

Business Change and Information Solutions
Sheffield City Council, PO Box 1283, Sheffield, S1 1UJ
E-mail: FOI@sheffield.gov.uk
Website: www.sheffield.gov.uk



23rd August 2017

Dear Mr Brooke,

I am writing in connection with the Freedom of Information request you submitted on 5th March 2017 (our reference 3670) and subsequent request for internal review. The Council is aware that you have raised a complaint to the Information Commissioner's Officer in regard to the lack of response from the Council in respect to your request for review.

Initially please accept my apologies for the protracted delays in response to your request for internal reviews. The Council does endeavour to provide a response to internal reviews within 20 working days, however upon occasion a review can be delayed as has occurred with these responses. Unfortunately due to a number of factors we have been significantly delayed in providing responses to internal reviews. These significant delays do not meet the standards the Council aims to achieve and please accept my apologies on behalf of the Council for this. We are currently setting aside additional resource to enable the review and closure of our internal review backlog in an effort to reduce any further delays in future.

In your request, you specifically ask for:

I am writing to request specific information with regards to statements made by Cllr Brian Lodge in public at the Council meeting on the 3rd March 2017. Cllr Lodge made reference to information and figures so I am assuming the information I require is readily available and should not be onerous for you to provide me with. For the avoidance of undue work and to simplify the gathering of the information request, wherever figures are requested these can be rounded to the nearest thousand. Where the information relates to estimated figures please make this clear in the response.

I asked Cllr Lodge why he had said publicly that delays to the felling of street tree caused by protestors would incur costs to the Council, when Article 19 of the Streets Ahead PFI contract state

19.1 The Authority shall not be responsible for any Protestor or Trespasser or for any act, omission or default of any such person during the Term.

In answer Cllr Lodge stated that "there is another clause (or other clauses) in the contract which isn't redacted. Delays that are.....outside of Amey's

control, so things like injunctions, things like protests that stop them carrying on their work, things like court cases, the Council setting up the ITP panel..... there is a cost to all that and that cost comes back to the Council.

The information I request is;

- 1. Which specific clause(s) or article(s) in the PFI contract between Sheffield City Council and Amey Hallam Highways Limited causes or allows Amey to pass costs on to the Council as a result of protests delaying tree removal works.*
- 2. What is the monetary cost to the Council to date as a result of protests delaying tree removal works. To be specific this refers to additional money paid by the Council to Amey or any other party as a direct result of protests that delay the removal of a tree. This should not include Council costs on legal court cases, handling FOI requests or setting up and running the ITP.*
- 3. What is the forecast cost to the Council over the coming 12 months for future payments as set out in point 2 above.*

Cllr Lodge also stated that;

"Its anticipated that the costs to the Council and to Council taxpayers will run into millions that includes court costs, the costs of new crews to bring the work back up to speed.... to catch up , extra costs to deal with re scheduling work and all these sorts of things so there are millions of pounds".

- 4. Please provide a figure to date that the Council has incurred with reference to Cllr Lodge's statement above. This should be additional costs over and above those already within departmental budgets. This should be provided in summary form showing legal costs, the ITP costs and the cost of new crews and rescheduling works separately.*
- 5. Please provide a summary explanation with figures to demonstrate how the Council has arrived at a figure of an anticipated "millions" for the extra costs of protests to be met by city taxpayers*
- 6. Please provide a summary or explanation of where the Council is funding these additional costs from.*

Cllr Lodge makes reference to the "costs of new crews" and "re-scheduling works" which will fall to the city taxpayer.

- 7. Please provide a summary explanation of what this statement means stating to which party any payments are made and provide a figure if not already specified in reply to point 4*
- 8. Please provide summary of any additional payments made to Amey over and above the value of the original PFI contract and show what of these costs is attributable to the protesting of tree removal*

I have carried out an Internal Review of the handling of your request. Please take this letter as the response to your request for an Internal Review.

The intention of an internal review is to consider if we handled your response in accordance with the law and to consider if any decisions made, for example to refuse information, were correct and still apply.

In my review of the processing of this request I have considered:

- Your original request
- The response to your request
- The information requested

Time for Compliance

Section 10 – Time for compliance with request

<http://www.legislation.gov.uk/ukpga/2000/36/section/10>

Section 10 of the Freedom of Information Act states that Sheffield City Council must respond to requests made under the Freedom of Information Act within 20 working days of receipt. In this case, your request was received by Sheffield City Council on 5th March 2017 which was responded to on 28th April 2017 following the extension of the initial deadline for responding to your request in order to complete the Council's Public Interest Test considerations. I am satisfied that Section 10 of the Freedom of Information Act was correctly complied with in this case.

Response to further comments in your request for review

Within your request for review you noted some specific concerns as detailed below; I felt it was appropriate to consider these representations prior to concluding a review of the application of exemptions in this case. I have where possible indicated the Council's response and internal review response directly to the issues raised below.

1. *Which specific clause(s) or article(s) in the PFI contract between Sheffield City Council and Amey Hallam Highways Limited causes or allows Amey to pass costs on to the Council as a result of protests delaying tree removal works.*

NOTE – you have refused stating that the information is accessible in the redacted contract online. – I have attempted to identify the specific clause or article that Cllr Lodge has referred to, however I am unable to. I cannot find a clause that has the effect that Cllr Lodge (stating “there is another clause (or other clauses) in the contract which isn't redacted) referred to in a public meeting. As the Council made this

information public but without specifying the clause I have merely requested the detail. Without knowing which clauses (unredacted) the Council has stated I can only conclude that Cllr Lodge lied in a public meeting.

In regard to this element of your request; the Council has attempted to provide you with a route of access to the information you have requested, namely the provision of a link to the Amey contract. In respect to the specific clauses that allow the Council to receive additional costs from Amey as a result of protests there is no simple list of clauses or areas of the contract which may be used in order to recoup costs. Hypothetically there are a range of provisions under the Contract where payments may be issued as a result of delays or other actions which affect cost to Amey and/or the Council. We will not know the exact clauses used in any claim from Amey until they have been made to the Council.

As noted in our initial refusal notice the Council does hold a record of legal advice which sets out the potential use of the contract to recoup monies or costs related to the tree protests. Upon review I do not consider it relevant for release under the Freedom of Information Act 2000 as it meets an exemption from disclosure. In this case the advice is subject to legal professional privilege and meets the associated exemption under Section 42 of the Act, as noted in our initial refusal notice. The Council considers that the release of this legal advice would severely prejudice the free and frank provision of advice from its legal representatives and the public interest test continues to lie in favour of the application of the exemption, as per the details provided in our initial refusal notice. Discussions regarding liability for costs arising from delays to tree replacements and consequent delays to other aspects of the core investment period works are on-going between the Council and Amey and consequently it would be particularly inadvisable to place the Council's analysis of the contractual position into the public domain at this time.

In regard to the remainder of your request and the points noted below I note on review of the Council's initial refusal notice that we did initially breach Section 1 (1)(a) of the Act by not explicitly stating within the response to points 2 to 8 whether we held recorded information to each point. I have therefore provided a more comprehensive response under this review I have provided additional context where applicable but also applied a further exemption from disclosure as detailed in my responses below.

2. *What is the monetary cost to the Council to date as a result of protests delaying tree removal works. To be specific this refers to additional money paid by the Council to Amey or any other party as a direct result of protests that delay the removal of a tree. This should not include Council costs on legal court cases, handling FOI requests or setting up and running the ITP.*

NOTE – stating the cost to the Council as a result of tree protests does not breach commercial interests. Furthermore, as Cllr Lodge chose to put the information in general terms into the public domain I can see no reasoned argument for not providing a simple breakdown of the figure.

In regard to this element of your request we do not hold a full record of additional costs at this point. The Council will not receive or be able to quantify the final claim for any additional monies from Amey until the conclusion of the Core Investment Period at the end of 2017. These will then be reviewed and assessed and per any standard contractual scrutiny process. We note there have been some communications in regard to the potential claims under the contract for additional costs as a result of delays in the removal of trees which can be related to tree protests; however, these remain under negotiation and the Council is unable verify any existing payments at this point as this element of your request meets the cost exemption identified in 8 of this response.

3. *What is the forecast cost to the Council over the coming 12 months for future payments as set out in point 2 above.*

Cllr Lodge also stated that;

“Its anticipated that the costs to the Council and to Council taxpayers will run into millions that includes court costs, the costs of new crews to bring the work back up to speed... to catch up , extra costs to deal with re scheduling work and all these sorts of things so there are millions of pounds”.

We did not hold any such “forecasts” as at the 5th March 2017. In the associated comment by Cllr Lodge we believe the “millions” figure was an attempt to contextualise the potential costs to the Council. As noted in the commentary provided in regard to point 2 the Council will not know the claim from Amey until the conclusion of the Core Investment Period.

4. *Please provide a figure to date that the Council has incurred with reference to Cllr Lodge’s statement above. This should be additional costs over and above those already within departmental budgets. This should be provided in summary form showing legal costs, the ITP costs and the cost of new crews and rescheduling works separately.*

In this regard please see the further breakdown:

In terms of Legal Costs at the point of your initial request the related legal fee were attributed to the Judicial Review of the Council’s tree management process (See: <https://www.judiciary.gov.uk/wp-content/uploads/2016/04/dillner-v-scc-judgment.pdf>) the related costs were (Source FOI 476):

Internal recharge from legal services to other departments for JR:

£19,999.94 (362.21 combined officer hours)

External legal cost for JR:

Counsel's fees: £68810 (£82572 inc VAT)

Filing via agent: £950 (£1130 inc VAT)

In terms of the cost of the ITP to aide with your enquiries I have provided a copy of the response to a recent FOI request related to this area of work (Source FOI 596 relating to figures held up to 1st August 2017):

Please see table below for information.

Please note that the 'financial year' columns (2015/16, 2016/17 & 2017/18) relate to the date that costs were incurred on the Council's accounts, not necessarily the date when related activity took place.

Please be aware that the 2017/18 figures show costs incurred to date. These costs do not represent the final costs incurred to the Council, as we have not yet received all final invoices for work carried out by members of the ITP.

Financial year	2015/16	2016/17	2017/18
Staff costs for consultation support and administration	£24,125*	£15,750*	No costs incurred*
Postage and delivery costs	£2,621	£20,839	No costs incurred
Payments made to members of the Independent Tree Panel	£11,712	£28,508	£28,149.50
Total	£38,458	£65,097	£28,149.50

In regard to wider costs please see the Council's response to point 2 of our response above. You note in the wording of your request "*This should be additional costs over and above those already within departmental budgets.*" In this context we would note that additional costs or spending would not be additional to departmental budgets. Any such claims would likely lead to a requirement for efficiency savings, further borrowing or the removal/ suspension of other services to finance the claim.

5. *Please provide a summary explanation with figures to demonstrate how the Council has arrived at a figure of an anticipated “millions” for the extra costs of protests to be met by city taxpayers*

NOTE – this request should not breach any commercial agreements – I have merely asked for a summary explanation of information the Council made public in its statement.

We do not hold specific records in regard to this element of your request. The Council does not hold recorded information detailing the estimate and attributed details as noted. The relevant record would be the minutes from the meeting of the 3rd March 2017 available from <http://democracy.sheffield.gov.uk/documents/g6357/Printed%20minutes%20Friday%2003-Mar-2017%2014.00%20Council.pdf?T=1> which are of course accessible by other means.

6. *Please provide a summary or explanation of where the Council is funding these additional costs from.*

NOTE – this request should not breach any commercial agreements – I have merely asked for a summary explanation of information the Council made public in its statement.

Any increases in costs to the Council would be funded by the Councils Highways Maintenance Department within the Place Portfolio as the service area responsible for the Streets Ahead contract. Ultimately any Council spending will be paid for by public funds in the form of local tax revenue or government funding from the public purse. As noted above any related spend may need to be covered by efficiency savings, further borrowing or the removal/ suspension of other services to finance the claim.

Cllr Lodge makes reference to the “costs of new crews” and “re-scheduling works” which will fall to the city taxpayer.

7. *Please provide a summary explanation of what this statement means stating to which party any payments are made and provide a figure if not already specified in reply to point 4*

NOTE - If providing a figure breaches commercial sensitivity then please provide the summary explanation only

We do not hold any recorded information in regard to this element of your request. Cllr Lodge was demonstrating potential areas where costs may be claimed, but we do not hold information in this regard and we are not required to create information (i.e. a summary explanation) in response to an FOI request.

8. *Please provide summary of any additional payments made to Amey over and above the value of the original PFI contract and show what of these costs is attributable to the protesting of tree removal*

We are unable to provide information in this regard as an exemption from disclosure applies. The Council's management of payments with Amey mean that any payments are made as a monthly lump sum for works completed in respect to both core contract works and non-contract works (i.e. works not covered specifically by the Streets Ahead contract). To collate all records we hold and separate core from non-core payments and provide a descriptor of those payments would far exceed the cost threshold for dealing with FOI requests. Payments are received a scrutinised monthly but this does not result in the holding of a core and non-core list of payments. As a result we would need to review each and every payment since the instigation of the contract and/or the tree protests to collate the related information. Due to the amount of records involved to locate, retrieve and extract the requested information would likely well exceed the cost limit for dealing with FOI requests under [Section 12](#) of the Freedom of Information Act. For ease of reference, the cost limit (18hours or £450) is specified in the [Freedom of Information and Data Protection \(Appropriate Limit and Fees\) Regulations 2004 \(SI 2004 No. 3244\)](#).

We publish the details of our expenditure of £250 or more on our open data platform <https://data.sheffield.gov.uk/>. Please use the search term "Spend data" in the search field to identify relevant datasets. We have been publishing these datasets since 2011, so you should be able to look through the datasheets and identify the spend with AMEY. As this information is accessible by other means it is exempt from disclosure under Section 21(1) of the Freedom of Information Act 2000. However, as noted throughout this response, payments to Amey in respect to tree protestor activity have not occurred to this point, pending the completion of the Core Investment Period.

Review Decision - Conclusion

As noted in the review above I have acknowledged the Council's initial breach of Section 1 (1)(a) of the Act by not explicitly stating whether recording information was held in regard to the individual elements of your request. Taking this into account, I believe that now as a result of this review we have clearly stated where information is held by the Council and specifically where we do not hold information. I have also introduced a further exemption which would have allowed us to refuse the whole response; however it appeared appropriate under our duty to assist, and as this was not applied in the initial response, to provide wider context to the points you have raised where applicable.

As the purpose of an internal review is to consider the processing of an initial request, including the application of exemptions it is appropriate in this case to amend our initial response.

If you are dissatisfied with the outcome of your internal review, you are entitled to contact the Information Commissioner's Office and they will consider whether your complaint is eligible for further review. The Information Commissioner's details and guidance is available on the website at www.ico.org.uk.

Kind regards

Mark

Mark Knight

Information Management Officer

Information Management

Business Change & Information Solutions (BCIS)

Sheffield City Council

PO Box 1283 Sheffield S1 1UJ

www.sheffield.gov.uk