



**IN THE MATTER OF AN APPEAL TO THE FIRST-TIER TRIBUNAL**

**Appeal No: EA/2012/0125**

**BETWEEN:**

**WILLEM VISSER**

**Appellants**

**and**

**THE INFORMATION COMMISSIONER**

**Respondent**

**and**

**LONDON BOROUGH OF SOUTHWARK COUNCIL**

**Second Respondent**

**Subject**

Freedom of Information Act 2000 ('FOIA'): s3(2)(b)

**Decision**

We allow this appeal and issue a Substituted Decision Notice.

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**Substituted Decision Notice**

Dated: 11 January 2013

Public Authority: LONDON BOROUGH OF SOUTHWARK COUNCIL

Address: 160 Tooley Street, London, SE1 2QH

For the reasons set out below, we find that the requested information should be disclosed within 30 days with only signatures redacted.

## Reasons For The Decision

### **Background**

1. Southwark Council has contracted out the management of its leisure centres to Fusion Lifestyle ('Fusion') under an agreement dated 7 April 2000, as amended by a deed of variation dated 31 October 2009. Fusion runs the Seven Islands Leisure Centre (SILC).

### **The Request for Information**

2. On 25 August 2011, the Appellant requested under the Freedom of Information Act 2000 ('FOIA') from the London Borough of Southwark Council ('the Council' or 'Second Respondent'):

*"...a copy of the attendance register, for the school year 2010/2011 (September – July), at Seven Islands Leisure Centre which schools sign when they turn up for their swimming lessons.*

*The reason for the request is that there are repeatedly school slots on the timetable which are not used by schools and consequently the pool is not used during these times.*

*I have raised the issue in the user groups, but the centre have refused to give me access to the above register and now banned me from the user group."*

3. On 16 September 2011, the Council responded advising the Appellant to contact Fusion, but he found they did not help him. He requested the Second Respondent to review the matter. The Council then told him that Fusion held the information but only for its own administrative records and not under the terms of the contract with the Council. The latter accordingly did not hold the information for the purposes of FOIA.
4. The Appellant progressed the matter through the usual channels. The Commissioner investigated the matter and concluded that the information was not held on behalf of the Council because its contract with Fusion whilst requiring reporting on the total number of (young) users and of schools using each facility did not require the maintenance of the school attendance register, such that the register was being kept solely for internal administrative purposes and not for the Council.
5. The Commissioner's decision notice did not clarify an issue which became clear during this appeal process: that the leisure centre maintained two registers – one that the schools signed on entering and leaving kept by the reception, which the requester wanted, and a second kept by the swimming teacher which contained children's names. Instead, it stated:

*"The Council informed the Commissioner that all the leisure centres managed by Fusion Lifestyle maintain a register of schools and children attending their sites. Initially copies of the school registers, including the names of the children attending, are made at the time of the lessons. This detailed information is recorded for Fusion Lifestyle's internal Health and Safety and*

*Safeguarding Children procedures. Although copies of the registers are made at the time of the lessons they are not retained by Fusion Lifestyle. The registers are used to collate the total number of children from each school attending the sessions and the usage statistics are consolidated for the reports required by the Council.”*

6. The Appellant appealed to this Tribunal.

### **Scope and Grounds**

7. At a case management hearing, the Appellant confirmed that he claimed:

#### **Scope of the Request:**

He was seeking the school attendance register held at SILC and not one with names of school pupils (those names being personal data). He had not been aware that there was more than one register until he had read the Commissioner's decision notice.

#### **Grounds of Appeal:**

The Commissioner had erred because:

- A. **Misunderstanding of Scope of Request:** The decision notice was not based on the information he requested, as the Commissioner had not understood what it was that he had requested.
- B. **Held:** The information was held on behalf of the Council and should therefore be released.

### **The Task of the Tribunal**

8. The Tribunal's remit is governed by s.58 FOIA. This requires the Tribunal to consider whether the decision made by the Commissioner is in accordance with the law or whether he should have exercised any discretion he had differently.
9. As explained to the Appellant at the case management hearing, the Tribunal does not have the power to require an authority to do anything beyond what is stated in the FOIA, and as such cannot rule on other matters such as whether Fusion has complied with 'best value' requirements under the contract, or wrongly reserved school swimming slots in bad faith. We do not discuss any such matters below.

### **Evidence**

10. The parties provided witness evidence, many lengthy submissions, a bundle of documents, and the Council provided some of the requested information. We have considered all that has been submitted even if not referred to below. We have not issued any part of our decision on a 'closed' or confidential basis.

#### **Appellant: Witness 1**

11. The Appellant explained that the register he requested for the school year 2010/2011 was what the schools signed when attending for their swimming lesson in SILC . It was a simple in and out signing register, consisting of about 40 pages, one for each week of term time for the school year 2010/2011. It did not include the names of children. He had seen it by the receptionist in a blue ring folder, labelled as a schools in and out signing register. Below that were 5 blocks, one for each day of the week. Each block had the date on it and below there were spaces for schools to fill in the name of the school and times of arrival and departure.
12. He also presented evidence from a school headmaster using the centre to confirm that they signed the name of the school 'in and out' and did not give names of children. The school confirmed that they only knew about a register at reception and not one taken during lessons with detailed information given.

### **Second Respondent's: Witness Statement 1**

13. The Council's Witness 1 was the Sports and Leisure Manager with responsibility for the Fusion leisure contract, who testified that:
  - i. Southwark had in place a robust monitoring regime to measure Fusion's performance in relation to the contract. This included: monthly reports, monthly contract meetings, and bimonthly monitoring visits by council officers to relevant sites. Monitoring covered maintenance, health and safety, customer care, etc.
  - ii. Fusion provided full details of usage in relation to groups specifically targeted by Southwark as requiring additional support to enable access facilities. The information was vital in showing that Southwark's duty to vulnerable or hard to reach groups was being met by Fusion and that they are therefore providing value for money.
  - iii. Under the contract, Fusion monitored its performance in delivering services. This included a requirement to increase participation in leisure activities by young people. To do this Fusion had to submit monthly usage figures – which were the total number of users and total number of schools and clubs using each facility.
  - iv. Southwark had no requirement for the registers or the information contained in them because it was already given the monthly usage figure which set out total/overall usage by young people and so did not require Fusion to:
    - a) provide a breakdown of the total usage figure which it submitted;
    - b) keep individual school attendance registers; or
    - c) submit such registers as part of the contract monitoring.

### **Witness 2**

14. The Council's Witness 2 was Fusion's Chief Executive. He stated:
  - i. Swimming teachers completed registers for tracking or monitoring pupils' progress and attainment. These were only used for the term.

- ii. Separately, schools were required to “sign in” for site operational purposes, by way of announcing their presence and to assist site management in the operation of the site on the day and in the event of emergency action procedures. In the case of SILC , the "sign in" form or "log" which was the disputed information took the form of a list of times in and out on each date, the name of the school or group, the number of children, the number of adults and the signature of the teacher or lead of the group.
- iii. Fusion did not specify the format for the signing in register and did not require its managers to retain or report on this information. Nevertheless, managers would consolidate some of the information in the “signing-in log” for preparing usage statistics for the reports required by the Council. There was no process for either retaining or disposing of the information.
- iv. The information was not provided to or required by the Council. There was no statutory or regulatory obligation for Fusion to maintain the information.
- v. There was no contractual requirement to maintain the information on the Council’s behalf.
- vi. Therefore, there was no legal requirement to collate this information or hold this information on behalf of the Council; no contractual obligation on Fusion to report this information; and no right of the Council to request this information.

### **The Contract**

15. The Contract stipulates as follows:

Services: To include maximising usage by Young People

- i. Fusion is to ensure that SILC delivers Services\_including: substantially contributing to key strategic objectives of engaging young people in positive activities increasing the numbers and frequency of children and young people using the facilities. (Main Agreement Cl.13.1 and Sch.1, para 1.1)<sup>1</sup>
- ii. Services are defined to include<sup>2</sup>:
  - a) Performance Standards: Fusion to supply ‘*exciting... high quality... Services... the Facilities [Seven Island Leisure Centre] will be appealing and accessible to anyone that wants to use them and usage will be maximised (including by Priority Groups...)*’
  - b) Priority Groups include children and young people in particular between 8 and 19. Their number and frequency of visits to increase over the period of contract. (See Appendix 1 para 3.1.2).
  - c) Fusion to provide services and activities including the Seven Island Leisure Centre to be open and accessible to Priority Groups. (See Appendix 1 para 3.1.2 and Appendix 3).

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<sup>1</sup> All references in this paragraph 15 are to the contract, and capitalized words are defined within the contract.

<sup>2</sup> See Sch.1 section 3.

- d) Fusion to maximise access to Facilities by Priority Organisations who provide sessions targeting Priority Groups including those listed in Appendix 4 (these include Seven Islands Swim Club).

iii. Facility Specific Requirements<sup>3</sup>: Seven Islands Swimming Pool:

- a) Swimming lessons will be a substantial element of the service as will school use.

Reporting on Provision of Services and Usage

- iv. Fusion is to report on its performance and ensure the information is at all times accurate and complies with all reasonable requests for additional information. Fusion is to attend monthly meetings to discuss performance including usage and performance of the Services. (Sch.1, para.s 2.7.1 and 2.7.2).
- v. Fusion is to achieve performance indicators for schools using each leisure facility, and report on these as follows:
  - a. An report submitted annually on its Service Delivery Plan, reporting on targets including Key Performance Indicators and trend analysis of usage figures. The relevant 'Annual Performance Standard' specified is the '*number of schools using [Seven Island Leisure Centre]*'. Under this objective, Fusion is to work with schools to develop and sustain the use of facilities by them with a target number to be agreed within the first month of each contract year. Performance indicators for this include schools renewing their bookings, new bookings from schools and target numbers being achieved. There is a reduction in management fee based on the degree of failure in this objective. (*Appendix 3: No. 2*)
  - b. A Monthly Review submitted monthly including Performance monitoring – progress and trend analysis of usage targets and performance indicators (see Schedule 4 Payment Mechanism and Appendix 2 of the Agreement)' and 'General site management and such other information that may be required by the Authority.' Under Schedule 4, Appendix 2, Management Information performance indicators include 'Monthly Performance Standards':
    - Simple and Efficient booking, with a 'Performance Indicator'- that the booking system works and that 'numbers/records of bookings are included within monthly report' to the Council. (*Appendix 2: No. 5*)
    - Reporting the number of visitors to the facilities (including SILC): the monthly figures are to be included within the monthly report in full and submitted to the Council, with the performance indicator to include that there are no instances of the figures being inaccurate. (*Appendix 2: No. 8*)
    - The monthly Performance Monitoring Report is the source of factual information regarding the performance of Services.

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<sup>3</sup> See Sch.1 section 4

(Schedule 4, para.6.1). ('Services' includes increasing pool usage by young people.)

Fusion to Monitor Performance and to assist Council in Monitoring Performance by providing Information

- vi. Fusion is to monitor its performance in the delivery of the Services (including increasing usage by young people) in accordance with Schedule 4 (*Payment Mechanism*). (Clause 17.1).
- vii. Under the section 'Fraudulent or Erroneous Reporting', in Schedule 4 of the contract:
  - a. Failure Events in the monthly Performance Monitoring Report could lead to Deductions in fees.
  - b. Where Fusion fails to monitor or accurately report a Failure Event in certain circumstances (such as deliberate misrepresentation), Fusion is to supply a copy of 'all its records in relation to the recording, monitoring and/or rectifying of Failure Events on an open book basis and access to all information, processes and computer programs used to calculate the Deductions so that the Authority can inspect such records. (Sub-para 6.3 of Schedule 4 of the Contract). (A Failure Event for present purposes includes a Monthly Performance Failure - i.e. 'an incident or state of affairs which does not meet or comply with the Monthly Performance Standards'<sup>4</sup>.
  - c. The Council may monitor Fusion's performance at any stage of the contract including to ensure the Services (including increasing usage by young people) are being provided in accordance with the specified terms. (*Also see Clause 17.2*) Fusion is to use reasonable endeavours to assist in this. (*Also see Clause 17.2*).
  - d. Where Fusion has been found to be fraudulent in submission of monitoring reports or claims for payment under Schedule 4 or have submitted erroneous monitoring reports within a specified number of months, the Council may, amongst other things, increase its monitoring levels. (*Clause 17.3*).
  - e. The Council may scrutinise the reports and documents that the Contractor is required to prepare under the Services Specification<sup>5</sup> (including maximising youth participation) and the Performance Monitoring Report<sup>6</sup> and request additional information, which it may reasonably require to audit such information. (*Sub-paras 6.3 and 6.8 of Schedule 4 of the Contract*). Where the parties cannot agree on fraudulent or erroneous reporting, there is a dispute resolution mechanism to be used.
  - f. Fusion is also to provide the Council with all information, documents, records and the like in its possession or available to it as may

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<sup>4</sup> Monthly Performance Standards include factors set out in paragraph 15.v.b above.

<sup>5</sup> The Services Specification is set out in Schedule 1 and includes the 'Services' - See para 15.i to iv.

<sup>6</sup> See para 15.v.b above

reasonably be requested for any purposes in connection with the delivery of the Services pursuant to the terms of the contract under clauses 48.4 and 59 (Audit Access).

- viii. Where there is an Annual Performance Failure, (i.e. a failure of annual performance standards, including targets for the use of facilities by schools<sup>7</sup>), there are similar provisions to deduct an amount from the Annual Management Fee. The assessment of annual performance standards is to be undertaken in the first month of the following contract year, with the contract year starting in April. (See *Schedule 4, art 5*).

#### Fusion to Transfer Information

- ix. Under clause 48, Fusion is to transfer information requested under a request for information to comply with FOIA.

#### **Ground A: Misunderstanding of Scope of Request**

16. The Appellant asserted that the Commissioner's Decision Notice was based on factual errors including that the school attendance register had the *names* of children on it. He said that his witness evidence illustrated that a register with the names of children on it did not exist as Fusion did not take such a register. He alleged that the Council was saying whatever it thought it could get away with (that the register had names of children on it, or that the information was not complete) and therefore should not be believed.

17. The Commissioner's arguments included:

- i. Which register was within the scope of the Appellant's request was not crucial to the issue of whether the information was held, as the reasoning applied equally to either type of register.
- ii. However, it was explained that the Commissioner had asked whether the information collated in the register was a list of schools attending, total number of children from each school or individual names of children attending. The Council replied that Fusion had advised:

*"... All centres will keep a register of schools and children attending their sites, with the total number of children from each school attending the sessions recorded through the numbers that the teachers sign-in. The detailed information is recorded by Fusion for its internal health and safety and safeguarding children procedure, and summary extracts are used to provide statistical information for both Fusion purposes and for the Council."*

- iii. The Commissioner then asked whether the school attendance register comprised of a list of the names of the individual pupils who used the facility or whether it was the total number of children only from each school attending the sessions recorded through the numbers that the teachers sign in. The response was:

*"Copies are made of registers including names at the times of lessons. This is for Fusion's own purposes including Health and Safety and usage statistics"*

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<sup>7</sup> See para.15.v.a above.



*but the records are not retained other than to consolidate the details to a high level as part of overall stats reporting to the council.'*

- iv. This was inconsistent with the Appellant's witness statement quoting a head-teacher of a school using the facilities who had said:

*"We just sign the name of school in and out. No names of children given."*

18. The Second Respondent also argued that the issue of which register had been requested was not pertinent in that in either case the information was not held on behalf of the Council.

### **Our Findings**

19. We think it is clear that the leisure centre maintained two registers. The 'sign-in register' was signed by the schools and used for operational purposes. The other 'swimming register' was completed by teachers and used for tracking pupils' ability and progress. The headmaster referred to above would not necessarily have known about the swimming register. In any event we do not think the information received by the Commissioner was inconsistent with his testimony, but rather it lacked sufficient detail that should have clarified that there was more than one register. We think that this reflected confusion on either the Council's or Commissioner's part as to what was kept by the leisure centre rather than the Council attempting to obfuscate matters. However, this is no longer a 'live' issue because all parties now accept that the Commissioner's decision notice was based on the wrong details about the relevant register.
20. Whilst clarifying that there were two types of register and that the Appellant specifically requested the sign-in register was not central to the Commissioner's reasoning in his decision notice, it is relevant to how we have approached the question of whether the requested information is held. This is because, based on that part of the Witness 2 testimony that we accept, it is the sign-in register that is used to produce usage statistics required under the contract. In contrast, the swimming register is only used for the teachers' own purposes in recording pupil progress.

### **Ground B: Held**

21. The Appellant argued amongst other things that there was no merit in the Council's position that the school attendance register was not held by Fusion on behalf of it because the contract did not require Fusion to maintain the register and the Council had no use for the information. The contract required Fusion to increase the use by schools and clubs and this was relevant to the monitoring of school attendance as it was a count of the number of schools attending annually. Therefore the Witness 1 statement that the Council does not require Fusion to maintain school attendance registers was incorrect. Since, as she stated, Fusion were required to report on local schools attending, this implied that they had to collect the relevant data - in the school attendance register. Bookings did not equate to attendance and there was no substitute for the school attendance register to monitor school attendance.
22. Additionally, the contract required the number of visitors to be reported to the Council.
23. The Commissioner's arguments included:

- i. There was no contractual requirement for Fusion to collate or keep individual school attendance registers or submit any such register to the Council as part of the contract monitoring.
  - ii. The Appellant's argument that the contract stated that the Council had a right to investigate possible breaches of the contract in any way it saw fit did not mean that the information requested, created by Fusion to meet its own internal needs, was necessarily accessible to the Council when undertaking its own performance monitoring. Even if Fusion's 'reasonable endeavours' may extend to providing the Council with a copy of the requested information, it is only obtainable in the context of performance monitoring rather than a general right to request at any stage (or, for instance, on receipt of a request for the information). There was no evidence that there are any arrangements which permit the Council to retrieve or obtain the information in the event of a request for information being made for it.
  - iii. Not all information held by Fusion as a result of managing the leisure centres could be considered as information held 'on behalf of' the Council.
  - iv. There was no indication that the Council's procedures for information management (for instance, retention policies) applied to the information.
24. The Second Respondent's submissions included:
- i. Not all information relevant to the management of a service provided by an external provider could be deemed to be held by the public authority.
  - ii. Whilst the contract enabled the Council to undertake its own monitoring of performance, and Fusion was required to use its best endeavours to assist it, such reasonable endeavours fell short of conferring an entitlement to full disclosure on the Council.
  - iii. Whilst the contract required Fusion to monitor its performance, the scope was limited to include the totals of pupils and of schools using the swimming facilities, and not the information in the sign-in log.
  - iv. Whilst the contract required Fusion to supply to the Council its records in relation to the recording, monitoring and/or rectifying of certain service failures, and the Council could scrutinise reports and documents and request additional information that it may reasonably require to audit the information in such circumstances, the relevant records of the contractor and the reports (and presumably the information behind them) that Fusion would be required to produce were acknowledged to be that of Fusion.
  - v. The disputed information exceeds the information required to be kept under the contract. The monitoring information required under the contract could be collected from the sign-in log, or from a named register, but it did not comprise either document and both documents exceeded the scope of the information required to be reported.
  - vi. Since the Council had no involvement in determining how Fusion chose to collect the information, the requested information was not held by Fusion on behalf of the Council. The means by which monitoring the number of schools attending the facilities is undertaken is a matter for Fusion, not the Council; and the log would not be the only possible source for this information.

Instead, the information related solely to Fusion's internal administrative arrangements. It managed or controlled the information and it could edit or delete it without the consent of the Council, subject only to its reporting obligations.

- vii. Fusion had not passed on the registers to the Council; it remained free to delete or amend the information without consent (subject to its reporting obligations in relation to totals); and it could apply its own policies and procedures to the information.

## Our Findings

25. For the purpose of this appeal, when a person requests information, the public authority must tell him whether it '**holds**' the information requested. If it does, then it must provide the information, unless a valid exemption applies. (See s1(1) FOIA).

26. We are told that a public authority 'holds' information if:

- (a) it is held by the authority, otherwise than on behalf of another person, or
- (b) **it is held by another person on behalf of the authority.**

(See s3(2)FOIA).

27. In *University of Newcastle v IC and BUAV [2011] UKUT 185 (AAC), [2011] 2 Info LR 54* (see paragraphs 20-64) the Upper Tribunal accepted the following analysis:

*"FOIA provides no precise definition of what it means to "hold" information... The effect of [s.3(2)(b)] is that the authority 'holds' information in the relevant sense even when physically someone else holds it on the authority's behalf..."*

*'Hold' is an ordinary English word. In our judgment it is not used in some technical sense in the Act... Sophisticated legal analysis of its meaning is not required or appropriate. However, it is necessary to observe that 'holding' is not a purely physical concept, and it has to be understood with the purpose of the Act in mind. Section 3(2)(b) illustrates this: an authority cannot evade the requirements of the Act by having its information held on its behalf by some other person who is not a public authority. Conversely, we consider that s.1 would not apply merely because information is contained in a document that happens to be physically on the authority's premises: **there must be an appropriate connection between the information and the authority, so that it can be properly said that the information is held by the authority.** For example, an employee of the authority may have his own personal information on a document in his pocket while at work, or in the drawer of his office desk: that does not mean that the information is held by the authority. A Government Minister might bring some constituency papers into his departmental office: that does not mean that his department holds the information contained in his constituency papers." (Emphasis added.)*

28. Accordingly, in our case where the information is said to be held by Fusion or its sub-contractor, we must look to see whether there is an appropriate connection between the requested information and the Council, such that it

could be said to be held by the Council. We do not find it necessary to address the many other decisions the Second Respondent brought to our attention because they are all from the first-tier Tribunal or Commissioner, and as such, we are not bound by them.

29. We find that the requested information is held by the Council for the following reasons:

- i. The legal relationship between Fusion and the Council is set out in the contract. The Council requires a certain level of performance and Fusion's level of pay is adjusted according to that performance. Fusion uses the requested information to demonstrate whether it has met that level of performance. Accordingly, the requested information is specifically used by Fusion to satisfy provisions of the contract and therefore we consider it to be held for the Council's purposes and so held under FOIA.
- ii. We reach this conclusion based on the parts of the contract we have set out above showing that Fusion is required to increase the usage of its facilities by young people, as a priority, and to monitor its targets to ensure this increase. It is to ensure that SILC delivers services including substantially contributing to objectives of engaging young people in positive activities and increasing the numbers and frequency of children and young people using the facilities, and to monitor its performance in providing services to ensure they are being delivered. It is required to produce monthly and annual reports to the Council in relation to its performance, and to be able to show that its records are accurate. The annual performance targets include information about school usage and deductions in the management fee for failure to meet the targets. The monthly review requires it to monitor performance progress and trends in usage targets, and the numbers of bookings and visitors to the facilities.
- iii. Whilst the contract does not specify the details of how to derive information for the records needed to produce monthly and annual reports, Witness 2 testified that the sign-in register is what is used as the source from which records are made, so it is held for the Council's contractual purposes. (He stated that '*managers would consolidate some of the information in the "signing-in log" for preparing usage statistics for the reports required by the Council. There was no process for either retaining or disposing of the information.*' He did not specify whether these were used to inform the monthly or the annual performance standard reports or both, but did make clear they were used.)
- iv. The Council argued that not all the information within the register was used for reporting purposes, and that once the figures had been taken the registers were no longer needed for the contract. We do not agree. The actual registers would be needed because Fusion (a) are required to provide accurate figures; and (b) would need the registers for auditing and monitoring purposes (including, for instance checking usage figures against what was booked and how far booked sessions were taken up). The Council may scrutinise the reports and documents for which it may reasonably require for auditing to show that the usage figures (related to the objective to increase youth participation and school usage) were accurate. It seems to us that the registers could be reasonably requested to verify the monthly or

annual records, given that Fusion has stated that they are used for these purposes.

- v. Further, the accuracy of reports is linked to the fee payment and the need to prove that there had not been fraud. We would therefore expect Fusion to want to ensure it could back up its monthly and annual reports with the supporting paperwork, and to assist it in any further dispute resolution process that could follow. To do this, they would need to keep the registers for quite some time, and certainly school usage figures would be expected to have been kept until May 2011 in relation to the previous contract year (as set out above). We consider our view to be supported by the fact that Fusion do seem to have kept the material for a reasonable length of time. And in any case, to the extent that they have kept them, in the absence of any other reason given we would think that they did so for auditing purposes, and therefore held the information on behalf of the Council.
- vi. Aside from their interpretation of the contract, we consider the testimony of Witness 1 and 2 to support our findings.

### **Other matters**

- 30. The Council argued that if the registers were found to be held by or on behalf of it, then the signatures it contained would possibly have been excluded from disclosure by virtue of s.40 FOIA as personal data of the signatories, and since the data processing condition in paragraph 6, Schedule 2, Data Protection Act 1998 might not be met. None of the parties provided sufficient legal analysis of their position on this point. The Appellant confirmed that he would accept the registers with the signatures redacted rather than to have the decision delayed by the need to provide further argument.
- 31. The extracts from the register supplied to the Tribunal did not span the whole period requested. The Council who originally stated that Fusion did have the requested information have confirmed that they provided us with all the relevant documentation they were provided with by Fusion.
- 32. Whilst not a ground of appeal, the Appellant sought in his submissions to assert that the Council had not complied with s.16 FOIA, in that the duty to provide advice and assistance included a duty to obtain the information and provide it to the applicant. This is not a proper interpretation of s.16 FOIA. Had the Council been unclear as to which register was being requested, they would have been expected to clarify which register. However, we had no reason to think that this was the reason why the Commissioner's decision notice misunderstood what had been requested.
- 33. Our decision is unanimous.

**Judge Taylor**

**11 January 2013**