



Neutral citation number: [2024] UKFTT 988 (GRC)

Case Reference: EA/2023/0130

First-tier Tribunal
General Regulatory Chamber
Information Rights

Heard: By CVP

Heard on: 18 October 2024

Decision given on: 6 November 2024

Before

JUDGE SOPHIE BUCKLEY
MEMBER SUSAN WOLF
MEMBER JO MURPHY

Between

ANTHONY KELLY

Appellant

and

(1) THE INFORMATION COMMISSIONER
(2) EAST LINDSEY DISTRICT COUNCIL

Respondents

Representation:

For the Appellant: In person

For the First Respondent: Did not appear

For the Second Respondent: Ms Anderton (in-house lawyer)

Decision: The appeal is allowed in part.

Substitute decision notice: IC-208500-Y3H0

Organisation: East Lindsey District Council

Complainant: Mr. Antony Kelly

1. On the balance of probabilities, the Council holds further information within the scope of part two of the request made on 24 October 2022.
2. On the balance of probabilities, the Council does not hold any further information within the scope of parts one, three and four of the request made on 24 October 2022.
3. The tribunal requires the public authority to take the following step:
 - a. Issue to the complainant a fresh response to the request confirming that it holds further information within the scope of part two of the request.
 - b. Either supply the information or serve a refusal notice under section 17 of FOIA including what grounds they rely on.
4. The public authority must take this step within 35 calendar days of the date of this decision.
5. Any failure to abide by the terms of the tribunal's substituted decision notice may amount to contempt which may, on application, be certified to the Upper Tribunal.

REASONS

Introduction

1. This is an appeal against the Commissioner's decision notice IC-208500-Y3H0 of 2 March 2023 which held, on the balance of probabilities, that the East Lindsey District Council (the Council) held no further information within the scope of the request.

Factual and legal background to the appeal

2. This appeal relates to the management by the Council of finances relating to the 'business improvement district' (BID) and in particular relating to the 'BID levy' which is a levy imposed on non-domestic ratepayers in the BID for the purposes of financing projects carried out for the benefit of the BID or those who live or work there.
3. Under part 4 of the Local Government Act 2003 (LGA) the Council may make 'BID arrangements' with respect to an area comprising all or part of the area of

the authority (a 'business improvement district'). The Council has done so in relation to all of the area of the authority.

4. Under section 54 LGA BID arrangements are to have effect for such period (not exceeding 5 years) as may be specified in the BID arrangements.
5. Under section 41(2) LGA the purpose of BID arrangements is to enable:
 - 5.1. the projects specified in the arrangements to be carried out for the benefit of the BID or those who live, work or carry on any activity in the district, and
 - 5.2. those projects to be financed (in whole or in part) by a BID levy imposed on the non-domestic ratepayers, or a class of such ratepayers in the district.
6. The BID Levy is based on a percentage of the rateable value (set by the Valuation Office Agency) of the relevant hereditament within the BID geographic area.
7. Section 47 LGA provides that the Council must keep a BID Revenue Account and that amounts paid to the authority by way of BID levy must be credited to the BID Revenue Account and that amounts are to be debited to the BID Revenue Account only in accordance with BID arrangements.
8. Schedule 3 of the Business Improvement Districts (England) Regulations 2004 (the Bid Regulations) makes further provisions on the keeping of the BID Revenue Account. Part 1 deals with credits to the account and part 2 with debits.
9. Schedule 3 provides:
 1. For each year a billing authority which is required to keep a BID Revenue Account ("the account") shall carry to the credit of the account amounts equal to the items listed in this Part of this Schedule.

Item 1: BID revenues

Sums receivable for the year under sections 43 and 45 of the Act.

Item 2: Income from BID services and facilities

Sums receivable by the authority for the year in respect of services or facilities provided by it (excluding contributions made by it to the BID under section 43(2)(a) of the Act) under the BID arrangements.

Item 3: reduced provision for bad or doubtful debts

The following, namely-

(a) any sums debited to the account for a previous year under [sub-paragraph (a) of item 3 of Part 2 of this Schedule which have been recovered by the authority during the year; and

(b) any amount by which, in the opinion of the authority, any provision debited to the account for a previous year under sub-paragraph (b) of that item should be reduced.

Item 4: credit balance from previous year

Any credit balance shown in the account for the previous year.

2. For each year a billing authority which is required to keep a BID Revenue Account ("the account") shall carry to the debit of the account amounts equal to the items listed in this Part of this Schedule.

Item 1: BID cost of collection

The cost to the authority for the year in respect of collecting the BID levy.

Item 2: BID expenditure

The expenditure of the authority for the year in respect of the BID arrangements (including sums paid to a third party to undertake the works or services under the BID arrangements).

Item 3: provision for bad or doubtful debts

The following, namely-

(a) any sums credited to the account for the year or any previous year under item 1 or 2 of Part 1 of this Schedule which, in the opinion of the authority, are bad debts which should be written off; and

(b) any provision for doubtful debts which, in their opinion, should be made in respect of sums so credited.

Item 4: debit balance from previous year

Any debit balance shown in the account for the previous year.

10. Regulations 14(3) and (4) of the BID Regulations states:

"(3) This paragraph applies where BID arrangements come to an end (whether by reason of termination under regulation 18 or otherwise) and there is a credit to the BID Revenue Account which, after deducting a reasonable sum for the cost of administering the arrangements for crediting or refunding the amount, would provide a credit or a refund of at least £5 for each person who was liable to pay the BID levy immediately prior to the end of the BID arrangements (..).

(4) Where paragraph (3) applies the relevant billing authority shall-

(a) Calculate the amount of the credit to the BID Revenue Account (after the deduction referred to in paragraph (3) has been made) which is to be credited or refunded to each previous levypayer;

...

- (c) make arrangements for the amount so calculated to be credited against any liability by way of non-domestic rates of each previous levypayer, or where there is no liability for that person by way of non-domestic rates, for the amount to be refunded to that person.”
11. The Council entered into a BID levy operating agreement (the operating agreement) with a BID company, Lincolnshire Coastal BID Ltd in May 2018. The BID term is the period of 5 years from 1 September 2017 to 31 August 2022. We do not need to decide if the person signing the agreement from the Council did or did not have proper authority from the Council to enter into that agreement.
 12. The operating agreement records that the Council is the billing authority for the purposes of the Local Government Act 2003 and is responsible for collecting the BID level and administering the BID Revenue Account. It records that the BID company is responsible for the operation of the BID and for using the BID Levy for the purposes of achieving the BID Arrangements.
 13. Public Sector Partnership Services (PSPS) is a Local Authority Trading Company owned by the Council along with South Holland District Council and Boston Borough Council. PSPS is responsible for the collection of the BID Levy and the Council’s bank accounts are maintained and monitored by PSPS.
 14. Every BID Levy payer has their own account record within the BID billing system, which sets out how much they owe. A bill is sent out annually and the amount is due in one instalment. On each of the individual levy account records, it will show a debit (indicating the BID Levy amount for that year) and a credit for the same amount (if the BID Levy is paid). When the BID Levy is paid, it comes into the Council’s payment system and is allocated to the individual account record as a credit. The net cash position of the BID accounts (monies received less any refunds) is consolidated into the Council’s general ledger.
 15. On a monthly basis, PSPS prepare a reconciliation report of the ‘BID Revenue Account’, summarising the monies received on behalf of the BID company and identifying the net payment due to the BID company. Based on this summary, the BID company then issue an invoice to the Council to claim the monies owed to them.
 16. Mr Kelly made a complaint to the Council’s independent auditor who concluded, inter alia:

“Maintenance of the revenue account

Our work has confirmed your objection included valid concerns because the Council has not been fully complying with the Regulations and the requirements of the BIDCo Operating Agreement, in that the Council has not maintained a formal BID revenue account as required by Schedule 3 of the

Regulations. We did find, however, that the Council has maintained records of BID levy income and amounts paid to the BIDCo, including regular control account reconciliations. The Council has now prepared a BID revenue account for 2021/22.”

17. If payment of the BID Levy is not made, the Council sends reminders and ultimately a Court Summons with a view to obtaining a Liability Order. If payment is still not made the matter is referred to Enforcement Agents for recovery.
18. According to the Council, by June 2024 the Council was still trying to reconcile the BID Revenue Account. The Council assert that this has been significantly delayed due to the non-payment of the BID levy by a number of individuals and the need for the Council to apply for Liability Orders. The Liability Order proceedings were finalised in December 2023. PSPS state that the reconciliation was being carried out in June 2024.

Requests, Decision Notice and appeal

The Request

19. This appeal concerns a request made to the Council on 24 October 2022:

“What was the balance of the Authority’s BID Revenue Account at close of business on 31/8/2022 [*part one*]

Please provide details of all amounts credited to and debited from the BID Revenue Account since the BID Arrangements came to an end on 31/8/2022, including the payers/payees. [*part two*]

Has ELDC complied with Regulation 14(c) and (d) of the Business Improvement Districts (England) Regulations 2004? [*part three*]

If so, please provide details of the minimum amount payable to previous levy payers.” [*part four*]

The response

20. In its response on 21 April 2023:
 - 20.1. In relation to part one of the request the Council stated: “The BID revenue account balance is £653.54 dr. The cash balance was £15,296.10 cr.”
 - 20.2. In relation to part two the Council provided a table summarising credit/debit movements on levy accounts. The Council stated that individual transactions on an account-by-account basis are not reported and that the BID revenue account was not yet reconciled.

- 20.3. In relation to part three the Council stated that if the question referred to regulation 14(4)(c) the answer was no, as the BID revenue account was not yet closed. The Council stated that there was no regulation 14(4)(d).
- 20.4. The Council stated that it did not hold the information requested in part four.

21. The Council upheld its position on internal review.

The Decision Notice

22. In a decision notice dated 2 March 2023 the Commissioner decided that the public authority had provided all the information it held in recorded form and on the balance of probabilities did not hold any further information in scope of the request.
23. The Commissioner noted that it is not the Commissioner's responsibility to determine whether a public authority ought to hold further information, or whether the information it does hold is adequate for the purpose it serves. His only role is to determine whether the public authority does, as a matter of fact, hold further information in recorded form.
24. The Commissioner stated that there is no requirement for the Council to create information in order to answer the requester's questions, their obligation is to supply information they held at the time of the request. From the information provided to him, in this case, the Commissioner was satisfied that, on the balance of probabilities, the Council supplied all the relevant information in scope, at the time of the request.

Notice of Appeal

25. The Grounds of Appeal are, in essence, that the Commissioner was wrong to conclude that the Council did not hold the requested information.
26. In particular the appellant asserts that:
 - 26.1. There is no information provided on the balance of the BID Revenue Account as at 31 August 2022. The balance has been given for 21 November 2022.
 - 26.2. There is no information given with regards to the details of credits and debits on the BID Revenue Account since 31 August 2022. 'Levy accounts' are not the BID Revenue Account. Under section 47 LGA amounts paid to the Council by way of BID levy must be credited to the BID Revenue Account.

- 26.3. It is likely that the balance of the Bid Revenue Account is constantly changing because regular payments are made to the BID company.
- 26.4. The BID Revenue account should present in the same way as a personal bank account with a live balance depending on what has been credited and debited in relation to the BID arrangements.
- 26.5. If it is impossible to give details of the balance of and transactions on the BID Revenue Account, how is it possible to be sure the information was correct as the time of the reply?

The Commissioner's response

27. The main points of the Commissioner's response are as follows.
28. The Commissioner submitted that first part of the request has been sufficiently answered. The Council have confirmed that the figures for cash balance related to the position on 31 August 2022.
29. In relation to part two of the request, the Commissioner noted that the Council have confirmed that it holds no information on the details of individual credit/debit transactions on the BID Revenue Account and that no money has been transferred from the BID Revenue Account to the levy accounts. The Council has confirmed that it would not be able to provide information if any money from the 'levy accounts' has been transferred into the BID Revenue Account as it 'does not show monies in and out and does not include individual credits or debits from levy payers'. If any money from the 'levy accounts' has not been transferred into the BID Revenue Account this would fall outside the scope of the Decision Notice.
30. The Commissioner submitted that neither he nor the tribunal can comment on whether or not the Council have correctly adhered to the BID legislation.
31. The Commissioner submitted that even if money has been credited/debited to the BID Revenue Account in the ways that the appellant suggest, the Council would not be able to clarify these possibilities because the BID Revenue Account 'does not present in the same way as a Personal bank account which would show monies in and out'.
32. The Commissioner submitted that information was provided in relation to parts one and three and the answer to question three meant no information was held for question four. In relation to question two, no information was held but the Council complied with its duties under section 16.

The appellant's reply to the Commissioner's response

33. The tribunal has taken all the points in the reply into account. The main points are as follows.
34. In relation to part one of the request the appellant submitted that the Council provided the balance of the specific account at a different time and the 'cash balance' at the specific time. Neither of these answered the request. There is no explanation from the Council of what the 'cash balance' is and what was taken into account when establishing it. If the cash balance was the same of the balance, the Council would not have provided two figures.
35. The Appellant submitted that all accounts show monies in and out. An account is by definition a record of transactions separate from other transactions not in the account. It is irrelevant that it does not show details for individual levy payers.
36. The Appellant noted that information has been provided about whether or not levy payers have been issued refunds, but this is relevant only to his stated intention in asking for the information. The Appellant is entitled to and wants to receive all of the requested information regardless of his stated intention, which is in any event only one of his intents.
37. The Appellant submitted that the statement that 'individual transactions' are not recorded is ambiguous and might mean that there are no individual transactions on the account or that there are no transactions regarding individual levy papers.
38. The Appellant submitted that the respondent's assertions that (a) the Bid Revenue Account balance and cash balance are the same thing and (b) that there were no credit and debits between 31 August 2022 and the date of the request cannot be right because there is a difference in the balance of the account of over £16000 between 31 August 2022 and the date of the response. That shows that there must be at least one credit or debit to the account in the relevant period or, in the alternative, that the balance and cash balance must be different things.
39. The Appellant submitted that the Commissioner should have reached his decision on the basis of the documents before him rather than on the basis of assertions by the Council.
40. The Appellant submitted that the Council accepted in its response to the request that it held information in relation to parts 1-3 but has failed to provide it.
41. The Appellant argued that the Council had focussed on the relationship between the levy payers and the BID Revenue account and not on the credits and debits to the Bid Revenue Account as requested.
42. The Appellant submitted that it was clear from the wording of the response and the internal review that the cash balance and the BID Revenue Account balance are not the same thing. The cash balance was said to be 'other information' provided 'to assist'.

43. The appellant argued that the fact that individual entries are not reported on the account in the way the appellant suggests does not mean that there are no credits or debits on the account and accordingly does not mean that the Council holds no information within the scope of part two of the request.
44. The appellant submitted that unless there are no credits or debits on the account during the relevant period, the Council will hold information within part two which it has not provided.
45. The appellant submits that if the Council does not in fact hold information within parts one and two of the request, it should modify its response to the request.

The Council's response

Part one of the request

46. The Council provided the following clarification:
 - 46.1. East Lindsey District Council's BID Revenue Account at close of business on 31/8/2022 was £15,926.10 in credit.
 - 46.2. The figure of £15,926.10 is the cash balance as at 31 August 2022. The 'cash balance' in respect of the BID Revenue account is the net amount of money available to the BID Company from payments made by BID Levy payers, after deductions have been made, such as refunds and the 5% retention as per operating agreement.
 - 46.3. The figure of £635.54 dr was the actual position at the end of September 2022.
47. The Council submitted that it fully responded to part one of the request.

Part two of the request

48. The Council submitted that, subject to the correction of an error, the position as at 21 November 2022, in terms of the movement in transactions was correctly communicated to the appellant.
49. The Council provided a table which shows the debit and credit movements taken from system reports from the BID Levy Accounts. The Council asserted:
 - 49.1. The BID Revenue Account does not show individual transactions from Levy Payers, but the 'movement' from Levy Payer accounts into the BID Revenue account.
 - 49.2. All revenue comes into East Lindsey District Council's 'Receipts' account, and is then allocated to respective cost centres, including the BID Levy cost centre which then reports into the BID Revenue Account.

50. On that basis the Council submitted that it had provided that the information held within the scope of part two of the request.

The appellant's reply to the Council's response

51. The appellant asserted that the Council have not dealt directly with whether they consider the BID Revenue Account balance and the cash balance to be the same thing.
52. The appellant set out the relevant law, including the general requirements to keep adequate accounting records for accounts under section 3 of the Local Audit and Accountability Act 2014 and the BID legislation.
53. The appellant questioned why, if the balance of the account at close of business on 31 August 2022 was £15,926.10 in credit, this was not stated in the response to the request or the internal review.
54. The appellant noted that the 'cash balance' is defined as 'the amount of money available to the BID Company...after deductions have been made.' He submits that unless that figure was the only amount in the account on 31 August 2022 the question has not been answered.
55. The appellant argued that it is not clear if what the Council refers to as the 'actual position' is the same as the 'cash balance'.
56. The appellant does not dispute that the BID Revenue Account does not show individual transactions from levy payers, but he is requesting the individual transactions that it does show.
57. The appellant submitted that at the point of allocation of funds to the BID Revenue Account on a specific date a credit transaction takes place and the same must be true for any debit transaction.
58. The appellant put forward that the wording of the operating agreement shows that there would be debits from the BID that can and should be regularly recorded on the BID Revenue Account. It provides that the BID Levy will be transferred from the BID Revenue Account to the BID Company and that on account payments are made monthly to the BID Company.
59. The appellant submitted that if 5% of the funds credited to the BID Revenue Account since the start of the tax year have not been paid to the BID company, then approximately 5% of 5 months revenue must still have been in the BID Revenue Account contributing to the account balance, yet the Council have declared that they have deducted that figure to obtain the cash balance.

60. The appellant queried why 'refunds' have been deducted from the balance. If refunds have already been made from the account he submits that they are irrelevant. He submits that the cash balance, as adjusted, is not the same as the BID Revenue Account Balance.
61. The appellant submitted that if the account balance has reduced by over £16000 between 31 August and 30 September then there must have been at least one transaction on the account. He submitted that unless the Council have failed in its responsibility to keep adequate accounting records then it possessed details of the transactions that took place on its BID Revenue Account between 31 August and 30 September which it is required to provide in response to the request.

The final submissions of the Council dated 26 February 2024

62. The Council made further submissions which the tribunal has taken into account.
63. In particular the Council submitted that the 'balance' and the 'cash balance' on the BID Revenue Account are the same. The Council asserted that the BID Revenue Account does not show individual transactions in the way suggested. Receipts are shown as individual line entries on the ledger, not the BID Revenue Account. It does not summarise per day. As someone makes a payment that would be one entry in the ledger which would show individual account references and transactions of the individual levy payers. There is then a process within the system that interfaces to create the balance on the BID Revenue Account

The appellant's submissions on the Council's witness statements

64. The appellant set out the law in relation to the requirement for the preparation and publication of a statement of accounts in regulations 7 and 10 of the Accounts and Audits Regulations 2015. In reliance on section 22 of the Local Government Act 2003 and section 31A of the Local Government Finance Act 1992 the appellant submitted that the BID Revenue Account is a 'revenue account' and therefore covered by the requirements in the Accounts and Audit Regulations 2015.
65. The appellant submitted that although the Council relies on the BID operating agreement, he asserts that the individual who signed the BID operating agreement was acting ultra vires and was not authorised to do so, in reliance on a response to a later FOI request to the Council.
66. The appellant exhibited a letter from the Council's independent auditor dated 28 June 2023. He asked the Tribunal to note the following extracts from that letter:

"The Council only acts as levy collector and does not exercise control before funds are transferred to BIDCo. This means that for the BID levy the Council

has no income to record in its Comprehensive Income and Expenditure Statement because it is acting as a collector and distributor of the sums involved.

...

In our view, the Council's accounting treatment is consistent with the Operating Agreement which records the respective functions of the Council and BIDCo...

Maintenance of the revenue account

Our work has confirmed your objection included valid concerns because the Council has not been fully complying with the Regulations and the requirements of the BIDCo Operating Agreement, in that the Council has not maintained a formal BID revenue account as required by Schedule 3 of the Regulations. We did find, however, that the Council has maintained records of BID levy income and amounts paid to the BIDCo, including regular control account reconciliations. The Council has now prepared a BID revenue account for 2021/22."

67. The appellant also attached a response to a further FOI request, in relation to the 'BID revenue account for 2021/22' referred to in the auditors letter above. The appellant asked the tribunal to note that:

"a) No detail of transactions has been provided for the BID Revenue Account which was claimed to have been retrospectively prepared.

b) The information that has been provided in the table is the total amounts credited to and debited from three separate accounts; H1010, H1015 and H1020, all under the same cost centre entitled Business Improvement District. There is no mention of the 'formal' BID Revenue Account that is claimed to exist.

c) Ms Sparks, in her review states that:

The screen shot does show each transaction on the BID Revenue Account.

d) The Council has given no detail of any transactions on any of those accounts listed and have instead again provided the effect on the account balances of the transactions recorded and over the period in question.

e) Ms Sparks also claims that the BID Revenue Account 'consolidates transactions that were processed in the timeframe'

f) The information provided is the information identified by the auditor as 'records of BID levy income and amounts paid to the BIDCo' which he and the Council have accepted as not being a formal BID Revenue Account."

68. The appellant attached an email exchange with the Council, in which the Council maintain that details of the BID Revenue Account are not required to be made public by law.
69. The appellant also attached any extracts referring to BID in the Council's published statements of accounts since 2017.
70. Finally the appellant attached a sheet showing details of extracts from published records of the Council showing details of sums transferred by the Council to the BID company.
71. The appellant made a number of the submissions on the relevance of that evidence, which we have taken into account where relevant to the issues we have to decide.
72. The appellant submitted that evidence of the existence, or not, of a formal BID Revenue Account would help indicate one way or another whether the Council intended to apply this charge under the BID Legislation or simply under the questionable operating agreement with no regard for that legislation. He explains that this is why he requested the information that is the subject of this appeal.
73. The appellant submitted that the Council are prepared to mislead the public as to the existence of a formal BID Revenue Account. He submitted their statements implied that a BID Revenue Account exists, after which they confirmed to the independent auditor that no formal BID Revenue Account had been kept.
74. The appellant submitted that the statements of the second respondent's witnesses are inaccurate in a number of aspects in relation the BID.
75. In relation to the statement of Ms Knowles the appellant submits that there remains a need for a formally separate BID Revenue Account. He submits that if there is a sum of transactions on the BID Revenue Account then there must be transactions recorded on the BID Revenue Account to sum.
76. The appellant submitted that the process described by Ms Knowles is that same process identified by the independent auditor i.e. maintaining 'records of BID levy income and amounts paid to the BIDCo, including regular control account reconciliations'.
77. The appellant submitted that the reason why the Council has not disclosed details of transactions, is because he understands that the Council would be committing fraud if it were to represent details of transactions on a nominal 'control account' as details of transactions on a formal BID Revenue Account.

78. The appellant argued that the Council stated in the initial response to the request that it held details of transactions on the BID Revenue Account for the period in question but has not communicated them. It has neither confirmed nor denied to the tribunal that it holds details of all or any of the transactions on a formal BID Revenue Account for the period in question, but instead has stated that the BID Revenue Account has not been 'reconciled', which is irrelevant to the appeal.
79. The appellant submitted that the Council has made payments to the BID Company during the relevant period, and that under BID and accounting legislation these transactions should be recorded at the time, in the formal BID Revenue Account if one exists. That information should have been communicated to the appellant in response to the request.
80. It is submitted that if the Council can be sure of the balance on two dates, it must be sure of the details of the transactions that occurred between those two dates.
81. The appellant submitted that the Council does not want to admit that it has not kept a formal BID Revenue Account and has instead been relying on the operating agreement and a control account and simply collecting and passing on the money charged. The appellant submits that the 'reconciliation status' is an irrelevant distraction. The request is for transactions, reconciled or unreconciled.
82. The appellant submits that either the Council holds information on the transactions, and should communicate it, or it does not and is required to correct its original response to a 'not held' response.
83. The appellant asserts that the Council is deliberately concealing the information and asks the tribunal what powers it has to act if there is a possible offence under section 77 FOIA.

Legal framework

84. Section 1(1) FOIA provides:

"Any person making a request for information to a public authority is entitled –
(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
(b) if that is the case to have that information communicated to him."
85. The scope of a request is determined objectively, in the light of all the surrounding circumstances.
86. The question of whether information was held at the time of the request is determined on the balance of probabilities.

The role of the tribunal

87. The tribunal's remit is governed by section 58 FOIA. This requires the tribunal to consider whether the decision made by the Commissioner is in accordance with the law or, where the Commissioner's decision involved exercising discretion, whether he should have exercised it differently. The tribunal may receive evidence that was not before the Commissioner and may make different findings of fact from the Commissioner.

Issues

88. The issues for the tribunal to determine are:
- 88.1. On the balance of probabilities did the Council hold any further recorded information within the scope of the request?

Evidence and written submissions

89. The tribunal had before it an updated open bundle dated 12 February 2024.
90. We also read and took account of:
- 90.1. Final submissions of the second respondent dated 26 February 2024.
 - 90.2. A notice of adjournment and directions dated 7 May 2024.
 - 90.3. A witness statement of Samantha Knowles, Chief Finance Officer for Public Sector Partnership Services, dated 25 June 2024.
 - 90.4. A witness statement of Lydia Rusling, Assistant Director for Economic Growth at the second respondent, dated 25 June 2024 and exhibits.
 - 90.5. A response from Mr Kelly to the second respondent's witness statements dated 16 July 2024.
 - 90.6. Emails from the Council and Mr Kelly dated 3 June 2024.

Oral submissions

91. We heard oral submissions from Mr. Kelly and Ms Anderton which we have taken into account.

Discussion and conclusions

Parts three and four of the request

92. These parts of the request were not in issue.

Part one of the request

93. As the independent auditor has confirmed, the Council did not maintain a formal BID revenue account as required by Schedule 3 of the BID Regulations. However it did keep records of BID levy income and amounts paid to the BIDCo. Based on

those records the Council is able to calculate the cash balance of the 'BID Revenue Account' at any time.

94. We accept on the basis of the evidence from Ms Knowles that figure provided for the 'balance' on 21 November 2022 and the figure provided for the 'cash balance' on 31 August 2022 are calculated on the same basis. Those figures represent the cash activity that there has been up to that date.
95. We are satisfied that the figures provided by the Council fall within the scope of part one of the request for the 'balance of the Authority's BID Revenue Account', and that they do not hold any further figures which would fall within that part of the request.

Part two of the request

96. We do not need to decide if the Council has complied with the BID Regulations or any statutory obligations to keep a separate account or to prepare or publish statements of accounts.
97. FOIA gives a right to recorded information. If a public authority holds the 'building blocks' of raw data from which the requested information can be easily derived, then it does not matter that it is not held in the particular form requested. It therefore does not matter for our purposes if the individual transactions in the form of credits and debits are formally recorded or reported as part of the 'BID Revenue Account' or whether they are recorded elsewhere by the Council.
98. Part two of the request made by Mr. Kelly is for 'details of all amounts credited to and debited from the BID Revenue Account since the BID Arrangements came to an end on 31/8/2022, including the payers/payees'.
99. The request was responded to on 21 November 2023. The relevant period in relation to which details of amounts credited and debited are requested is therefore from 31 August 2022 to 21 November 2022.
100. In the course of Ms Knowles' evidence she was referred to the wording of part two of the request, and Mr. Kelly put to Ms Knowles that although the Council had provided the *sum* of the debits and credits that took place during that period, it had not provided a list containing the details of each of those transactions, including the payee or the payer.
101. Ms Knowles' response was 'No, is the honest answer. We have a list of transactions and they have not been provided.'
102. The Judge asked Ms Knowles where the list of transactions would be found, and she stated that it would be in a financial ledger that was introduced in 1 April

2021. The Judge asked if it was possible to go back to a particular point in time in that ledger and Ms Knowles confirmed that it was.

103. On an objective construction of the request it is clear to us that the list of transactions referred to by Ms Knowles is within the scope of part two of the request.
104. On that basis we find on the balance of probabilities that the Council holds further information within the scope of the request in the form of a list of transactions that took place between 31 August 2022 and 21 November 2022 which has not been provided to the appellant.
105. The appeal is allowed on that basis. As the Council had not confirmed that it held this information it is appropriate to order to the Council to provide a fresh response to part two the request and either to provide the information or to issue a refusal notice.

Signed Sophie Buckley

Date: 24 October 2024

Judge of the First-tier Tribunal