



## South Tyneside Council

Alex Shipp  
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Date: 17<sup>th</sup> February 2014  
Our Ref: FOI 13 13329

Dear Mr Shipp

### **Internal Review: Freedom of Information Request FOI 13 13329**

On 20<sup>th</sup> January 2014, South Tyneside Council received your request to conduct an internal review of your Freedom of Information request reference 13329.

Your original request asked for

- 1) Please provide a copy of the 26th September contract**
- 2) Please provide details of parking charges issued before 15 April 2013**
- 3) Please provide details of parking charges issued between 15 April 2013 and 26th September 2013. Where available this should indicate total tickets issued, tickets cancelled, tickets paid and tickets outstanding, broken down by month/part month.**
- 4) How many court cases have ParkingEye filed for charges issued before 15 April 2013?**
- 5) How many 'landowner witness statements' have you provided to ParkingEye for use in court cases for charges issued before 15 April 2013?**
- 6) For those witness statements which stated 'The Operator has written authority from the landowner to undertake parking management, control and enforcement at the site' (or similar), please provide a copy of this written authority, and the date this authority came into being.**
- 7) Please provide copies of all correspondence between yourself and ParkingEye regarding these witness statements**
- 8) How many 'landowner witness statements' have you provided to ParkingEye for use in POPLA cases for charges issued before 15 April 2013?**

The internal review of your request was held on 27th January 2014. The Review Panel consisted of Gill Hayton (Deputy Monitoring Officer). Dave Patterson (Information Governance Team) provided information, but did not take any part in the review decision making process.

The Panel when making its decision considered the history of your original request and the responses provided to you by the Council.

The Council's original response to your request is shown below:

We can confirm the following information with regards your request above.

1. Please provide a copy of the 26th September contract

The Council of the Borough of South Tyneside acting in its capacity as the Tyne and Wear Pension Fund has a contract with ParkingEye Ltd for car parking management at Corporation Street, Preston, which is dated 26 September 2013. A copy of the redacted contract is attached. Prior to this there was a contract in place for car parking management at Corporation Street, Preston dated 12 September 2008 and made between the Council's appointed Managing Agent at Corporation Street and ParkingEye Ltd.

2. Please provide details of parking charges issued before 15 April 2013

We do not have the information you have asked for. The Act only covers recorded information held by the Council. As we do not have the relevant information in recorded form, we are under no obligation to find out information from elsewhere. This information is not held by a public authority and so we are not able to transfer the request on or advise you to redirect your request.

3. Please provide details of parking charges issued between 15 April 2013 and 26th September 2013. Where available this should indicate total tickets issued, tickets cancelled, tickets paid and tickets outstanding, broken down by month/part month.

We do not have the information you have asked for. The Act only covers recorded information held by the Council. As we do not have the relevant information in recorded form, we are under no obligation to find out information from elsewhere. This information is not held by a public authority and so we are not able to transfer the request on or advise you to redirect your request.

4. How many court cases have ParkingEye filed for charges issued before 15 April 2013?

We do not have the information you have asked for. The Act only covers recorded information held by the Council. As we do not have the relevant information in recorded form, we are under no obligation to find out information from elsewhere. This information is not held by a public authority and so we are not able to transfer the request on or advise you to redirect your request.

5. How many 'landowner witness statements' have you provided to ParkingEye for use in court cases for charges issued before 15 April 2013?

Nil

6. For those witness statements which stated 'The Operator has written authority from the landowner to undertake parking management, control and enforcement at the site' (or similar), please provide a copy of this written authority, and the date this authority came into being

Please find attached a copy of a standard draft witness statement. This is a witness statement of fact only. The statement is provided to confirm that the Council of the Borough of South Tyneside, acting in its capacity as the Administering Authority of the Tyne and Wear Pension Fund, is the owner of the site at Corporation Street Retail Park,

Corporation Street, Preston, Lancashire PR1 2UZ and that ParkingEye Ltd has authority from the Fund to undertake parking management, control and enforcement at this site. Negotiations of the drafting of this Witness Statement commenced on 12 April 2013 and the statement has been largely in use since 3 May 2013.

7. Please provide copies of all correspondence between yourself and ParkingEye regarding these witness statements

Correspondence relating to the witness statement are confidential communications between the Fund's lawyers and a third party for the purpose of preparing litigation. Litigation privilege attaches to these confidential communications, because litigation is in reasonable prospect or is pending, and the communications are for the dominant purpose of collecting evidence for use in the litigation.

8. How many 'landowner witness statements' have you provided to ParkingEye for use in POPLA cases for charges issued before 15 April 2013?

Nil

### **Internal Review Response**

The Review Panel has reviewed the Council's original response to your Request.

#### **Question 1**

The Review Panel noted that the Council provided to you a copy of the contract between the Council and ParkingEye Limited dated 26 September 2013. The copy of the contract supplied to you had been redacted in places however the Council's original reply to you did not explain to you the reasons why some of the information in the contract had been redacted or which of the exemptions the Council had relied upon to redact that information. The Review Panel reconsidered the redacted contract and noted that the information that was redacted consisted of personal information relating to individuals, service specific information and specific contractual clauses.

The Panel then went on to consider the exemptions. The Panel was satisfied that personal information relating to individuals was correctly redacted from the contract and that the Council had correctly relied upon the exemption contained within section 40(2) of the Act (Personal Information). The Panel was satisfied that the information should be redacted as disclosure of that information would be unfair to those individuals as they would have had a reasonable expectation that their personal information would not be disclosed to the public. This exemption is an absolute exemption and the Council does not need to consider the public interest test.

The Panel then considered the exemption contained within section 43, that disclosure of the information would, or would be likely to, prejudice the commercial interests of the Council or of a third party. A commercial interest relates to an individuals or an organisations ability to successfully participate in a commercial activity, i.e. the purchase or selling of goods and services. The procurement of parking management services is clearly a commercial activity. The Review Panel was satisfied that the Council was engaging in a commercial activity when contracting with ParkingEye Limited to provide parking management and enforcement services in respect of Corporation Street, Preston.

Section 43 is a qualified exemption and is subject to the public interest test. The Panel then went on to consider the public interest test. The Council must consider the impact that disclosing commercial information would or would be likely to have on the Council's own commercial interests and on those with whom the Council enters into commercial contracts or arrangements. There is an inherent public interest in the public being allowed to scrutinise the decisions made by the Council. Factors which are relevant to this balance include the public interest in public authorities being transparent about their use of public resources (i.e. public money and/or land) and the public interest in creating confidence in the decisions (including financial decisions) taken by authorities.

However, there will always be some public interest in maintaining commercial confidences. The Panel were of the view that disclosure of the unredacted sections of the contract would or would be likely to prejudice the commercial interests of the Council, the Tyne and Wear Pension fund and ParkingEye Ltd. The Panel considered that disclosure would make it less likely that private sector bodies would provide the Pension fund with commercially sensitive information in the future and consequently undermine the ability of the Council and the Pension Fund to manage its investment properties effectively.

The Panel considered that disclosure of an unredacted contract would or would be likely to prejudice the commercial interests of the Pension Fund by impacting adversely on its bargaining position during contractual negotiations in the future, particularly in respect of parking management and enforcement services. Third parties would be discouraged from confiding in or contracting with public authorities if they did not have some assurance that confidences would be respected. Some of the redacted information related to the fees payable by the Council in respect of the parking management and enforcement services. ParkingEye Limited operates within a competitive environment. The disclosure of cost information relating to the contract would be of particular value and interest to competitors who may try to undercut ParkingEye Ltd in future tenders.

The Review Panel was satisfied that the Council had properly redacted the contract prior to disclosing it to you, however, the Panel found that the Council should have explained to you which exemptions had been relied upon in doing so. I apologise for this failure on behalf of the Council.

### **Questions 2 & 3**

The Review Panel considered the Council's response that it does not hold the information you have requested in respect of the number of parking charges issued prior to 15 April 2013 (Question 2) and the number of parking charges issued between 15 April 2013 and 16 September 2013 (Question 3). The Panel reviewed the information held by the Council and the explanation from the Tyne and Wear Pension Fund as to how the parking management and enforcement services were operated at Corporation Street, Preston. The Pension Fund explained that it was not actively involved in the management and enforcement of parking at Corporation Street, Preston save for entering into the contractual arrangement with ParkingEye Ltd and providing landowner witness statements in respect of parking events.

The Pension Fund confirmed that it is not informed of the number of parking charges issued by ParkingEye Ltd. The Council was only informed of individual parking events being referred to the Court when it was requested to provide a landowner witness statement for use in court or POPLA proceedings.

You referred in your internal review request to a web interface operated by ParkingEye Limited and suggested that the Council could obtain the requested information from the web interface. The Council confirms that it does not have access to any web interface operated by ParkingEye Ltd and is therefore unable to obtain the information you have requested in that way. The Review Panel was satisfied that the Council does not hold the information you have requested. The Panel are also mindful of its obligations under the Act that it only required to disclose information that it holds and does not have to engage in obtaining information for third parties in order to respond to a request. The FOIA is clear that the Council is not under an obligation to create information in order to respond to FOI requests.

#### **Question 4**

The Review Panel considered the Council's original response to your request for details of the number of court cases brought by ParkingEye Ltd in respect of parking charges issued before 15 April 2013. The Council informed you that it did not hold the information requested. The Panel reviewed the information held by the Council and the explanation from the Tyne and Wear Pension Fund as to how the parking management and enforcement services were operated at Corporation Street, Preston. As previously advised above, the Pension Fund explained that it was not actively involved in the management and enforcement of parking at Corporation Street, Preston save for entering into the contractual arrangement with ParkingEye Ltd and providing landowner witness statements in respect of parking events. The Council relied upon its managing agent and ParkingEye Ltd to manage and enforce parking at the property.

The Pension Fund confirmed that it was not informed of each and every court case brought by ParkingEye Ltd and would only be made aware of a court case when it was requested to provide a landowner witness statement to ParkingEye Ltd. The Council therefore does not hold all of the information that you have requested and it only holds information in respect of court cases where it has been requested to provide a landowner witness statement.

The Review Panel considered the Council's records concerning the number of landowner witness statements provided to ParkingEye Ltd. The Council's records show that 17 landowner witness statements were provided to ParkingEye Ltd for parking events which occurred between 10 October 2012 and 15 April 2013; out of the 17 witness statements, the records show that 5 were in respect of court cases issued by ParkingEye Ltd.

#### **Questions 5 and 8**

The Review Panel reconsidered the Council's response to your original request for information about the number of landowner witness statements provided to ParkingEye Ltd in respect of charges issued before 15 April 2013 for use in court cases (question 5) and for use in POPLA cases (question 8). The Review Panel found that the Council had inadvertently misread your original request and had provided you with information concerning the number of landowner witness statements signed on behalf of the Pension Fund prior to 15 April 2013. I apologise for this error on behalf of the Council.

The Review Panel has reconsidered the information held by the Pension Fund and can confirm (as per question 4 above) that the Council has provided 5 landowner witness statements in respect of parking events occurring prior to 15 April 2013 for use in Court cases, and had provided 12 landowner witness statements in respect of parking events occurring prior to 15 April 2013 for used in POPLA cases.



### **Question 6**

The Panel considered the Council's original response to your request for a copy of the authority given to ParkingEye Ltd to manage and enforce car parking at Corporation Street, Preston.

The Council, acting in its capacity as the Administering Authority of the Tyne and Wear Pension Fund, was the owner of the site at Corporation Street Retail Park, Corporation Street, Preston, Lancashire PR1 2UZ and that ParkingEye Ltd had authority from the Fund to undertake parking management, control and enforcement at the site under the contract entered into by the Council and ParkingEye Ltd. The Panel noted that it had already provided to you a copy of the redacted contract between the Council and ParkingEye Ltd which authorises ParkingEye to operate parking management, control and enforcement at the property. The Panel was satisfied that it had provided to you information concerning ParkingEye Ltd's authority to operate parking management and enforcement at the property.

### **Question 7**

The Review Panel considered the Council's original response to your request for copies of all correspondence between the Council and ParkingEye Ltd in respect of witness statements supplied by the Council to ParkingEye Ltd. The Panel noted that the Council had declined to disclose to you that correspondence on the grounds that it was subject to Legal Professional Privilege. The Panel considered that the Council had relied upon the exemption contained within section 42 of the Act but that it had not specifically informed you of this nor was it clear from the original response that the Council had considered or applied the public interest test.

The Review Panel reconsidered the exemption and was satisfied that the information requested would be exempt by virtue of litigation privilege and the Council could rely upon section 42 of the FOIA that disclosure of the correspondence would adversely affect the confidentiality of proceedings where such confidentiality is provided for by law. Litigation privilege applies when litigation is underway or anticipated. As previously advised, the communications were between the Tyne and Wear Pension Fund's lawyers and ParkingEye Ltd for the purpose of preparing litigation and the Review Panel was of the view that the litigation privilege extends to these communications.

Section 42 is a qualified exemption and is subject to the public interest test. The Panel then went on to consider the public interest test. The public interest in maintaining the exemption is inherently strong due to the important principles behind legal professional privilege. It is essential to safeguard the Council's ability to obtain open and frank legal advice from its legal advisors as a fundamental part of the administration of justice. To disclose the correspondence would be manifestly unfair to the Council and will prejudice its ability to properly participate in and litigate in proceedings as disclosure of the correspondence would reveal the basis of the Council's case. A private organisation who is a party to the same proceedings and who is not subject to FOIA would not have to reveal their position in such a manner which would place the parties to the litigation on an unequal footing and would be contrary to the overriding objective of the Courts. The Review Panel was satisfied that whilst there is inherent public interest in how the Council conducts itself and its business, this is insufficient to outweigh the public interest in maintaining the exemption.

Information Commissioner's Office (ICO)

Should you remain dissatisfied with the outcome of my internal review, you can write to the Information Commissioner to ask for an independent appeal of the Council's decision. The Information Commissioner is the Government's Independent Body responsible for overseeing the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004.

Please do note the ICO will only review cases that have exhausted the Council's internal review procedures. All correspondence to the ICO must quote the Council's reference number and the reasons for your appeal.

The ICO's contact details are as follows: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, SK9 5AF. More information can be found on the ICO's website at [www.informationcommissioner.gov.uk](http://www.informationcommissioner.gov.uk).

If you have any further queries about this matter then please do not hesitate to contact us.

Yours sincerely

**Gill Hayton**  
**Solicitor & Deputy Monitoring Officer**  
**South Tyneside Council**