

MEETING:	GENERAL OVERVIEW AND SCRUTINY COMMITTEE
DATE:	6 JANUARY 2014 (DEFERRED FROM 11 NOVEMBER 2013)
TITLE OF REPORT:	FREEDOM OF INFORMATION AND ARM'S LENGTH COMPANIES - AN UPDATE
REPORT BY:	HEAD OF GOVERNANCE

1. Classification

Open.

2. Key Decision

This is not an executive decision.

3. Wards Affected

County-wide.

4. Purpose

To update the Committee on the freedom of information report presented on 4 March 2013.

5. Recommendation

THAT:

(a) The Committee notes the report.

6. Reason for Report

- 6.1 An allegation was made at General Overview and Scrutiny Committee on 3 September 2013 that the Committee had been misled in connection with the report 'Freedom of Information and Arm's Length Companies'. The allegation states that the Committee were given misleading information about the governance of Hereford Futures and how the Freedom of Information Act 2000 applies to such companies.

7. Key Considerations

- 7.1 As a direct result from a complaint received from a member of public into this allegation, the matter was referred to the Solicitor to the Council. The substance of his response to the complainant was as follows (references to the name of the complainant have been anonymised):
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"I have read the report entitled 'Freedom of Information and Arm's Length Companies' ('the Report') which was considered by the General Overview and Scrutiny Committee ('GOSC') on 4 March 2013. The Report was written by Geoff Hardy, a solicitor and the council's former Governance Services Manager. In addition, I have read the questions and the published answers contained in the Supplement to the Agenda for the GOSC meeting on 4 March 2013. Lastly, I have also undertaken a company search for Hereford Futures Limited. I am satisfied that the Report, and particularly paragraphs 9.9 and 10.4, presents an accurate statement of the relevant law on Freedom of Information as applicable to Hereford Futures Limited.

It seems to me that the essence of the complaint centres on the answer given by Mr Jones to his/her Question 1 ('Question 1') to the GOSC on 4 March 2013. That question and answer exchange are set out below.

Question 1. AS Hereford Futures Ltd has no shareholders, but is wholly funded by Herefordshire Council, could the situation regarding FOI and private companies limited by guarantee please be clarified?

Answer. For the purposes of the Freedom of Information Act, Hereford Futures is not wholly owned by Herefordshire Council, it is owned by the directors and Herefordshire Council has only a minority interest. Hereford Futures has a number of public and private funding sources, and for these reason (sic) does not come under the terms of Section 3 or Section 6 of the Freedom of Information Act. Hereford Futures does not hold information on behalf of Herefordshire Council, it holds information as a company in its own right. With reference to the point raised in question one: "As Hereford Futures Ltd has no shareholders, but is wholly funded by Herefordshire Council." I am informed that "Hereford Futures is not wholly owned by Herefordshire Council, it is owned by the directors and Herefordshire Council has only a minority interest. Hereford Futures has a number of public and private funding sources, and for these reason (sic) does not come under the terms of Section 3 or Section 6 of the Freedom of Information Act." "...could the situation regarding FOI and private companies limited by guarantee please be clarified" I consider that Geoff's report more than adequately sets out how FOI works in relation to information held by companies for and on behalf of a public authority (9.4, 9.5, 9.6, 9.7, 9.8,9.9, 9.11, 10.3 and 10.4)". As detailed in para 10.4 if Hereford Futures holds information commissioned by the Council, or relating to a council core function which it carries out on the council's behalf this may fall under the remit of FOI, however information relating to the general running of Hereford Futures is unlikely to fall under the remit of FOI.

In my opinion the answer to question 1 was correct in its fundamental point: that Hereford Futures Limited is neither 'a public authority' (for the purposes of section 3 of the Freedom of Information Act 2000 ('the FOI Act')) nor 'a publicly owned company' (for the purposes of section 6 of the FOI Act). However, the language used by Mr Jones (who is not a lawyer) in his answer to Question 1 could have been more precise.

Hereford Futures Limited is a company limited by guarantee. As such, the company has no shares and is not 'owned' by any shareholders. In a company limited by guarantee the members of the company (not the directors) guarantee to contribute to the company's assets in the event that it is wound up. This guarantee is limited to a specified sum, frequently only £1, as is the case with Hereford Futures Limited.

The company search I have undertaken suggests that the only members of Hereford Futures Limited are the original members; two companies used by Bevan Brittan, solicitors, for the purpose of forming 'shelf' companies for use by their clients. Of the 13 directors of the company, only two may be nominated by the council: the Leader and the Chief Executive. As such, I consider it incorrect to

say that the council, or the directors, 'own the company.'

The Directors' Reports and Financial Statements do not purport to list all sources of income for Hereford Futures Limited. What they do record are 'Related Party Transactions' (i.e. where there is a connection between the company (or its directors) and a donor or contractor). The Financial Statement for the year ending March 2011 discloses a grant of £163,426 from Advantage West Midlands as a related party transaction. This is clear evidence that Hereford Futures received funding from at least one non-council source, but it does not prove that this was the only non-council source of income. However, my understanding of section 6 of the FOI Act is that the key question to consider is whether a company is owned by a public authority, not whether it receives some or all of its funding from a local authority.

My conclusion is that the advice given by Mr Jones to GOSC on 4 March 2013 in relation to X's Question 1 was correct in substance, but inaccurate in detail. I am very strongly of the opinion that it was not intended to mislead the committee."

- 7.2 The Solicitor to the Council then went on to consider that the delay in the council responding to the complainant was unacceptable and apologised for this. He also provided the complainant with the necessary information if they wished to complain further.

8. Community Impact

- 8.1 The report to General Overview and Scrutiny Committee on 4 March 2013 identified the community impact implications.

9. Equality and Human Rights

- 9.1 The report to General Overview and Scrutiny Committee on 4 March 2013 identified the equality and human rights implications.

10. Financial Implications

- 10.1 The report to General Overview and Scrutiny Committee on 4 March 2013 identified the financial implications.

11. Legal Implications

- 11.1 The report to General Overview and Scrutiny Committee on 4 March 2013 identified the legal implications.

12. Risk Management

- 12.1 The report to General Overview and Scrutiny Committee on 4 March 2013 identified the risk management issues.

13. Consultees

- 13.1 None.

14. Appendices

14.1 Link to the report 'Freedom of Information and Arm's Length Companies':

<http://councillors.herefordshire.gov.uk/documents/s50011755/FOI%20and%20Arms%20Length%20Companies%204%20March%2013.pdf>

15. Background Papers

15.1 None identified.