

Review of the handling of Freedom of Information Act requests made to Cambridgeshire County Council relating to FACT and HACT

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Introduction

This report was commissioned by Gillian Beasley, Chief Executive of Cambridgeshire County Council (CCC) following the report by PKF Littlejohn LLP (PKFL) relating to CCC, Fenland Association Community Transport (FACT), Huntingdonshire Association Community Transport (HACT) and Ely and Soham Association Community Transport (ESACT).

Within that report, there is a specific section concerning a number of Freedom of Information Act (FOIA) requests submitted to CCC relating to the payments made and contracts awarded to HACT and FACT during a three year period. PKFL examined the requests and responses particularly as concerns had been expressed regarding the information supplied in terms of how full the answers were. The scope for those requests was:

“By reference to Council procedures, investigate and report the handling of FOI requests 5709, 3509, 3348 and 5779. Assess more recent examples provided by the CBTA as to whether the CCC has operated in breach of the FOI Act and whether the information has been denied the CBTA which it had a right to view and whether the CCC redacted information in line with the Act”

Their conclusions are summarised below:

- incorrect information supplied in relation to HACT contracts which caused protracted correspondence
- Two contracts were omitted from all FOIA responses
- there was an incorrect reference to emergency powers being used
- Information was redacted by CCC which the ICO required to be disclose following an ICO decision notice being issue

The scope of this report is based on the PKFL report and additional FOI requests identified within that report as well as those which can be linked or would add value to this report. This report has examined the handling of the requests including the process followed to gather the information, any discussions on any concerns prior to the response, the response itself and how any subsequent complaints were responded to. I have also considered whether greater transparency could have been delivered through providing better context or whether different decisions on withholding information could have been made.

Executive summary

It would appear that the root cause of the issues identified is a lack of clear and good record keeping within the Transport Service. The lack of clarity or awareness over contracts held is at the heart of the matter, for example PKFL have identified two contracts omitted from all disclosure. I have seen no evidence that these two contracts were shared with the Cambs-FOI service. If information is not shared with them by a service, either wilfully or in genuine error, or is incorrect, the FOI service would not be aware and are reliant on the providing service. A FOI service can only operate with the information it is supplied with and the views of those who know the information best.

In the section below "Recommendations", recommendations 1 and 2 apply.

There are lessons which can be learned from the situation in which Cambs-FOI found themselves in and experienced some five years ago.

Mistakes were made in FOI responses due to the Transport Services' response which then impact on later responses; for example a mistake in the service in responding to FOI-3339 regarding the number of contracts causes additional requests and concerns being raised. As well as omitting contracts PRC3 and PRC4 (as PKFL have noted), there were a further two contracts missed at this point. This omission sets in motion a chain of requests questioning the number of contracts based on other answers or other available information. These mistakes are part of the points made in paragraph one, however there is also an opportunity to benefit from hindsight.

There were opportunities to review, provide greater detail or reassess which were not noted by the FOI service and worked on with the Transport Service. The subsequent protracted correspondence could have been avoided much earlier had responses from the service been examined in detail especially during the internal review process. For example, the Transport Service stated that an original agreement had been archived but there is no evidence that they were asked to retrieve it from archiving. Equally a more detailed analysis of the published "payments to suppliers" spreadsheet with Finance may have identified all the contracts.

In the section below "Recommendations", recommendation 3 applies.

In reviewing the specific documents to determine whether the information should have been redacted, and how it is explained to the recipient, it is my view that the FOIA exemption relating to personal data has been applied correctly and disclosure would have added very little to the overall picture disclosed. It would have been of help to the request had the reasons for redaction been explained clearly.

In the section below "Recommendations", recommendation 4 applies.

The use of the more subjective exemption by Cambs-FOI relating commercial interests has been tested by the ICO and a First Tier Tribunal. In these decisions, the ICO and First Tier Tribunal have upheld the use in some cases and overturned in others however it is noted that the exemption was considered to have been engaged in all cases, i.e. it was appropriate to use that exemption. The decision to overturn was because the case was not made sufficiently strong enough in the view of those bodies. The exemption is a subjective assessment of commercial sensitivity and any such assessment can always be disagreed with. I do note that on each use of this exemption, Cambs-FOI do demonstrate good practice as they evidence that they have sought to balance the public interest in disclosure against the potential for adverse effect on the commercial interests of another.

In the section below "Recommendations", recommendation 5 applies.

My final comments relate to the Cambs-FOI service for whom this was clearly a difficult matter involving the receipt of many FOIA requests received and being heavily reliant on a service to provide the accurate information. They were hampered by the effects of absence in a small team and in this

matter, greater support from the involved services was needed to deal with the volume and nature of these requests. In terms of handling future requests, there is a potential need for greater oversight of the requests and ensuring that services/partners are challenged appropriately. The lack of consistency and the missed opportunities to correct past requests led to the repetitive nature of requests which continued to impact for some time. It would also be worthwhile to publish responses on the council's website in order to make information more accessible. I note that this was done in the past but does not currently happen.

In the section below "Recommendations", recommendations 6 and 7 apply

I have included a concerns and recommendations after the evaluation of each FOIA response. The recommendations are reproduced in a consolidated list on the following page.

Recommendations

Recommendations as a result	
1	<p>A register of contracts awarded and pertinent details including the value of the contract should be accurately maintained in line with the statutory Local Authority Transparency Code. Although the value may be less than £5000, it would promote open and transparency if greater detail was published.</p> <p>Cambridgeshire County Council should ensure that the Transport Service have an accurate and up-to-date a register of all contracts awarded to transport providers in addition to the corporate register of contracts. This should include all awarded since or in operation after 1 January 2013. This would ensure that full disclosure has been provided in this matter.</p> <p>Both above should include:</p> <ul style="list-style-type: none"> • Date of award • Start date of contract • End of Contract • Supplier name and details • Value of contract • Description of services provided • If the contract was the result of an invitation to quote or a published invitation to tender or an emergency award <p>It is understood that an audit of contract management within the Transport Service has begun which should review the issues highlighted in the PKFL report and this report. This should assist with the accuracy and currency of the contracts register.</p>
2	<p>In the interests of transparency and in line with the statutory Local Government Transparency Code, Cambridgeshire County Council should ensure as a minimum the following information relating to grants is published when awarded to voluntary, community and social enterprise organisations.</p> <ul style="list-style-type: none"> • date the grant was awarded • time period for which the grant has been given • department which awarded the grant • beneficiary • beneficiary's registration • summary of the purpose of the grant, • amount • details of how the grant award was approved <p>Cambridgeshire County Council should consider whether it would serve them better for this to be part of a separate register or whether these details are captured within the contracts register, and other grants could be incorporated into that</p> <p>Cambridgeshire County Council should consider whether they have identified and published details of all grants awarded to transport providers. This should include all awarded since or in operation after 1 January 2013. This would ensure that full disclosure has been provided in this matter.</p>
3	<p>Cambs-FOI should ensure that the internal review process should be reviewed to ensure that any issues are answered fully such as in the case of the payments made and the number of contracts are declared. The</p>

	process should also be reviewed to ensure that there is resilience of more than one individual to undertake reviews and how an independent person may be sourced in contentious matters.
4	Cambs-FOI should ensure that responses do explain why it has been necessary to apply an exemption such as redacting information.
5	Cambs-FOI should ensure that the Public Interest test undertaken sets out clearly what the link between disclosure and harm to the commercial interests are to enable them to determine whether it is more than hypothetical.
6	Where there are clearly signs of a contentious FOIA request or group of focussed requests, Cambs-FOI should engage a senior officer in the service and ensure that person has oversight of the information being provided. Cambs-FOI should ensure that any contentious FOIA requests are highlighted to their Head of Service and Director so that appropriate senior support can be provided. It may be appropriate and useful to bring together key contacts into a group to handle such matters and ensure that controls are in place to deliver responses. This would ensure that all internal parties are aware of all communications to ensure consistency.
7	Whilst it is not mandatory to have a disclosure log, Cambridgeshire County Council should consider publishing responses via the website and therefore making these available to the public.

Freedom of Information Act Requests

In reviewing the matter, I have identified the below FOIA requests which related to the concerns raised; either during the Littlejohn report, ICO involvement or I have become aware of during my review.

FOI reference	Summary of Request	Date Received
2510	School and social care contracts fulfilled by organisations in Wisbech and March	09.01.2013
2544	FACT contracts with CCC	21.01.2013
2744	Grants paid to FACT, monitoring and FACT budget	19.09.2013
3264	Grants awarded to FACT and details of contracts awarded	17.09.2013
3293	The amount of monies paid to FACT in the calendar years 2010, 2011 and 2012	24.09.2013
3294	Details of all funding awarded to HACT by CCC including sight of application forms	24.09.2013
3339	The number of contracts awarded by CCC to HACT since 1st January 2013	10.10.2013
3348	The total amount paid to FACT from the Community Transport Fund and a breakdown of payments from the fund	10.10.2013
3362	Contracts awarded to community transport organisations	17.10.2013
3509	Details relating to the contracts referred to in FOI-3339 and the bids made by HACT	25.11.2013
5709	Details relating to all the contracts awarded by CCC to HACT since March 2013.	08.09.2015
5779	Documentation relating to the awarded of monies to HACT.	01.10.2015
5851	Details pertaining to all exemption applications made by CCC to issue transport contracts on an "emergency" basis between 1st February 2013 and 1st may 2013	20.10.2015
6744	Request for correspondence to the DfT, FACT and actions taken by CCC	03.07.2016
6750	Documentation relating to FACT receiving Section 106 money in relation to the Tesco's Development in Chatteris.	05.07.2016
7296	Correspondence between CCC and FACT between 1st August 2016 to the present date	11.12.2016

I have been provided with the emails and documents generated by the FOI service, and accessible to them now, in handling the requests. It is noted that these matters occurred as long ago as five years in some cases with staff having since departed and some emails no longer available. In addition, there were the following 22 FOIA requests received which have not been reviewed on the basis that I do not believe that they will add further value on this matter overall. The issues are laid bare in some of the 16 which have been reviewed. It is also possible that these are not the only FOIA requests made but are the most obvious in relation to FACT and HACT.

FOI reference	Summary of Request	Date Received
2339	Bus Pass Concessionary Payments	29/10/2012
2655	The purpose of the grant from CCC to FACT Ltd and the terms and conditions	22/02/2013
3327	Payments made to FACT from 2006 to 2009	03/10/2013
3338	Amount paid to FACT from the Community Transport Fund	10/10/2013
3399	Grant funding paid to FACT	29/10/2013
3491	Board of FACT Ltd	20/11/2013
3508	Public Community Contracts relating to 3362	20/11/2013
3539	Details for contracts held by HACT	03/12/2013
3947	HACT permit 19s	03/04/2014
3992	FACT dial-a-ride and dial-a-car journeys including statistics	15/04/2014
4027	Emails from and to FACT and HACT (request for clarification lapsed)	28/04/2014
4062	Minutes for Cabinet meeting for HACT use of bus passes	07/05/2014
4063	FACT annual grant information	07/05/2014
4064	Invoices from FACT and HACT	07/05/2014

4100	Passenger transport contracts	15/05/2014
5460	Value of Future Transport Fund	02/07/2015
5850	Invoices received by HACT for contracts 150 and 46A since 2013	16/10/2015
6012	FACT Contracts - Numbers of Passengers	10/12/2015
6154	FACT and HACT membership	01/02/2016
6678	Commercial drivers with DQC licenses	16/06/2016
6833	Minutes relating to funding for FACT/HACT	27/07/2016
6908	Correspondence with Jo Philpott of FACT/HACT	22/08/2016

Evaluation of individual responses

Notes on the evaluation

I have reviewed the matters in date order, starting with the earliest referred to in the report.

For ease of reference, I have referred to the team providing the FOIA service as Cambs-FOI.

Names of those individuals who submitted requests have been omitted. Although the name of the individual is known, it is almost irrelevant in terms of the response issued as the identity of a requester should not influence the facts of the response. There is also no expectation that their identity should be revealed to the wider public.

I have pseudonymised the names of officers within this report as I have been asked to review the requests, how they were handled and published.

There are timescales relating to the handling of FOIA requests. The Information Commissioner (ICO) provide guidance on how long a public authority has to respond to requests. Their guidance is "...may take up to 20 working days to respond, counting the first working day after the request is received as the first day." There are instances where this may be extended to reasonable limit should it be required as per section 10(3) of the Act but the ICO recommends that this does not exceed 40 working days.

Whilst it is not mandatory under the Act to provide a complaints process, it is good practice as per the to offer such a function should a requester wish to challenge a response. In the event that an individual requests a review of the response, known as an internal review, then the ICO recommend that this should take no longer than 20 working days or 40 working days in exceptional cases.

It is possible to withhold or refuse to supply information under FOIA. Where a public authority seeks to do so they must apply an exemption, state which they apply and why. Some FOIA exemptions are qualified and section 43(2) is one such. The exemption relates to commercial interests and how the disclosure would prejudice or be likely to prejudice which gives the use of the exemption two thresholds. The ICO use a differentiation between the two of higher than 50% chance equals would prejudice and less than 50% is would be likely to. The exemption must be qualified by the public interest test. The ICO believe three criteria must be met and have stated:

Firstly, the actual harm which the public authority alleges would, or would be likely, to occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption

Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance

Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – ie, disclosure ‘would be likely’ to result in prejudice or disclosure ‘would’ result in prejudice. In relation to the lower threshold the Commissioner believes that the chance of prejudice occurring must be more than a hypothetical possibility; rather there must be a real and significant risk. With regard to the higher threshold, in the Commissioner’s view this places a stronger evidential burden on the public authority to discharge.

It is on these criteria on which the three decisions in this matter were assessed.

Some exemptions are absolute and the one which is noted as having been applied in this matter is that which related to section 40(2) of FOIA which relates to the disclosure of someone else’s personal data within a FOIA response. Where the data is such and its disclosure would contravene a principle of Data Protection, it will be withheld.

Review of Request

This request was received on 9 January 2013 and was clarified twice with the requester to ensure that the response provided the information wanted. The request was:

(1) Please list all school contracts currently being fulfilled by organisations based in March and Wisbech. Listed by, organisation, number of students, special requirements, live mileage, value of winning bid, next two best bids and organisations, reason for choosing winning bid.

(2) Please list all social care contracts currently being fulfilled by organisations based in March and Wisbech. Listed by, organisation, number of passengers, special requirements, live mileage, value of winning bid, next two best bids and organisations, reason for choosing winning bid.

It was clarified that the request meant school transport and the kind of organisations were confirmed as including taxis, bus companies and community transport.

The response issued on 6 February 2013 was as follows:

Please see tab one of the attached document FOI_2510_APP1, which is a list of current school contracts by organisations based in March and Wisbech, and tab 2 of the same document showing the same information for Adult Social Care routes.

Cambridgeshire County Council (CCC) does not record live mileage, but we do record start and end of route mileage and have provided this information. The only special requirements that can be provided if stored on record are whether the vehicle is a tail lift or whether they carry a passenger assistant.

Please note that for social care transport, we have withheld the number of passengers using the daily service. This is because the figures are small and could allow individual users to be identified. This detail is therefore, being withheld under section 40(2) of the Freedom of Information Act 2000 which allows personal information to be withheld where users could be identified. Section 40(2) is an absolute exemption and does not require a public interest test.

Where possible we have provided winning companies as well as 2nd and 3rd bids; however, please note that we have withheld the daily rate for the winning companies and also the names of the unsuccessful organisations as we believe that this information falls within the scope of section 43(2) of the Freedom of Information.

Disclosing the information in full would be likely to prejudice the commercial interests of both the winning organisation and the unsuccessful bidders. Whilst there is a public interest in transparency in respect of the awarding of contracts, this has to be balanced against the fact that the information in question relates to private companies, rather than the Council itself.

Releasing the competitive rates of the winning organisation at this level of detail would provide their competitors with insight into how they operate and the rates that they apply to individual services.

The unsuccessful bidders entered the tendering process under the expectation that their bid details would not be disclosed if their bid was unsuccessful.

We therefore have concluded that maintaining this confidentiality is in the public interest and furthermore that the public interest in the transparency surrounding this contract award predominantly can be met through disclosing the unsuccessful bids in an anonymous form and the name only of the winning organisation.

The information was provided by C and initially Cambs-FOI queried whether an overall contract value rather than day rates however C advises the overall value would depend on how it is calculated.

The attachment provides the information and the below is an extract to give an example.

Contract No.		A457	A441
Route Description		Wisbech to On Track	Gorefield to On Track
Operator		Acme Cabs	Acme Cabs
Daily Price		Withheld under section 43(2)	Withheld under section 43(2)
Vehicle Size		4	4
Special Req.			
Bidder 2		Withheld under section 43(2)	Withheld under section 43(2)
Bidder 2	Daily Price	£11.00	£23.00
Bidder 3		Withheld under section 43(2)	Withheld under section 43(2)
Bidder 3	Daily Price	£20.00	£60.00

The public interest test applied believes that withholding the daily price of the winning bid protects the commercial interests of the winning company and withholding the name of the other bidders but releasing the value protects their interests. It is noted that in later decision on much the same matter, both the ICO and First Tier Tribunal upheld the approach of not disclosing the name of the losing bidders. Both did however uphold the need to disclose overall contract value which the requester challenges the above on the basis that they state that a contract notice should have been published which would have the contract value on. The internal request is provided in the name of an Information Governance Manager; on review, the change in the response is to release the daily rates of the winning bids after discussion with the service, explained as below:

I have gone back to review the day rates that were provided. You are quite correct in your submission that overall contract values would generally be released under FOI and this is something that we do regularly. However, it is usual to withhold detailed breakdowns of overall contract values as their release could be used by competitors as an unfair advantage in future tender processes by disclosing the way that winning organisations manage their pricing.

On this occasion, I have taken further advice from my colleagues in the Passenger Transport Team. Due to the nature of these transport contracts, it is not possible to work to an overall contract value because there are so many variables; instead, the values submitted equate to daily rates. As such, in the absence of no overall value and with consideration to the public interest in transparency of decision making, we have released the daily rates of the winning organisations for each route.

The internal review is considered correctly. A review is undertaken and the argument that contract value is disclosable is correct. Payments to a supplier over £500 are disclosable so the actual value would be disclosed. A local authority is also expected to publish contract values over £5000. The breakdown of a value may be commercially sensitive however the overall value will be available through other means. In this instance, the daily rate is considered to be the value as the service have stated that there are many variables. From what I have seen the answer on this from C is extracted below:

Education tenders that go through the EU process have a time limit on and we request the daily price from the operator and it depends on whether it is a 190 school day, or if it is termly, or once a week, so we ask for a daily price...The total of the contract does not show the requestors the information they are looking for which is the daily rate that we request to decide on who is the cheapest price.

There are two views to be taken on this; CCC have determined that they feel the requester is more interested in knowing the daily rate because that is how the award is made rather than an overall value. It is also the more commercial of the figures because it discloses the daily rate so that someone would have to undercut to win the contract. The overall value, minus the daily rate disclosure and how a calculation could be made to reach the daily rate, would perhaps protect commercial interests more. However the most commercially sensitive detail would be the makeup of the winning company's daily rate. The requester makes a similar point in their request for a review:

It should be remembered that the Contract Award Notice requires publication of the name of the successful tenderer and the overall contract price; but it has always been accepted that the makeup of the contract price (e.g. the rates for specific aspects of the services) are confidential and need not be disclosed.

The decision is taken to disclose the daily rates and not a total value. This FOIA response is left undermined by a subsequent disclosure affecting the decisions made on the subsequent matters by the ICO and First Tier Tribunal to uphold the disclosure of the total value. This was as a result of a disclosure by a CCC officer on hold to calculate the annual value. Cambs-FOI were unaware of this email until the matter reached the tribunal.

Summary of concerns and recommendations

Concerns identified
(a) The request asked for the annual value of the contract and not the breakdown of a contract price which they accepted was confidential. The response provided a daily rate because the service felt that this was what was of more value. Variables would enable the overall the contract value to be determined and the values were not provided.
(b) An individual officer has disclosed the means to calculate the value outside of the FOI process which undermined the council during the ICO and First Tier Tribunal process. Had the officer shared this with Cambs-FOI, a large amount of work could have been avoided for the team, the ICO and tribunal.
Recommendations as a result
(a) A register of contracts awarded and pertinent details including the value of the contract should be created and maintained in line with the requirements and suggestions of the Local Authority Transparency Code. Although the value may be less than £5000, it would promote open and transparency if greater detail was published.
Cambridgeshire County Council should consider the creation of a register of all contracts awarded to transport providers in addition to the corporate register of contracts. This should include all

awarded since or in operation after 1 January 2013. This would ensure that full disclosure has been provided in this matter.

Both above should include:

- Date of award
- Start date of contract
- End of Contract
- Supplier name and details
- Value of contract
- Description of services provided
- If the contract was the result of an invitation to quote or a published invitation to tender or an emergency award

(b) Where there are clearly signs of a contentious FOIA request or group of focussed requests, Cambs-FOI should engage a senior officer in the service and ensure that person has oversight of the information being provided. Cambs-FOI should ensure that any contentious FOIA requests are highlighted to their Head of Service and Director so that appropriate senior support can be provided. It may be appropriate and useful to bring together key contacts into a group to handle such matters and ensure that controls are in place to deliver responses. This would ensure that all internal parties are aware of all communications to ensure consistency.

FOI-2544

Review of Request

The request was received on 21 January 2013 and responded to within time on 18 February 2013.

The request was as follows:

Please find below my freedom of information request regarding Fenland Association for Community Transport (FACT Ltd) and all current contracts they hold with the CCC

(1) Please list each contract

Contract number

Contract type (Home to sch, Social services, bus hire)

With or without driver

Date tendering process started

Date/Time tendering process closed

Pick up postcodes or road and town name, drop off postcode or road name and town (OR) round trip mileage from FACT offices back to FACT offices

Return journey Yes/No

Live mileage

Number of passengers

Escort required (plus cost if itemised in bill)

Date/Time Fact entered bid

Wheelchair vehicle required

Next best quote name and price. Date/Time bid entered

Reason for winning bid

(2) If a contract carries several children on a home to school contract, and one of the children was absent would the daily charge remain the same?

(3) Value of all contracts issued to FACT Ltd in each of the following years 2007, 2008, 2009, 2010, 2011, 2012

(4) Value of all Grants paid to FACT Ltd. from the CCC for each of the following years 2007, 2008, 2009, 2010, 2011, 2012

(5) Total back to base mileage, and total live mileage covered for all contracts, and total value of contracts (bus or car hire with driver) for 2011

(6) Total Mileage used and total value of all (Van or car hire no driver) contracts for 2011

(7) in each year of 2011 and 2012 how many contracts did FACT bid on, and supply Contract Numbers

(8) in each year of 2011 and 2012 how many winning bids did FACT Ltd make, and please supply contract numbers.

A further question was added to this FOIA request on the same day as follows:

(9) Does the CCC pay for fuel on any of the contracts it issues to fact ltd and if so which ones. Hire without driver, hire with driver, school home to school, ECT

The response was as follows

1. Please find attached an excel spreadsheet showing current contracts and types. All of the contracts require driver and, when required, passenger assistants, to be provided by FACT.

Postcode details are exempt from disclosure under Section 40(2) of the FOI Act. The postcodes in this context constitute personal data as they could allow individuals to be identified. This is particularly relevant due to the rural nature of some of these routes (i.e. postcodes cover only a small number of houses) and that the individuals that could be identified are vulnerable clients of the service. We do not record the mileage details for each contract, however we are starting to put mileage on some of our routes as they go out to tender for future reference. Precise details on the number of passengers have been withheld for the same reason, although we have provided the vehicle size to give an indication of the numbers involved.

We have withheld the name of the next best quote in each case under Section 43(2). Whilst there is a public interest in disclosing which organizations are receiving public funds, this interest is accepted to be much lessened in organizations that ultimately do not win the respective contract. Disclosing this information would prejudice the operators' commercial interests as it would aid an attempt to build a detailed picture of how individual operators bid for contracts, particularly when disclosed in conjunction with the daily rate proposed. There is a public interest in showing the daily rate figure of the next-best bid and we have therefore provided this in an anonymous form.

The reason for the winning bid in nearly all circumstances is because they were awarded to the operator that offered the cheapest price and could meet all our terms and conditions. Generally the only time there is an exception to this is when an operator may have had specialist training or there was a need for continuity for the client; however this does not apply to any of the routes we have shown on the spreadsheet.

2. The daily charge remains the same whether or not all the children travel or not, this is standard practice for all contracts and operators, unless we are made aware of long term absence or change.

3. The value of each contract is the rate paid per day to the operator. This daily rate is exempt information under Section 43(2) of the FOI Act as it constitutes the commercial information of the operator and disclosure would prejudice their commercial interests. Whilst there is a public interest in transparency on the spending of public money, this has to be balanced against the prejudice caused to a third party by disclosing detailed information about their business. In this case, the daily rate

offered is a crucial aspect on which operators compete for contracts and disclosing FACT's rates for specific individual contracts would prejudice their ability to compete for contracts as knowledge of this would give an unfair advantage to competitors.

4.

Value of grants :
2007 = £35,284.10
2008 = £36,978.00
2009 = £37,310.00
2010 = £38,019.00
2011 = £39,281.00
2012 = £39,117.75

5. As stated in response to Question 1, this data is not stored and not reported upon by the Council.

6. We do not hire van or cars without drivers from FACT.

7. Details of contracts which FACT made a successful bid for are provided in the attached spreadsheet. We have withheld details of contracts that FACT bid for and did not win under Section 43(2) for the same reason that we have not disclosed the identity of unsuccessful bidders in response to Question 1. Such details are the commercial information of the operators concerned as they would provide competitors with a detailed understanding of which contracts they had and had not competed for. Whilst there is an overriding public interest in disclosure when the company wins a contract, and is therefore paid public money, this does not extend to disclosing commercial information of third parties when they were not successful with their tender proposal. It is in the public interest that companies can compete for public sector contracts without having their commercial interests prejudiced through details being disclosed which would allow competitors to gain an insight into their business plans and their strategies in respect of tendering for specific contracts.

8. The information is provided in the attached spreadsheet.

I cannot see that the second question relating to petrol is included in the response. I have seen no reference to it again in the documents supplied.

The information is supplied by C who comments on the draft response to add more detail. A Cambs-FOI officer has also commented on the response asking if greater explanation on parts not held or not disclosed can be provided. Cambs-FOI have also completed a public interest test to deal with the use of the section 43(2) exemption relating to commercial interests. This has been applied to a number of aspects including the unsuccessful bidders. They have also applied an exemption around the disclosure of location data citing that it may reveal identities or locations of vulnerable service users.

I have not reproduced the attachment in full but an example of what has been disclosed is below:

Operator	FACT	FACT	FACT
Contract No.	HA08	IM01	MG03
Route	Wisbech to Harbour School	Coldham to Impington VC	Murrow to Meadowgate

Date of tender started	May-11	Oct-11	Oct-11
Date tender returned	11/07/2011	05/12/2011	05/12/2011
Date FACT responded	11/07/2011	05/12/2011	05/12/2011
Contract Start Date	01/10/2011	20/02/2012	20/02/2012
Contract End Date	31/10/2014	28/02/2017	28/02/2017
Vehicle Size	4	4	7
Special Req.			T/L + 1 PA
2nd Bidder Quote	£81.20	£72.00	£84.00
Date/time tender returned	11/07/2011	05/12/2011	05/12/2011

On 2 September 2013, the ICO notifies CCC that they have received a complaint from the requester. The details of the complaint are not provided until 15 November 2013 and these are summarised below:

- Question 1 - disputes the application of section 40(2) to part (vi) of this request in order to withhold details of postcodes; disputes that CCC do not hold live mileage details of passenger numbers
- disputes that CCC do not hold the time of a bid, disputes the withholding of the second best bid
- Question 3 disputes the withholding the total value of all contracts
- Question 5 and 6 - disputes that the CCC do not hold the mileage
- Question 7 - disputes the withholding of contracts FACT did not win

The ICO requested that CCC provide answers to the above, including evidence for the ICO to review, explanation of how CCC has applied exemptions any discussions with FACT to withhold the information. It is noted that the ICO agreed an extension to respond to their November request.

The ICO issued a decision notice, FS50511196, on 26 June 2014 regarding this matter. It upholds the response of Cambs-FOI except for the information falling into the scope of Question 7 which the ICO requires CCC to disclose. In this regard, the ICO felt that the likelihood of prejudice was hypothetical and as such disclosure would not harm FACT's commercial interests. It is noted that the requester disagreed with the ICO decision and appealed the matter to a First Tier Tribunal on 26 March 2015 where Judge Lane dismissed the appeal for all other information save for disagreeing with the ICO over the total value of the contracts. This was based on the subsequent decision - after the initial answer in February 2013 - by a CCC officer in March 2013 to inform the requester of means by which they could calculate the annual value. In a FOIA request published on 6 February 2013, the daily rates were published as part of the FOIA response. It is understood from my enquiries that the CCC

officer was not part of Cambs-FOI; who only became aware of it much later after the matter had progressed through to the Tribunal. The view of the Tribunal was that the means to calculate the total value had been disclosed to someone and in the view of the Tribunal, this damaged the argument of withholding the total values given who the requester was. This disclosure clearly undermined the decision made by the Cambs-FOI team and left no room for any disagreement.

Summary of concerns and recommendations

Concerns identified
(a) The case for withholding the contracts not won by FACT was not sufficiently strong and the ICO determined that the likelihood was hypothetical rather than an actual, real or of substance in line with the ICO guidance.
(b) An individual officer has disclosed the means to calculate the value outside of the FOI process which undermined the council during the ICO and First Tier Tribunal process. Had the officer shared this with Cambs-FOI, a large amount of work could have been avoided for the team, the ICO and tribunal.
Recommendations as a result
(a) Cambs-FOI should ensure that the Public Interest test undertaken sets out clearly what the link between disclosure and harm to the commercial interests are to enable them to determine whether it is more than hypothetical.
(b) Where there are clearly signs of a contentious FOI request or group of focussed requests, Cambs-FOI should ensure the involvement of the Head of Service as their contact to ensure all internal parties are aware of communications to ensure consistency. It may be appropriate to appoint key contacts and create a small group to handle such matters and ensure that controls are in place to deliver responses.

FOI-2744

Review of Request

This request was received on 19 March 2013 but only acknowledged on 25 March 2013 with a due date of 18 April 2013 which was met. Given the number of questions and answers within correspondence, I have reproduced the response below which includes the request with answers in italics:

1. In section 3.3 of the Grant Funding Agreement between CCC and FACT it states (FACT) shall accept Concessionary Fares passes when presented, and offer members a discount in line with the terms and conditions as set down in the separate CCC Concessionary Fare Scheme agreement document. May I please have a copy of this agreement with Fact.

Please see the attached letter, APP1.

2. In section 3.6 it states "including transport requests through the CCC operated Cambridgeshire Minibus Brokerage Scheme (CaMBS). May I please have the figures for this transport for 2011 and 2012 in mileage and cost and purpose of transport? And in mileage, cost and number of passengers for the third quarter of 2011 & 2012

Cambridgeshire County Council does not record information about mileage and costs for CaMBS and therefore this information is not held for the purposes of the Freedom of Information Act. We do hold information about the number of enquiries received and the number of journeys which are as follows:

Since July 2009, there have been 277 enquiries received, of which 205 journeys were undertaken. Thirty six of those journeys were provided by FACT.

3. The whole idea of members proving eligibility was bluntly turned down by FACT. Now we know firstly, that FACT Ltd cannot be trusted to accept members with no supervision, as left to their own devices that had "door to door transport for EVERYONE" on the front of their buses. Been caught advertising under Taxi in the Thomson local. Claimed to be a mistake. Now been caught advertising under TAXI, MINICAB and PRIVATE HIRE on GOOGLE. Manager caught asking a father organising a birthday party for his daughter to join as a group and quoting prices and confirming availability of vehicle, for a service that is supposed to be for charities etc (any denial and I have it all in writing) And I have membership for a friend who I asked to join, he is fit as a fiddle a professionally and in his forties accepted no questions asked!!! (And Manager knows nothing of this one). Secondly as this is a requirement of the terms and conditions of this annual grant, will the CCC now confirm that this will be implemented immediately, both for new applicants and renewals alike (please find attached document presented to MP's meeting and highlighted recommended solution).

This is not recorded information held by the Council for the purposes of this Freedom of Information request. You will receive a separate reply from Joseph Whelan in response to your letter to him dated 9 April. Mr Whelan has confirmed that he will respond to you by Friday 19 April.

4. Section 5.1 of the agreement states that Cambridgeshire County Council must receive an annual budget forecast and 12 month action plan for the forthcoming year; please may I have a copy of the annual budget and action plan for 2013?

Cambridgeshire County Council does not hold this information and therefore does not hold it for the purposes of FOI. FACT may be happy to supply you with a copy should you wish to contact them separately; however, please note that they are not subject to the provisions of the Freedom of Information Act and therefore, any information that they may provide will be done so at their discretion.

5. Section 5.1 of the agreement states that Cambridgeshire County Council must receive annual financial reports by the end of September for the previous financial year. Please could I have a copy of 2011 financial report?

The Council does not hold a copy of this information. FACT may be happy to supply you with a copy should you wish to contact them separately; however, please note the reply above which states that FACT are not subject to FOI so any information they may share will be done at their discretion.

Please note that for the two questions above, although the information is not held by the Council, the relevant officers have had sight of it.

6. Please could I have a copy the Quarterly service performance indicators (for 2011 and 2012), for each service operated as stated in section 3.1 to 3.5, 3.6 and 3.7 of the agreement.

This would include:

- (a) Total number of single passengers journeys undertaken (a passenger journey is defined as a one-way journey, therefore the outward and return parts of a return journey are counted as two single passengers)
- (b) Total miles travelled
- (c) Revenue received from each service operated
- (d) A breakdown of number of individuals and group members by parish
- (e) Total number of group hire bookings including total number of passengers carried, mileage and revenue received.
- (f) Total number of unmet requests and journeys not operated

Cambridgeshire County Council only holds information on (a) and (b). Please see the attached document, APP2. The Council does hold information that includes that requested in (e); however, it also includes school journeys. As the Council does not hold the raw data, we are unable to separate the school journeys from the rest and providing this would not give you with an accurate picture. Please advise if you wish to receive this information anyway.

7. Please could I have a copy of all monitoring information as detailed in section 3.3 and 5.1 of this agreement, including those journeys made using bus passes?

Please see the information that has been provided above in APP2.

Attachment 1 is a letter from Fenland District Council to FACT and has no redactions. APP2 is a spreadsheet on journeys and miles with the response stating that they have no other information.

Officers A and B are involved in supplying information to help respond. I note that a copy of the grant application is held but not disclosed which can be attributed to the use of the letter to confirm a discount. I note that the view has been that the financial reports have been seen but not held for FOIA. There is a duty to assist under section 16 of the FOIA by directing a requester to the appropriate body who holds the information which Cambs-FOI have done. FACT are not subject to FOIA so would have no compulsion to share the information themselves however they have had to disclose as part of their charitable status. It is correct to say that it is not CCC's document to disclose but potentially a conversation with FACT may have led to the Charity Commission website where accounts are disclosed. There is no duty to act as the requester has stated below however given the nature of the request and the relationship which was emerging, it may have been appropriate to have provided some greater assistance. It is a moot point and there is no requirement however it could be considered a means of engendering greater trust.

An internal review is requested on 24 April 2013, the requester comments are below with Cambs-FOI responses in italics:

"In section 3.6 it states "including transport requests through the CCC operated Cambridgeshire Minibus Brokerage Scheme (CaMBS). May I please have the figures for this transport for 2011 and 2012 in mileage and cost and purpose of transport? And in mileage, cost and number of passengers for the third quarter of 2011 & 2012"

I would like to ask did the Cambridge county council pay for any of the 36 journeys carried out by FACT

The answer is no; these journeys were all paid for by the community groups undertaking the journeys.

Secondly I asked

Section 5.1 of the agreement states that Cambridgeshire County Council must receive an annual budget forecast and 12 month action plan for the forthcoming year; please may I have a copy of the annual budget and action plan for 2013?

Section 5.1 of the agreement states that Cambridgeshire County Council must receive annual financial reports by the end of September for the previous financial year. Please could I have a copy of 2011 financial report?

By claiming to not hold this information, is to claim "we receive all the information as stated in the agreement but then simply decide to destroy some of it and keep the rest on file" It is simply nonsensical. This is confirmed by the following request where the agreement insists on SIX requests for information (a) to (f) All this information is of the same type there is no National Security concerns here. And yet you are suggesting that 3 of these pieces of information is kept on file, and the other three (by their absence) we decided to destroy when we received them!!!!

As a member of the public I believe I have a right to know what is happening to public funds, and as the public body you have a duty to not only make sure FACT keep to the agreement made, but also hold ALL relevant information regarding the conditions of use of public money for the public to inspect. And thus **I believe it is your duty to contact FACT for the information you have failed to collect as to the relevant agreement!!**

In our initial response we stated that we did not hold copies of this information. I have established that this is still the case; as noted in the original response, we have seen this information as part of the monitoring process but copies have not been retained on file. The FOI Act only relates to information held by the public authority and we are not required to ask a third party to provide us with a copy of information that we do not hold.

In any case this information is internal FACT information, produced by themselves for their own purposes, made available to us simply for monitoring purposes. They provide detailed information about this third party and, even if copies were retained, disclosure would be likely to prejudice their commercial interests.

"Please could I have a copy the Quarterly service performance indicators (for 2011 and 2012), for each service operated as stated in section 3.1 to 3.5, 3.6 and 3.7 of the agreement. This would include:

- (a) Total number of single passengers journeys undertaken (a passenger journey is defined as a one-way journey, therefore the outward and return parts of a return journey are counted as two single passengers)
- (b) Total miles travelled
- (c) Revenue received from each service operated
- (d) A breakdown of number of individuals and group members by parish
- (e) Total number of group hire bookings including total number of passengers carried, mileage and revenue received.
- (f) Total number of unmet requests and journeys not operated"

I have established that this is still the case and that we do not hold the information covered by points (c), (d) and (f). It should be noted that these categories were taken from a previous generic agreement but have been reassessed and are no longer required. We do not hold those legacy details for FACT and agreements have been updated so that these performance indicators are no longer included in the agreements.

Regarding (e) total number of group hire bookings have been included with school contracts yes I would like that information. And if possible ASAP rather than waiting for the hole of this revue to be made.

The information relates to FACT's own business as an organization and it is provided to the Council for information as part of the monitoring process relating to the agreement. FACT provides this information to us solely for this purpose and are under a reasonable expectation that their own information about their business will be considered by the Council for this purpose and will otherwise be held in confidence by the Council and not disclosed freely into the public domain. The information is therefore exempt from disclosure under Section 41 ("information provided in confidence") of the FOI Act. Whilst the Council needs to be transparent about its dealings, there is a public interest in the Council being able to receive information from third parties and this would be compromised if organizations were reluctant to do so due to the belief that the Council would subsequently disclose the information widely into the public domain.

The information is also exempt from disclosure under Section 43(2) of the FOI Act as disclosure would prejudice the commercial interests of FACT. Details of an organization's work in a certain area – amount of business and revenue generated – is commercial information as it provides competitors with valuable information about the organization's dealings and commercial activity. It is not in the public interest that the Council should disadvantage one organization's position relative to its competitors by making such information public. This is particularly the case here as the information we hold is not limited to group hire bookings, as it includes school journeys, and therefore it relates to a wider range of the organization's work.

Regarding the information given on the far right it gives information on W/C and WAK please explain what WAK means

WAK refers to instances where the individual does not require a wheelchair but does have mobility difficulties in regard to walking.

It is noted that an administrative issue caused a delay in the response until 27 August 2013 as Cambs-FOI thought that they had responded. The requester complained to the ICO after receiving no response to their request for review and Cambs-FOI subsequently responded. The ICO in their decision notice FS50510473 accepts that the administrative issue.

The requester complained to the ICO following the internal review, disputing:

1. the Council's position that it does not hold information falling within the scope of requests 4 and 5.
2. the Council's position that it does not hold the information falling within the scope of parts (c), (d) and (f) of request 6.
3. the information falling within the scope of section part (e) of request 6 is exempt from disclosure on the basis of the sections 41(1) and 43(2) and in any event there is a compelling public interest in disclosing this information.

The matter progressed through an ICO decision and subsequent appeal to the First Tier Tribunal along with FOI-2544 and FOI-3348. In this matter, the ICO found in favour of CCC in all but point three. CCC withdrew its reliance on section 41 but maintained its use of section 43; the ICO accepted that the exemption could be engaged but as with the two other decision notices issued on 26 June 2014, found that CCC had not made the case sufficiently. The ICO required CCC to disclose the information for point three. The ICO and the subsequent First Tier Tribunal upheld that the Council did not hold the information for points 1 and 2 above.

Summary of concerns and recommendations

Concerns identified
(a) The case for withholding the contracts not won by FACT was not sufficiently strong and the ICO determined that the likelihood was hypothetical rather than an actual, real or of substance in line with the ICO guidance.
Recommendations as a result
(b) Cambs-FOI should ensure that the Public Interest test undertaken sets out clearly what the link between disclosure and harm to the commercial interests are to enable them to determine whether it is more than hypothetical.

FOI-3264

Review of Request

This request was received on 17 September 2013 and responded to on 15 October 2013, within time.

The request was as below

Can I have all documentation relating to all aid or grant payments made to FACT LTD in 2013, 2012 and 2011. Including applications, accompanying notes and communications regarding these grants (paper and electronic), terms and conditions for both the grant and terms for application and "signed" agreements

Was the grant restricted as to its intended use or unrestricted and if restricted the purpose of the grant. Any documentary proof or evidence of how the money was used and registration numbers of any vehicles purchased.

What checks do CCC undertake and by whom to ensure payments to FACT meet the criteria for

which the payment was allocated?

Has the County Council ever been aware of any breach of the terms and conditions of any grants, please give details including any action taken against FACT LTD

Could the CCC supply evidence that the funds for each grant have been used appropriately

Any internal correspondence and any external correspondence between the Council and FACT or the FDC relating to these grants and bus pass concessions both written and electronic.

Could I have a copy of all documentation relating to FACT LTD permit 19s, including applications, signed agreements and licences? Issued in 2009, 2010, 2011, 2012 and 2013

Has the County Council been aware of any breaches of permit 19 regulations and if so please give details including what action was taken.

How does County Council evaluate what payment is made to FACT for concessionary bus fares?

How does County Council evaluate what payment is made to other bus operations for concessionary bus fares?

Did the County Council allocate any funds to FACT LTD for the purchase of vehicles in 2011 & 2012, and if yes which vehicles and registration numbers

What was the total mileage covered by FACT in 2012 & 2011 for County Council Contracts. Both live mileage and total?

Could the council please supply the total number and monetary value of all CCC contracts held by FACT Ltd for each of the following years 2010 2011, 2012 & 2013

Could the council please supply me with the number of contracts that FACT Ltd tendered for in 2010 2011, 2012, & 2013.

Excluding the quoted price and contract number could you please supply evidence of these bids for 2011, 2012 & 2013.

For the years 2010, 2011, 2012 & 2013 By organisation and In order of value could the council give the total monetary value (Top Ten) given in grants and funding to community transport schemes by the County council

For the same years and by organisation and in order of value could the County Council give the total monetary value of contracted transport work carried out by the organisations in the above list for the County Council

The response, agreed by Pat Harding, is below and was a refusal in full:

Your request is being refused in full under section 12(2) of the Freedom of Information Act 2000 which provides that a public authority can refuse a request in full where to locate and extract and relevant information would exceed the appropriate limit. The appropriate limit is specified in Regulation 3 of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 and for local government is set at £450 or 18 hours of officer time at £25 per hour. Please see the Council's [charging policy](#) for further information.

In this instance the volume of information that has been requested over 17 separate questions means that in order for the Council to provide a full response, it would require many officers to manually check hard copy files, electronic files and email archives, to name but a few.

We estimate that this will take far in excess of 34 hours of officer time and are therefore refusing your request as advised above.

Please see the Council's [disclosure logs](#) where you can search and find details of all previous requests that have been responded to with information about FACT.

Should you wish to refine the scope of your request in a way that allows some information to be provided within the appropriate limit, or if there are certain areas that you are interested in, please send your revised question to foi@cambridgeshire.gov.uk where it will be treated as a new request and will be considered accordingly.

Any public authority is able to apply this exemption if they can show that it would take longer than 18 hours and Cambs-FOI did offer the opportunity to refine the request and direct the requester to other options. There are 17 questions here requiring over 34 hours of work to respond and would require

officers to review files individually to respond to. In my view, this was an appropriate response; both clearly demonstrating how they had considered the amount of time the response would take but equally suggesting the requester refine their request.

Summary of concerns and recommendations

Concerns identified
None identified
Recommendations as a result
None identified

FOI-3293

Review of Request

This request was received on the 24 September 2013 and a response issued on 7 October 2013 within the statutory timeframe for a response to be provided.

The request was:

How much money has been paid to Fenland Association Community Transport in bus pass concessions for the following periods? From Jan 1st to December 31st for the following years 2010,2011, 2012

The response issued was:

Payments to FACT, from Cambridgeshire County Council towards bus concessions did not begin until April 2011. Therefore, the Council does not hold any information before this time.

The amount paid to FACT for bus pass concessions between 1 April 2011 and 31 December 2011 was £17,272.25 and this has previously been released in response to FOI 2339 which can be viewed on our disclosure log available on the Cambridgeshire County Council website here:

<http://www.cambridgeshire.gov.uk/CMSWebsite/Apps/FOI/Search.aspx>

The amount paid to FACT for bus pass concessions between 1 January and 31 December 2012 was £36,363.25.

In order to provide this response, K emailed the request to C who shared the request with A and B. The response provided by A provides a figure previously released under FOI-2339. A has advised that he has no doubt regarding the accuracy of the response provided previously and therefore has not reviewed that figure. I see no reason to consider that he should have checked that part of the response if it was believed to be correct. The second amount is provided by A to Cambs-FOI and forms part of the response. I have not found any reason to believe that there was an issue either with the information provided to Cambs-FOI nor in the response issued. The response was not challenged and there appears to have been no request for an internal review. The ICO appear to have had no contact regarding the request. Good practice is shown in providing a link to the disclosure log although as the link no longer works, I cannot review usefulness of the link.

Summary of concerns and recommendations

Concerns identified
(a) Cambridgeshire County Council do not currently have a disclosure log which would enable members of the public to see requests previously responded to.

Recommendations as a result

(b) Whilst it is not mandatory to have a disclosure log, Cambridgeshire County Council should consider publishing responses and therefore making these available to the public.

FOI-3294

Review of Request

This request was received on 24 September 2013 and a response issued on 10 October 2013 within the statutory timeframe for a response to be provided.

The request was:

I would like to ask the following questions:

(1) Please list all funding the council has awarded to HACT. Including copy of applications and conditions of grants

(2) please give purpose for funding

The response issued was as below:

Cambridgeshire County Council has awarded HACT a grant of £11,750 from its core funding to support community transport dial-a-ride schemes. There is a standard service level agreement in place for this funding; please see APP1, attached.

In addition, there have been grants totalling £179,048.46 given from the Council's Community Transport Fund. Please see the attached application form and assessment criteria, APP2 and APP3.

The information was supplied to Cambs-FOI by A. There are three attachments to this response, referred to below:

- APP1 is a grant funding agreement between CCC and HACT relating to the period 2013-2014. There are no redactions to this document.
- APP2 is a blank application form for the Cambridgeshire Community Transport Fund (CCTF)
- APP3 is the criteria for applications to the fund

The response provided by A does not appear to have been challenged by Cambs-FOI. On a closer inspection of the response, I would be inclined to view the request as not having been responded to correctly. I would read the questions to be for CCC to provide a list of all funding which CCC has awarded to HACT along with the application forms submitted to obtain that funding and the purpose of that funding with any conditions attached to it. Whilst the response does provide the financial figures, it does not provide a copy of the application form nor the purpose of the grants totalling £179,048.46. The response provides a single blank application form and the criteria for the application, but not what HACT requested the grants for. The response was not challenged nor was an internal review requested. However, during the course of the review, said information was requested in FOI-3348, dealt with in due course. Nonetheless, it would have avoided a further question being asked later.

Summary of concerns and recommendations

Concerns identified

(a) Cambridgeshire County Council were asked to supply a list of all funding and the application forms. The application form was blank and the actual purpose of the grant was not stated.
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Recommendations as a result

(a) In the interests of transparency and in line with the Local Government Transparency Code, Cambridgeshire County Council should ensure a register of grants is available containing the following information for services:

- date the grant was awarded
- time period for which the grant has been given
- department which awarded the grant
- beneficiary
- beneficiary's registration
- summary of the purpose of the grant,
- amount
- details of how the grant award was approved

Cambridgeshire County Council should consider the creation of a register of all grants awarded to transport providers in addition to the corporate register. This should include all awarded since or in operation after 1 January 2013. This would ensure that full disclosure has been provided in this matter.

FOI-3339

Review of Request

This request was received on 10 October 2013 and a response issued on 21 October 2013 within the statutory timeframe for a response to be provided.

The request is as follows:

[How many contracts have been awarded by Cambridgeshire County Council if any to "Huntingdon Association for Community Transport" since 1st January 2013?](#)

The response issued is:

[There have been five contracts awarded to HACT since 1 January 2013](#)

The information is supplied by A and C to Cambs-FOI.

C responds that Education have five contracts have been awarded:

Contract Number	From	To
925	01.04.2013	31.07.2014
PT04	01.04.2013	31.07.2014
PT03	01.04.2013	31.07.2014
PTP02	01.04.2013	31.07.2014
ON45	10.09.2013	30.07.2014

A states that Public Transport have awarded two contracts to HACT but none from 2013. A's email dated 17 October 2013 states:

[From my public transport side we have awarded two contracts to HACT, although none from 2103!](#)

It is a fair assumption that 2103 mean 2013. The Charities Commission identify that HACT is a charity and in the accounts held on the Charities Commission website, HACT's own accounts state "The organisation is a charity established under a constitution dated 8 March 2013". This would imply that the organisation only came into being in March 2013. The FOI request clearly states 1 January 2013. Any contracts awarded could therefore have only been awarded in 2013. This would lead me to conclude that an error was made in the response from A. I do not believe an argument could be made as to this being a deliberate omission as A does reveal two contracts in existence, it is that the response is not challenged nor has A realised the error. Whilst I could argue that Cambs-FOI could have challenged his response, it would need Cambs-FOI to know more about contracts awarded than the service which awarded those contracts. A FOI service is reliant on a service to provide the right information and must trust that they have done so.

On 3 December 2013, an internal review was requested by the requester. They contended that the council's own website indicated that HACT had been paid for twelve contracts in June 2013 and asked for the details of all contracts awarded to HACT.

The internal review appears to have been undertaken by D, Information Governance Manager (no longer with the service). It was issued on 23 December 2013. Whilst referencing another individual who submitted a request and challenged this FOI response, D responds to the issues raised. Believing that the requester is referring to the openly available £500 spend data, D states:

Although not explicitly stated in the correspondence of 3rd December 2013, it would appear that the information on the council's website referred to is the payments over £500 made to suppliers. These payments are published on a monthly basis. It is inferred that the number of payments made to a supplier indicates the number of contracts held with that supplier.

It should be noted that the spend data website provides no information on contract characteristics to which the payment relates, including contract number or invoicing cycles. It is therefore not possible to assert a direct correlation between the number of payments over £500 that the council has made to a supplier in a given month, and the number of contracts it holds with that supplier.

The original response issued by the council on 21st October 2013 provided the number of contracts fulfilled by Huntingdon Association Community Transport. The review finds that the information provided was that held at the time that the request was received and the information available on the council's spend data website does not dispute this. Consequently, this review finds that the request was dealt with in line with the provisions of the Freedom of Information Act 2000. The appeal is therefore not upheld.

Whilst the matter has been reviewed, I am unable to comment on how it was reviewed. Given the very clear challenge to the number, I would have expected to see an explanation of those twelve payments and which contracts they relate to which would confirm the answer of five. The payments would have linked back to a contract and whilst there may be a number of invoices paid against one contract, it remains the one contract. There is no deeper examination which would have either confirmed the answer of five as correct or else identified an error.

A second individual has also challenged the answer based on the responses they received in FOI-3362. This response highlights the issues noted on the open data published regarding spend over £500. I cannot see that the spend has been questioned or an attempt to determine whether the response supplied was correct. This would have been a very clear opportunity to confirm the number of contracts in place.

Summary of concerns and recommendations

Concerns identified
(a) The requests asks for all contracts awarded to HACT since 1 January 2013. Five contracts are declared however the response for public transport is that there are two but none awarded since

2013. The request is made in 2013 and HACT were only established in that year. It would be impossible for the contracts to have been awarded to HACT any sooner.

(b) The response has been challenged by the individual concerned referencing the openly available data on payments over £500 which they believe indicates 12 contracts are in existence. The response in the internal FOI review does not attempt to analyse which contracts the 12 payments relate to.

Recommendations as a result

(a) A register of contracts awarded and pertinent details including the value of the contract should be created and maintained in line with the requirements and suggestions of the Local Authority Transparency Code. Although the value may be less than £5000, it would promote open and transparency if greater detail was published.

Cambridgeshire County Council should consider the creation of a register of all contracts awarded to transport providers in separation to the corporate register of contracts. This would ensure that full disclosure has been provided.

Both above should include:

- Date of award
- Start date of contract
- End of Contract
- Supplier name and details
- Value of contract
- Description of services provided
- If the contract was the result of an invitation to quote or a published invitation to tender or an emergency award

(b) The internal review process should be reviewed and ensure that any issues are answered fully. In this instance, there should be a direct link between a payment made and the contract or service provided. The review of these 12 payments may have highlighted the existence of more than five contracts.

FOI-3348

Review of Request

This request was received on 10 October 2013 and a response issued on 7 November 2013 within the statutory timeframe for a response to be provided.

The request was as follows:

Could I please have the total amount paid to FACT from the Community Transport Fund

Could I please have a break down of all allocated money from the £512,000 Community Transport Fund and who it has been paid to

In reference to the FOI request 3294 could I please have a copy of HACT'S and FACT'S actual applications for this fund

The response issued was as follows:

Please see the attached documents, APP1, APP2 and APP3 for copies of the FACT and HACT application forms that have been submitted to the Community Transport Fund. In addition to the

application forms, please also see the attached spreadsheet, APP4, which provides information about what the grant will cover with regard to APP1, the launch of HACT.

Please note that some information has been withheld under section 43(2) which states that where release of information is likely to have an adverse effect on the commercial interests of any body, including a local authority, the information may be withheld if it is found to be in the public interest to do so. A public interest test has been conducted and in this instance, has found in favour of withholding some information.

In this response, a number of individuals are also included in the answer prior to it being published. These are Joanne Philpott of FACT, H, A and E.

There are four attachments with redaction in some parts.

APP1 - is the application form submitted by HACT to the CCTF by Joanne Philpott named March 2013. It details the project of setting up HACT, the ring and ride service and how this will benefit the local community. The bulk of the application form is unredacted however an exemption has been applied in the summary of costs. The revenue and capital costs are redacted with the reason given as the likely adverse effect on commercial interests, section 43(2) of the FOIA. Whilst the breakdown of those costs has not been disclosed, the total has been disclosed.

APP2 is a second application form submitted by HACT to the CCTF for communications equipment. The total capital costs are stated here and there are no redactions.

APP3 is an application form submitted by FACT to the CCTF for communications equipment. The breakdown of the total capital costs is redacted and some of the project description is redacted which is said to be the predicted growth of the charity. The section 43(2) exemption is again applied.

APP 4 is a spreadsheet relating to HACT which included set up costs but was disclosed with all figures redacted besides a total cost.

Both APP1 and APP2 were provided by A with some explanation of how the monies were spent. It is unclear from the information I have who supplied APP3 and APP4 however Joanne Philpott has commented on all.

A public interest test has been applied on the use of the exemption. This was signed off by Pat Harding as Customer Service and Transformation Corporate Director on the recommendation of K. As is appropriate, comments were sought from Joanne Philpott on any concerns that FACT/HACT would have. These are noted and accepted as the redactions are applied as requested. The fundamental concern is that disclosure would enable anyone to set up a similar community transport company and be detrimental to their business. It is also apparent that conversations were held between Quentin Baker, then Head of LGSS Law, and Joanne Philpott as to whether a commercial exemption could be applied to a charity. The commercial exemption can apply to the covering of costs and not profit alone. The ICO guidance on the matter of what a commercial interest states:

A commercial interest relates to a person's ability to participate competitively in a commercial activity. The underlying aim may be to make a profit however it could also be to cover costs or to simply remain solvent.

It would be correct to consider whether disclosure would prejudice the commercial activities of a charity given it has a wider scope than profit.

The requester submitted a request for internal review on 12 November 2013 with a response issued on 10 December 2013. The requester does not accept that the information can be protected by commercial interests as they argue that the forms states these do not duplicate similar service.

The internal review is again completed by D, Information Governance Manager. In concluding the review and upholding the use of the exemption, the review states:

FACT/HACT do compete for funding streams to provide their services, which is the nature of their applications – and therefore the contested information – in this case and consequently have commercial interests in being able to compete for such funding.

The withheld information relates to FACT/HACT and their internal workings, in terms of their own budgeting and financial position, systems they have invested in to provide their services (e.g. radio infrastructure), and their processes for applying for funding. Regardless of whether there is somebody else providing the specific service relating to the specific application currently, the information would still provide other people within the sector with details about their operations which could disadvantage them when competing for future funding.

There is a public interest in scrutinizing the awarding of public funding to an organisation and we have disclosed the majority of the information contained in the applications to this effect. However, it is reasonable that a line is drawn between this information and withheld details included in such applications that go beyond the awarding of public funding into disclosing details about the inner workings of the organisation (which is not subject to the FOI Act) bidding for the funding.

D has qualified the use of the exemption through considering the public interest in how public monies have been used but balancing that against the level of detail full disclosure would reveal.

In this instance, the requester exercised their right to refer the matter to the ICO. The ICO contacted Cambs-FOI on 19 December 2013 setting out the complaint and requesting information from Cambs-FOI including unredacted copies of the documents as well as further justification on the application of the exemption. Cambs-FOI have responded appropriately, making their case under the lower threshold of the commercial exemption.

The ICO issued decision notice FS50524922 on 26 June 2014 which upheld the decisions to withhold information in APP1 and APP4 on the basis of section 43(2). The ICO did so on the basis that whilst there was public interest in transparency on how FACT/HACT spend public monies, there was strong public interest in those organisations competing equally for grants. ICO however ordered the disclosure of the withheld information in APP3. They were not persuaded that Cambs-FOI had identified “a sufficiently clear or specific way” how the disclosure of more limited information would prejudice the interests. The unredacted version of APP3 was subsequently released as required. The use of the exemption had merit and an argument could be made however the Cambs-FOI could not say specifically how the disclosure of certain aspects of the document would impact on commercial abilities. Whilst a question could be asked of whether the exemption had been correctly applied, it is noted that the ICO accepted that that prejudice envisaged by Cambs-FOI does fall within the exemption, it was how it would prejudice that was not a case made sufficiently strongly. I do not consider that it was an exemption used by Cambs-FOI in error; a case was made on three documents and ICO agreed with the decision on two out of three documents. It is arguable that the use of the exemption was largely consistent across all three documents however it was not strong enough in the case of APP3. It is noted that the requester disagreed with the ICO decision and appealed the matter to a First Tier Tribunal on 26 March 2015 where Judge Lane upheld the ICO decisions. This demonstrates that the use of the section 43(2) exemption by Cambs-FOI in APP1 and APP4 was upheld by the ICO and a First Tier Tribunal.

Summary of concerns and recommendations

Concerns identified
The case for withholding information on one of the applications forms was not sufficiently strong and the ICO determined that it was not clear how the disclosure would prejudice commercial interests.
Recommendations as a result
Cambs-FOI should ensure that the Public Interest test undertaken sets out clearly what the link between disclosure and harm to the commercial interests are to enable them to determine whether it is more than hypothetical.

Review of Request

This FOI request was received on 17 October 2013 and responded to on the date it was due, 14 November 2013. The request was as below:

Please could I ask the following questions:

1. How many community transport organisations are currently operating commercial Home to school contracts for the Council
2. How many community transport organisations are currently operating commercial transport contracts of any kind for the Council
3. Does the council insist on the individual drivers of these organisations undergo any kind of CRB Checks (Sorry is it now DRB)
4. Does the council insist all the drivers of these organisations undergo any kind of medical to be able to service these contracts
5. How many contracts in total are being undertaken by these community transport organisations
6. As the majority of these contracts are awarded based on cost, what would the total saving be for the councils by using these organisations?

The response was approved by E and D in addition to the communications team and is as below:

1. There are three community transport organisations currently operating home to school contracts for the County
2. There are three community transport organisations currently running public transport contracts for the County Council.
3. Yes, the Council does require drivers to undergo Disclosure and Barring Service checks (replaces CRB).
4. No, there is no requirement for drivers to undergo medical tests.
5. There are eight contracts in total for public transport and seventeen for educational transport.
6. This information is not recorded by the Council. In order to work it out, it would be necessary for an officer to manually locate and check each of the winning contracts and then to do the same for the nearest tender submission made by a non-community transport organisation – this would require checking at least 50 tender documents / contracts (assuming that the second placed tender was in every case a non-community transport organisation). There are a large number of tender rounds each year and contracts that have been awarded have been done so over different time periods which would add further complications.
7. Allowing an estimate of thirty minutes per contract / tender submission to locate the relevant documentation, retrieve it from archive and extract the relevant information to enable calculations to be made, to extract and calculate the information for this question would exceed the appropriate limit of £450 (18 hours of officer time at £25 per hour) which is set in Regulations. Therefore, we are refusing this part of your request under section 12(2) of the Freedom of Information Act. Please see the Council's [charging policy](#) for more information. If you wish to reduce the scope of your question, it will be logged as a new request and will be considered accordingly.

The information is requested from C and A. A supplied answers for question 2, 3, 4, partially for 5 and 6. A does undertake a calculation to estimate that it would exceed the 18 hours rule within FOIA. G supplies the additional answers for question 5.

The information by G provided for the 17 home to school contracts is as below

FACT	HACT	Ely Soham & District Community Transport
Home to School	Home to School	Home to School
NW19	PT03	SOP04
MG02	925	650A
A/MG03	PT04	HI03
CRP03	PTP02	HI09
T324	ON45	ELP06
		S646
		A/HI03

The requester submits a request for an internal review on 19 November 2013. He is asked to clarify as D argues that it is not sufficiently clear as to his reasoning. My reading of the internal review request is that the requester has highlighted the answers given and then given an extract of the payments to supplier spreadsheet in order to highlight the discrepancy. They clarify it as below:

(a) The response to FOI request 3362 states that all three community transport schemes that undertake commercial contracts for the council fulfil 25 CONTRACTS (Extract from Response to Request 3362 - Questions 1, 2 and 5 highlighted in Red)

(b) Screen shot of the councils payments of over £500 demonstrates in September (Which is the latest published figures and consistent with previous months) shows that 56 CONTRACTS were paid to these organisations.

(c) Now if we take 25 from 56 it gives us a difference of 31, 124% more contracts than declared by the Councils officers = incorrect information issued in a FOI request

D produces the internal review response on 23 December 2013 and in response provides the standard response regarding the difference without appearing to take the additional time to highlight those 56 payments and find if they can be linked to contracts. It may well be that the review would have answered this question better had Cambs-FOI sought to provide greater detail.

The council publishes all payments made to suppliers over £500 on its website. Payments are published on a monthly basis. The spend data website provides no information on contract characteristics to which the payment relates, including contract cycles or invoicing periods. It is therefore not possible to assert a direct correlation between the number of payments over £500 that the council has made to community transport organisations in a month, and the number of contracts it holds with such suppliers.

The original response issued by the council on 14th November 2013 provided the number of contracts fulfilled by community transport organisations. The review finds that the information provided was that held at the time that the request was received. Consequently, this review finds that the request was dealt with in line with the provisions of the Freedom of Information Act 2000. The appeal is therefore not upheld.

Whilst the requester did not pursue this further, it does become apparent that the same question is being asked on a number of occasions by different people without ever truly being closed off with a thorough answer.

Summary of concerns and recommendations

Concerns identified
<p>(a) The request asks all contracts awarded to community transport. The response is issued in the same month as a previous request which stated that HACT had five contracts all from education which are clearly listed. In this answer, there appears to be 25 in total in existence but I have not seen details of the eight referenced for the public transport area.</p> <p>(b) The response has been challenged by the individual concerned referencing the openly available data on payments over £500 which they believe indicates 56 contracts are in existence. The response in the internal FOI review does not attempt to analyse which contracts the 56 payments relate to.</p>
Recommendations as a result
<p>a) A register of contracts awarded and pertinent details including the value of the contract should be created and maintained in line with the requirements and suggestions of the Local Authority Transparency Code. Although the value may be less than £5000, it would promote open and transparency if greater detail was published.</p> <p>Cambridgeshire County Council should consider the creation of a register of all contracts awarded to transport providers in addition to the corporate register of contracts. This should include all awarded since or in operation after 1 January 2013. This would ensure that full disclosure has been provided in this matter.</p> <p>Both above should include:</p> <ul style="list-style-type: none"> • Date of award • Start date of contract • End of Contract • Supplier name and details • Value of contract • Description of services provided • If the contract was the result of an invitation to quote or a published invitation to tender or an emergency award <p>(b) The internal review process should be reviewed and ensure that any issues are answered fully. In this instance, there should be a direct link between a payment made and the contract or service provided. The review of these may have highlighted the existence of more contracts.</p>

FOI-3509

Review of Request

This FOI request was received on 25 November 2013 and responded to within time on 17 December 2013. The request was as follows:

Can I please have

- the live mileage of these contracts [FOI 3339],
- which schools they are operating to and from?
- Time of Morning drop off at school, time of afternoon pick up from school.
- Value of daily price.
- When these contracts commenced,

- when was the closing dates and times of tendering process.
- What date and time was HACTS bids received, and evidence of this information.
- How many contracts have HACT bid on since 1st January 2013 with evidence that the bid was made, excluding any individual information to prejudice their commercial interests

The response was issued with a table detailing the contract details

Please note that live mileage is only recorded for mainstream home to school transport

Contract	Live mileage*	Route Description	Morning drop off	Afternoon pick up	Daily price	Start
ON45	14.1 miles	Molesworth - Tresham Coll, Kettering	9.00	15.15	£55.76	10/09/2013
925	19.4 miles	East Hatley - Gamlingay VC & First Sch	8.40	15.50	£79.73	01/04/2013
PT03	19.4 miles	Woodwalton to St Peters School	8.20	15.15	£82.31	01/04/2013
PT04	14.9 miles	Yelling to St Peters School	8.20	15.25	£75.00	01/04/2013
PTP02	3.7 miles	Woodwalton to Abbots Ripton Primary	8.40	15.25	£72.02	01/04/2013

Evidence of the bid submission is provided for ON45, see appendix 1. Contracts 925, PT03, PT04 & PTP02 were awarded to HACT under emergency powers. Those contracts were previously operated by Nene and Ouse.

App1 is an email showing that HACT bid for ON45.

The information is supplied by C, A and G with input on the final answer from E who emphasised the awards under emergency powers. This is consistent with the previous answer in FOI-3339 however it does not tally with what is disclosed in FOI-5709.

Summary of concerns and recommendations

Concerns identified
(a) The request asks for the details of contracts in FOI-3339 and this compounds the earlier error of not disclosing at least two other contracts likely to have existed at the time.
Recommendations as a result
a) A register of contracts awarded and pertinent details including the value of the contract should be created and maintained in line with the requirements and suggestions of the Local Authority Transparency Code. Although the value may be less than £5000, it would promote open and transparency if greater detail was published.

Cambridgeshire County Council should consider the creation of a register of all contracts awarded to transport providers in addition to the corporate register of contracts. This should include all awarded since or in operation after 1 January 2013. This would ensure that full disclosure has been provided in this matter.

Both above should include:

- Date of award
- Start date of contract
- End of Contract
- Supplier name and details
- Value of contract
- Description of services provided
- If the contract was the result of an invitation to quote or a published invitation to tender or an emergency award

FOI-5709

Review of Request

This request was received on 8 September 2015 and responded to within time on 6 October 2015. The request was as follows:

Under the FOI Act please could I request the following information:

- A. Contract numbers for all council transport contracts both past and current, awarded to the Huntingdon Association for Community Transport (HACT) since its formation in March 2013
- B. Start date of all Council transport contracts, both past and current, awarded to (HACT) since its formation in March 2013
- C. End date of all Council transport contracts, both past and current, awarded to (HACT) since its formation in March 2013
- D. Date HACT entered their bid for all Council transport contracts, both past and current, awarded to the organisation since its formation in March 2013
- E. Number of contracts issued to HACT on an "emergency" basis, the grounds by which these contracts were categorised as an emergency and relevant documentation to/from procurement team
- F. Date of bid entered by HACT to retain any transport contracts previously held
- G. If any of the following has already been issued in previous FOI requests could you please forward the FOI numbers and making sure any relevant "up to date" information is then disclosed

The response issued was as follows for Questions A-D:

Please refer to the appendix 'FOI_5709_App1' for this information. (For ease, this is reproduced below)

Contracts awarded to HACT since March 2013

Contract	Start Date	End Date	Bid Date
46A	01.04.2013	27.06.2015	28.02.2013
150	01.04.2013	27.06.2015	28.02.2013

28	02.06.2014	01.06.2017	11.02.2014
46A	29.06.2015	30.06.2018	27.01.2015
65	27.07.2015	28.07.2018	27.01.2015
150	29.06.2015	30.06.2018	27.01.2015

For question E:

In April 2013 services 46A and 150 were let on an emergency basis. Documentation for the 150 is attached as 'FOI_5709_App2'. The Council does not hold the documentation for the 46A.

For question F:

Please refer to the appendix 'FOI_5709_App1' - reproduced above.

This information is supplied by F, A and C.

In FOI-3339, Cambs-FOI disclose that there are five contracts and these are identified in FOI-3509. The former was in October 2013 and the latter in November 2013. It is clear that neither 46A nor 150 were included in either of those responses yet were in existence. The explanation offered is that it has been assumed that 3509 was about home to schools contracts based on the questions asked. This answer relates to local bus contracts and it is considered that through FOI-3509 and FOI-5709, all contracts have been declared.

FOI-3339 does not discern between any type of contract. It asks for how many have been awarded to HACT. FOI-3509 asks for details of those five contracts. Whilst it may have referred to schools in the request, it fundamentally refers back to FOI-3339 where it appears that A did not disclose the details of the two contracts which would have been in existence at the time.

A believes that the lack of documentation for contract 46A (Question E) is an oversight. There is no further explanation provided.

There is a clear discrepancy in the answer given in this FOIA response and that of earlier responses. This request asks for all awarded since March 2013 to which the response is four yet previously there were five. The responses both 3339, 3509 and 5709 are flawed.

An internal review is requested on 16 October 2015 and responded to on 10 February 2016, taking 81 working days therefore outside of the forty day period. The request for an internal review highlights this and again refers back to the open data pages about payments to suppliers where there are more payments - in this matter, the requester highlights that there are between seven and ten monthly payments.

The review highlights the lack of documentation for the emergency award of contract 46A as well asking for the confirmation that contracts 150 and 46A were let from 1 April 2013 to 27 June 2015. There is also a new request for all invoices relating to those contracts.

D, Information Governance Manager, undertook the internal review. The response confirms that the contracts listed in FOI-5709 were indeed local bus contracts and did not include home to school contracts which had been released in FOI-3339 and FOI-3509. An apology was given however D also includes a refusal notice on this matter as these were already available. There is no explanation as to why contracts were not included nor is there any reference to why two contracts were not disclosed in those earlier responses. The dates of the contracts are confirmed which confirms that both 150 and 46A were in place at the time of the two requests. The response also does not provide any explanation as to the missing paperwork for contract 46A - it simply states that CCC do not hold any information for the purposes of FOIA. The same line regarding the payment to suppliers is used as

previously - however evidence is held that a Cambs-FOI officer did seek to marry them up on this occasion themselves:

“...some time going through the latest spreadsheets searching against HACT and from what I can see, there is nothing there that ties up individual invoices / payments with specific contracts...”

There is no evidence that anyone involved with the payments on these contracts was asked for assistance. I refer back to my previous comment that this would have been an opportunity some two years earlier to identify all the contracts.

Summary of concerns and recommendations

Concerns identified
<p>(a) The request asks all contracts awarded to HACT and this discloses two bus contracts which were in existence at the time of the initial response of five in FOI-3339 and FOI-3509. The explanation given is that FOI-3509 referenced schools in its request and therefore it was taken to mean that the response should only be about schools. FOI-3339 did not make such a distinction and asked for all contracts. There is no explanation of this</p> <p>(b) The response has been challenged by the individual concerned referencing the openly available data on payments over £500 which they believe indicates more contracts are in existence. The response in the internal FOI review does not attempt to analyse which contracts the payments relate to.</p> <p>(c) The internal review exceeded the normal timescale for such a review to be undertaken.</p> <p>(d) There is a lack of documentation to support the award under emergency powers</p>
Recommendations as a result
<p>a) A register of contracts awarded and pertinent details including the value of the contract should be created and maintained in line with the requirements and suggestions of the Local Authority Transparency Code. Although the value may be less than £5000, it would promote open and transparency if greater detail was published.</p> <p>Cambridgeshire County Council should consider the creation of a register of all contracts awarded to transport providers in addition to the corporate register of contracts. This should include all awarded since or in operation after 1 January 2013. This would ensure that full disclosure has been provided in this matter.</p> <p>Both above should include:</p> <ul style="list-style-type: none">• Date of award• Start date of contract• End of Contract• Supplier name and details• Value of contract• Description of services provided• If the contract was the result of an invitation to quote or a published invitation to tender or an emergency award <p>(b) The internal review process should be reviewed and ensure that any issues are answered fully. In this instance, there should be a direct link between a payment made and the contract or service provided. The review of these payments may have highlighted the existence of more contracts.</p> <p>(c) The internal review process should also be reviewed to ensure that there is resilience of more than one individual to undertake reviews and how an independent person may be sourced in contentious matters.</p>

Review of Request

This request was received on 1 October 2015 and responded to, within the statutory timeframe, on 28 October 2015.

The request is as below:

.....FOI request 3294 which supplies an application for £174294.98 grant and £27567.97 as a loan giving a total of £201,860.95. I also note in 3294 asking for total amount of funding awarded to HACT it is claimed the £11,750 was awarded and an additional £179048.46 was awarded giving a total of £190.798.46 and yet actual payments on your website under payments to suppliers gives a total of £213,610.95. Could you please explain the conflicting information?

The specific amounts in the above figures are hugely different but the totals generate a difference of just £282 indicating changes had been made from the original application to the actual payments made!

Therefore Under the freedom of information act I would like to ask the following questions.

(1) For a substantial payment such as this the Council must have created a file, may I please have a copy of this file and to include assessment notes, amendments to this application, correspondence with the HACT management, additional information requested from the council etc

(2) As the copy of application included in FOI 3294 was unsigned and undated, could you please supply me with the date the very first application for this funding was made and the actual signed agreement.

(3) How did HACT receive these funds i.e, bank transfer etc.

(4) Under payments to suppliers the dates attached to these payments was the 26th March 2013, can the council confirm this was the actual date the money left the council's account, and, if not, which date did the money get released

The response provided to each of the questions is below:

1. All information relating to grants awarded to HACT is available on the Council's disclosure log where previous request responses are available to access. Payments to suppliers, as published on the website, not only include grant payments that are awarded; they also show payments that have been made to suppliers under contracts where the Council has been invoiced for services received. Therefore, any amounts that may be shown will not necessarily reconcile with grant amounts that have been awarded. As such, all information that is held that relates to the grants awarded to HACT has been released in response to previous requests and there is no further information that is held for the purposes of the Freedom of Information Act.
2. The agreement runs from 1 April 2013 to 31 March 2014 and was signed just before the beginning. The Freedom of Information Act provides a right of access to information held by a public authority at the time a request is received. This is not an entitlement to specific documents, although in the majority of cases, documents will be provided. The only information that will be included in the signed copy of the agreement is the signature of the signee. Before release, this would be redacted and withheld under section 40(2) of the Freedom of Information Act – personal data. As such, as the information contained in the agreement will not differ, you have not been provided with a further copy of the application form.

3. Both payments were made by CHAPS bank transfer
4. According to the Council's records, £161,920.00 was released on 19 March 2013 and £40,222.95 was released on 21 March 2013

The responses are based on information supplied by B, A and Finance.

It is noted that in the answer to (1), whilst saying the information is already available on the disclosure log, the response does not provide the link to those previous responses. There is a link to question 4 regarding amounts paid, which confirms how much has been paid in respect of the applications. Yet there is a discrepancy in the amounts paid which the requester highlights but the difference is not addressed in the response. Whilst there is some discussion internally on which figures the requester means, I do not see evidence that the figures were clarified with them. This approach is in line with ICO guidance when the public authority requires further information to enable information to be found. The response provided in question 1 is similar to the responses previously provided on the list of payments to suppliers which does not fully answer the request.

It is also noted that the date of the agreement is not provided for question 2. In requesting the information, K emails A and B to start the process of responding to the initial request and in relation to question 2 regarding the unsigned agreement and the lack of a date, states:

If we can provide the date that would be great. With regard to a signed copy, as the information is already available, albeit unsigned, there is no obligation under FOI to do so; however, in the essence of being helpful, if there is a signed copy that is readily to hand, we could consider releasing it.

The response provided by Passenger Transport in October 2015 is:

As this Agreement was signed in 2013, it was included in a substantial batch archived last year when we moved offices.

However in a later answer in February 2016, when the internal review request is received, is:

I've had a look through my files, and can't find the paper copies of the applications with our date stamp on (A may have these documents – he's back on Monday). However, HACT started operating on 01/04/2013, and I remember receiving the application in March 2013 – again, A may have retained the document with the date stamp.

I do not see any consideration of seeking to access the archived paperwork which is still held by CCC. This could be considered to be a missed opportunity to provide the requester with information to answer their question.

It is accurate to say that a signature being disclosed, even if redacted, would add little however a redacted signature does at least confirm a signature. The exemption is appropriate however given the specific request for a signed application and the concerns over transparency then the production of a signed form with a redacted signature may have been a more open response as sought by Cambs-FOI at the outset.

It is also noted that they failed to provide the actual date of the agreement in their response stating *"The agreement runs from 1 April 2013 to 31 March 2014 and was signed just before the beginning."* This does not answer the question and it is noted that this lack of information coupled with the decision not to release the document would lead one to consider that they did not hold the document hence the vagueness of the answer. This approach is presumably based on the answer from B which was:

The Agreement ran from 1st April 2013 to 31st March 2014 so was probably signed just before April 2013

An internal review was requested on 9 November 2015 and responded to on 17 March 2016. This took 91 working days, outside of the forty working days expected. The requester asked for progress

on two occasions, 21 January 2016 and 10 February 2016. The lack of response led to a complaint to the ICO on the failure to respond in time, although by the time that arrived in May 2016, a response had been given.

The internal review was undertaken by D, Information Governance Manager.

In the response, the requester is provided with the reference numbers of the two requests (FOI-3294 and FOI-3348) believed to answer question 1. This is the information which should have been provided in the first instance although it would have been preferable to provide a link to aid the requester in finding these.

In reviewing this matter and based on the evidence supplied to me, it is unclear as to whether a signed copy of the application form for the "Launch of HACT" is held. In reviewing FOI-3348, I note that the application form released as APP2 regarding the HACT application "Communications" does have a date and a typed signature. This is on the version received by Cambs-FOI from A and included in the disclosed version. This date of 29 July 2013 differs from the date of application stated by A in response to this FOI where an email dated 6 August 2013 is referred to. The application form disclosed as APP1, however does not have a date nor does it have signature typed in. A refers to an email received 12 March 2013 for the "Launch of HACT" as the evidence of the date of the application but this does not confirm the date an application was signed.

The requester has submitted further questions their request for a review including:

Can you confirm these are the only FOI requests relating to information held of HACT funding? Will the council then confirm that with the granting of over £200,000 of public money:-
No further documentation, information or correspondence exists;
No official assessments were made and signed off;
No emails to HACT asking for further information or informing them their grant had been successful;
No minutes of meetings where the allocation of this grant was agreed, in fact no information of how and who agreed this funding?
If not I would like to resubmit my request to be supplied with ALL documentation, information and correspondence connected to ALL grant funding and loans issued to HACT.

The response is that all information held has already been provided. B stated 16 February 2016

...we've already provided as much evidence as we have relating to these payments. I have not got any further documentation on these payments.

I still no evidence of any decision to access the archived material where there may have been further material to answer the question.

The internal review does conclude that the difference in amounts is due to a reduction in costs for the launch of HACT. The review does provide a breakdown to explain the payments however it shows that the answer originally regarding the payments to suppliers was flawed. If you consider the two side by side, the review response is the response that should have been given originally.

Original Answer

All information relating to grants awarded to HACT is available on the Council's disclosure log where previous request responses are available to access. Payments to suppliers, as published on the website, not only include grant payments that are awarded; they also show payments that have been made to suppliers

Internal Review Answer

The figures that you have identified above relate to grant payments awarded to HACT under the Community Transport Fund, a total of £202,142.95 which can be broken down as follows.

under contracts where the Council has been invoiced for services received. Therefore, any amounts that may be shown will not necessarily reconcile with grant amounts that have been awarded. As such, all information that is held that relates to the grants awarded to HACT has been released in response to previous requests and there is no further information that is held for the purposes of the Freedom of Information Act.

or

HACT submitted applications for the following amounts from the Community Transport Fund:

Under their "Launch of HACT" application, there was a grant amount of £174,294.98 and a loan amount of £27,567.97.

Under their "Communications into the Future" application, there was a grant amount of £4753 and a loan amount of £4753.

This gives the total awarded to HACT from the Community Transport Fund as £211,368.95 (grant total £179,047.98 and loan total £32,320.97).

The grant amount for the "Launch of HACT" application consisted of two amounts, one for revenue costs, and one for capital costs.

These individual amounts were redacted from FOI 3348 and withheld under section 43(2) – commercial interests and as such, will not be provided here.

However, it can be advised that when the actual costs came in for the Launch of HACT, the capital costs (and associated VAT costs) were reduced by a total of £4,822.95. In addition to the amounts above from the Community Transport Fund, HACT have also received a grant from the Council's core funding to the value of £11,750.

It highlights how a detailed answer to past requests could have identified other contracts and shown greater transparency.

Summary of concerns and recommendations

Concerns identified
(a) The request asks all correspondence relating to grants awarded in 2013 and the only information held is that disclosed in relation FOI-3294 which was three documents. The service state that they have no more paperwork but refer to a substantial batch of papers archived in 2014. I do not see evidence of an attempt to retrieve these. A signed and dated copy is not available nor does it appear to have been sought.
(b) The initial response did not direct the requester to the specific previously issued responses.
(c) The internal review exceeded the normal timescale for such a review to be undertaken.
(d) There is a lack of documentation to support the award of grants.
Recommendations as a result

(a) In the interests of transparency and in line with the Local Government Transparency Code, Cambridgeshire County Council should ensure a register of grants is available containing the following information for services:

- date the grant was awarded
- time period for which the grant has been given
- department which awarded the grant
- beneficiary
- beneficiary's registration
- summary of the purpose of the grant,
- amount
- details of how the grant award was approved

Cambridgeshire County Council should consider the creation of a register of all grants awarded to transport providers in addition to the corporate register. This should include all awarded since or in operation after 1 January 2013. This would ensure that full disclosure has been provided in this matter.

(b) Cambs-FOI should ensure that responses provide a link to previously issued responses or attach them to the response being issued. A disclosure log on the website should be considered.

(c) The internal review process should also be reviewed to ensure that there is resilience of more than one individual to undertake reviews and how an independent person may be sourced in contentious matters.

FOI-5851

Review of Request

This request was received on 20 October 2015 and was responded to 17 November 2015, within the twenty working days. The request was:

Could I please have all exemption applications and terms and conditions made from the Cambridgeshire county council for permission to issue transport contracts on an "emergency" basis between 1st February 2013 and 1st May 2013

The response is

There is only one exemption that is recorded and that was provided previously under FOI 5709. Please see the link below where you may access the Council's published response:

http://www.cambridgeshire.gov.uk/site/custom_scripts/foi_details.aspx?ref=5709

Where transport is needed at short notice and for a short term, it is treated as a short term contract. As such, there is no requirement for an exemption application.

All procurement processes for short term contracts meet the criteria as set out on the Council's website and all comply with all domestic and European procurement legislation – please see the link below for details:

http://www.cambridgeshire.gov.uk/info/20092/business_with_the_council/37/business_with_the_council/2

The information seems to have been supplied by a combination of A, I and, C although there would appear to be some emails missing relating to who confirmed this response as correct. I also see no confirmation of any approval which I have seen in other requests.

C emails Cambs-FOI in response to the request and states, although unclear of the dates related it, "The only exemption I can think of is when we used FACT to cover for the demise of ESDAR". C refers to A and J as having greater knowledge, the latter responding that:

If the Dates of 2013 are correct it would be impossible now to even identify any such emergency cover

If it is meant to be 2015 – I have nothing

At the point of drafting a response, the Cambs-FOI officer has reviewed past requests and has identified the use emergency powers referred to in FOI-3509:

In the Council's response to 3509, it states that evidence of bid submissions were provided in relation to on contract – ON45 but that the others were provided under emergency powers – contract refs 925, PT03, PT04 and PTP02

I have not seen any evidence of the paperwork relating to the four contracts provided under emergency powers. The published response is fundamentally flawed. The response should have been that there have been six contracts let under emergency powers, based on FOI-3509 and FOI-5709. The former disclosed that 925, PT03, PT04 and PTP02 were let from 1 April 2013 for over a year and the latter that 46A and 150 were let from that same date until June 2015. These are all within the time period specified in the request but the only paperwork supplied in FOI-5709 related to 150. Based on the response to FOI-5851, it would seem that no other paperwork was held.

Summary of concerns and recommendations

Concerns identified
(a) There is a lack of documentation to support the award under emergency powers
Recommendations as a result
<p>a) A register of contracts awarded and pertinent details including the value of the contract should be created and maintained in line with the requirements and suggestions of the Local Authority Transparency Code. Although the value may be less than £5000, it would promote open and transparency if greater detail was published.</p> <p>Cambridgeshire County Council should consider the creation of a register of all contracts awarded to transport providers in separation to the corporate register of contracts. This would ensure that full disclosure has been provided.</p> <p>Both above should include:</p> <ul style="list-style-type: none">• Date of award• Start date of contract• End of Contract• Supplier name and details• Value of contract• Description of services provided• If the contract was the result of an invitation to quote or a published invitation to tender or an emergency award

Review of Request

This request was received 3 July 2016 and responded to on 27 July 2016, within the statutory timeframe. The request was as below:

As reported in the Cambs Times on May 14 2016, CCC (Cambridgeshire County Council) declared "This is a complex issue and while we are following the lead of other councils in how to deal with this, we are asking the Department of Transport for clarification, we will then take the appropriate action if anything changes as a result of this clarification."

1. I request under FOI, a copy of all correspondence sent to the DfT and or any other government departments or authority in relation to such clarification being sought, along with all responses of such requests.
2. I would also like all information as to what action Cambridgeshire County Council have taken to check if FACT drivers are all operating legally.
3. Please include a copy of ALL documentation between FACT and CCC representatives, paper and electronic, based on matter generated with regard to this.

The response issued was

1. Copies of correspondence are attached as APP1 and APP2. The information has been provided in full except for some minor redactions, as explained further below.

APP1

This appendix includes several emails relating to a request CCC made for a copy of a transcript of a relevant public inquiry. The transcript itself, mentioned as being attached to the email on page 4, is included after the final email (from page 9). We have redacted contact details of individuals as information exempt from disclosure under Section 40(2) of the FOI Act as this is personal information the disclosure of which would breach the first Data Protection Act principle.

We have also redacted commercial details relating to AVR Transcription on page 1, namely their transcription rate and quoted cost. As shown in the correspondence, we did not actually pay anything for the transcript, as upon further review it was found that the inquiry had already been transcribed. It is considered that disclosing these details would prejudice the commercial interests of AVR Transcription as it directly relates to their pricing structure. The public interest in not harming an organisation's commercial interests is not overridden in this case by a compelling requirement to aid transparency on council spending as CCC did not actually pay any fee for the transcription in the end.

APP2

This appendix includes all other correspondence around CCC seeking clarification on this topic. The only information redacted from this correspondence is contact details of individuals, as per the reasoning stated above for APP1

2. This question was responded to as part of FOI 6678: The interpretation and monitoring of driving licence legislation is the responsibility of the DVSA and not the County Council. If the Council is notified of issues from DVSA then action could be taken against a contractor.
3. Any checking of licences and other legal interpretations are the duty of other agencies and therefore we have not contacted FACT direct about them.

The response has been approved by Graham Hughes in addition to the communication team.

I note that the answers to questions 2 and 3 are statements that these are not the responsibility of CCC. I have not reviewed these matters in detail given that the CCC have stated that they hold no information on these nor has any been provided to contradict that statement.

I have reviewed the two appendices regarding the redaction of parts with two exemptions having been used; section 40(2) regarding the disclosure of personal data and section 43(2) relating to the commercial interests of a company. I do note that the Office of Traffic Commissioner agreed to the disclosure of a hearing transcript which does demonstrate that CCC took a reasonable step to provide a disclosure of another public authority's material when they could have directed the requester to submit a separate request. Neither appendix causes me concern - there is some minimal redaction of non CCC employees' names and contact details which is correct. I also note the minimal redaction of a company's transcription costs which, if public, could harm their ability to compete. I have no concerns with this response.

Summary of concerns and recommendations

Concerns identified
None identified
Recommendations as a result
None identified

FOI-6750

Review of Request

This request was submitted on 5 July 2016 and responded to on 2 August 2016. The request was:

[Fenland Association for Community Transport received section 106 money of over £50000 in relation to the Tesco's Development in Chatteris.](#)

[Please could I have all documentation written electronic or otherwise with the details of when this money was allocated and for what reason. Who made the decision and to how this money was to be spent in relation to the Development, and the criteria under which the grant was allocated](#)

The response was:

[Please see attached copies of all documents we hold in relation to this funding.](#)

I have undertaken a review of the documents and note that the only redactions are of CCC officers' contact details, although their name is disclosed on the bottom of letters. Again I cannot comment on whether this is the fullness of what is held but it is redacted appropriately. My only comment is that the response does not explain what has been redacted which is only a minimal issue.

Summary of concerns and recommendations

Concerns identified
(a) The response does not detail why information has been redacted
Recommendations as a result
(a) Cambs-FOI should ensure that responses do explain why it has been necessary to redact information.

FOI-7296

Review of Request

This request was received on 11 December 2016 and responded to, within the appropriate time, on 12 January 2017. The request was as follows:

Can we please have a copy of all correspondence between the CCC and FACT between 1st August 2016 to the present date, both sent and received and to include all emails, letters, phone records, stats and quarterly reports with dates each was sent or received

The response issued was as follows

Please see Appendix 1 for copies of all the email correspondence between CCC and FACT between 01/08/2016 and 11/12/2016 that can be released under Freedom of Information legislation.

Some records of correspondence have been withheld, and others have been redacted, in accordance with Section 40(2) of the Freedom of Information Act 2000.

For copies of the material in the FACT, ESACT, and HACT quarterly reports (which were sent from staff at FACT to the County Council and received on 27 October 2016) please consult appendices 2-9.

Appendices 2, 3 and 4 provide all the material that Cambridgeshire County Council is able to publish from the FACT Quarterly Steering Group Report, October 2016. Appendix 2 is an exact copy of pages 1-2 of the report, Appendix 3 reproduces, or indicates, as far as possible without contravening Section 40 of the Freedom of Information Act 2000, the content of pages 3-9 of the report and Appendix 4 is an exact copy of page 10 of the report.

Appendices 5 and 6 provide all the material that Cambridgeshire County Council is able to publish from the HACT Quarterly Steering Group Report, October 2016. Appendix 5 is an exact copy of pages 1-3 of the report and Appendix 6 reproduces, or indicates, as far as possible without contravening Section 40 of the Freedom of Information Act 2000, the content of pages 4-14 of the report.

Appendices 7, 8 and 9 provide all the material that Cambridgeshire County Council is able to publish from the ESACT Quarterly Steering Group Report, October 2016. Appendix 7 is an exact copy of pages 1-5 of the report, Appendix 8 reproduces, or indicates, as far as possible without contravening Section 40 of the Freedom of Information Act 2000, the content of pages 6-14 of the report and Appendix 9 is an exact copy of pages 15-16 of the report.

The only exemption applied to the information in this response is that of section 40(2) of the Act relating to the personal information. I have reviewed the documentation supplied but have not seen the originals.

Appendix 1	There are contact details left in for officer and a number of business contacts but some minor redactions where section 40(2) has been applied.
Appendix 2	No redactions applied
Appendix 3	The published document contains no personal data and would appear to have removed the name of who typed the minutes
Appendix 4	No redactions applied as a statistical report
Appendix 5	No redactions applied
Appendix 6	The published document references removal of names relating to a film

Appendix 7	There some officers/individuals named in the report however
Appendix 8	The published document contains no personal data
Appendix 9	No redactions applied

Summary of concerns and recommendations

Concerns identified
None identified
Recommendations as a result
None identified

Conclusion

There are some common themes within this review of FOIA requests and how they have been handled. I have summarised these concerns below.

I have noted questions missed from answers as they have been lost during the email exchanges and not picked up at the point of response. I have also noted that some responses do not tally entirely with the request e.g. providing a blank application form did not entirely answer the question.

There does appear to have been a lack of record keeping by a service leading to failure to disclose contracts, when emergency powers were used or when a grant had been awarded and the lack paperwork which demonstrated governance arrangements. This clearly hampered the ability of CCC to respond accurately. It may be fairly assumed that two contracts which did come to light, 150 and 46A, in a FOIA response are the two suggested by the individual officer earlier which were not considered to have been awarded "since 2013". An individual officer has misread, misinterpreted or simply erred in not disclosing those two contracts awarded to HACT in 2013 during the FOIA matters. The request was made in October 2013 and HACT were founded in March 2013 so any contracts awarded had to be since 2013. I cannot say for sure whether these were the PRC3/PRC4 contracts or the ones subsequently disclosed in other FOIA response.

There have been clear missed opportunities which could have highlighted discrepancies sooner in the process. For example reviewing the "payments to suppliers" data could have linked back to more than the contracts disclosed. It may have been complex to do but had this been done when first questioned, it may have saved further requests.

I have noted a lack of challenge from the Cambs-FOI officer. Contracts had been awarded under emergency powers but no paperwork existed for something that had been a live contract up until a few months before the request. I have not seen this questioned or escalated as an issue within a very contentious matter. The comment regarding archiving is not noticed and dealt with nor is the comment regarding no contracts since 2013. It is also noted from what I have seen that, given the volume of requests being received, it would have been beneficial to have had more senior officer involvement throughout. This is clearly a contentious and complex matter and I have not seen evidence of the oversight that might have been helpful in order to seek resolution. The FOIA responses appear to be seen in too much isolation to ensure that all internal parties are on the same page.

Whilst there is no guidance on who should conduct an internal review process, given the contentious nature of the requests, the process missed chances to take a fresh look at the requests. There were a number of opportunities where answers were produced again - it was only later in the 2015 that a more detailed response on the grant issue was given. Had it been possible for a person outside of the

service to review then this may have seen issues resolved sooner or a challenge to the content of the response.

There is a documented approach to the use of the public interest test in each case where it has been used. This is best practice. It showed that decisions had been qualified and considered. It is noted that the ICO and a First Tier Tribunal have agreed with decisions made on nine aspects and found the argument insufficiently made on three aspects. I note that it is not an erroneous use in those three aspects, indeed the ICO notes that the exemption is engaged but it was more that the case was not made strongly enough that the commercial interests are more than hypothetical. I would also add in that one of those three matters, the decision making process was undermined by an officer outside of the Cambs-FOI team. I do not believe that there was a deliberate attempt to withhold information by Cambs-FOI by a misuse of exemption.

Whilst I believe that there are lessons which could be learned from this situation, I also note that the team worked with what they were provided in terms of information and explanation. There is no suggestion from what I have seen information was not disclosed for reasons other than an exemption being applied, or they were informed by the service area that it was not held or not provided with it. It is also noted that the team was affected by an individual's sickness and subsequent maternity leave at a point when the team was already small (3.6 fte). Following a corporate capacity review, the size of the team was doubled. A small team dealing with large quantities of complex or contentious requests can need higher level support or a group of key individuals formed to work together ensure consistent transparent responses.

