

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 May 2025

Public Authority: Leicester City Council
Address: City Hall
115 Charles Street
Leicester
LE1 1FZ

Decision (including any steps ordered)

1. The complainant requested information from Leicester City Council ("the Council") relating to an ESPO Liquid Fuels Framework.
2. The Commissioner's decision is that, on the balance of probabilities, the Council does not hold information within the scope of the request.
3. The Commissioner does not require the Council to take any steps.

Request and response

4. On 28 April 2024, the complainant wrote to the Council and requested information in the following terms:

"For context, your organisation has been placing direct awards to suppliers under the ESPO Liquid Fuels Framework 301_22 The Supply of Liquid Fuels. ESPO was investigated by the Public Procurement Review Service (PPRS) and was required to inform its customers that the framework operated on a direct award model because this was not clear from its user guide documents. This is evidenced on the PPRS website here: <https://www.gov.uk/government/publications/mystery-shopper-results-2018>. Row 541 of the spreadsheet that can be downloaded from that link provides full details.

The questions under FOI, for your organisation, are as follows:

1. Did ESPO make you aware that you were placing a direct award for each order that you placed?
2. Did you issue a Contracts Finder Notice for each order you placed?
3. Please can you provide links to the Contracts Finder notices for the direct awards you placed under the framework in the month of November 2023?
4. Please can you state your total spend under the framework in the year 2023?"
5. The Council responded on 13 May 2024, and provided the complainant with some information in response to the request.
6. On 14 May 2024, the complainant wrote to the Council and asked that it clarify part of its response. The Council responded on 17 May 2024, and clarified its response.
7. On 30 October 2024, the Council provided the complainant with a further response to the request. It asked the complainant to disregard its previous responses to the request and amended its position. The Council now stated that it has not used the ESPO Liquid Fuels Framework 301_22 ("the Framework") which commenced in 2022.
8. The complainant wrote to the Council on 9 November 2024, to request an internal review. The Council provided the complainant with the outcome of its internal review on 5 December 2024. The Council denied holding information within the scope of the request but confirmed that its Housing teams were currently in the process of undertaking an exercise to determine whether it had used the Framework.

Scope of the case

9. The complainant contacted the Commissioner on 5 December 2025, to complain about the way their request for information had been handled. Specifically, they stated that they consider the Council to hold information within the scope of their request.
10. Therefore, in this notice, the Commissioner will cover whether the Council holds information within the scope of the request.

Reasons for decision

Section 1 – general right of access to information

11. Where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the task for the Commissioner is to determine whether, on the balance of probabilities, the public authority holds any information relevant to the request which it has not already disclosed to the complainant.
12. In making this determination, the Commissioner will consider the complainant's evidence and argument and the actions taken by the public authority to check whether the information is held. The Commissioner will consider any other reasons offered by the public authority to explain why the information is not held, and also any reason why it is inherently likely, or unlikely, that information is not held.
13. The Commissioner is not expected to prove categorically whether the information is held; he is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities. Applying the civil test of the balance of probabilities is in line with the approach taken by the Information Tribunal when it considered the issue of whether information is held.

The complainant's position

14. The complainant considers the Council to hold information within the scope of their request. In their initial complaint to the Commissioner, the complainant explained that the Council has recently been investigated by the Public Procurement Review Service (PPRS) regarding its use of the Framework. The Complainant said that during its investigation, despite the Council stating that it has not used the Framework, the PPRS found evidence of a contract between the Council and another organisation under the Framework. The complainant provided the Commissioner with a copy of the PPRS' case closure report to evidence this. As the PPRS' investigation found evidence of the Council having used the Framework, the complainant considers the Council to hold information within the scope of their request.

The Council's position

15. The Council maintains that it does not hold any information within the scope of the request. In its submissions to the Commissioner, the Council explained that following the PPRS' investigation, it undertook searches within its Fleet Services Team and its Procurement Team to establish whether it had used the Framework. However, the Council has said that it has not been able to locate any evidence that it has used the

Framework, or that it holds any other information relating to the Framework.

16. The Council explained that when searching for information relating to the Framework, it interviewed staff within its Fleet Services Team, who are involved with the purchase of fuel. It stated that as all the senior staff who were involved with fuel purchase process have subsequently left the Council, it was unable to interview those staff members. However, the Council has said that operational level staff confirmed that a different, earlier, framework to that referred to in the request is followed, and has been for a number of years.
17. The Council explained that when searching for information relating to the Framework it also consulted staff within its Procurement Team who could not recall using the Framework. Furthermore, searches of all records held by the Procurement Team did not locate any information relating to the Framework.
18. The Council explained that it has conducted searches of all paper records held by its Fleet Services Team. However, no information relating to the Framework was located. The Council stated that it has also conducted searches of its Fleet Services Team's limited electronic records which included carrying out systematic searches of all Fleet Services shared drives, and the files of the former Fleet Services manager, for information relating to the Framework. However, no information was located.

The Commissioner's position

19. The Commissioner recognises that following an investigation, the PPRS determined that it was likely that the Council had used the Framework. Given this, he understands why the complainant considers the Council to hold information within the scope of their request.
20. However, based on the explanations provided by the Council, the Commissioner is satisfied that the Council has conducted reasonable searches for information within the scope of the request. When conducting its searches, the Council consulted staff members within the relevant teams and also carried out extensive searches of both paper and electronic records.
21. Furthermore, whilst the Commissioner notes that Council's searches were not limited to the specific information requested in this case, as the search parameters were extended to cover any information held that relates to the Framework, he considers that if any information within the scope of the request was held, it would likely have been located by the Council's searches.

22. Therefore, the Commissioner's decision is that on the balance of probabilities, the Council does not hold information within the scope of the request.

Right of appeal

23. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
General Regulatory Chamber
PO Box 11230
Leicester
LE1 8FQ

Tel: 0203 936 8963
Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

24. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
25. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Suzanne McKay
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF