

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 July 2014

Public Authority: Derby City Council
Address: The Council House
Corporation Street
Derby
DE1 2FS

Decision (including any steps ordered)

1. The complainant has requested information relating to a Single Status Job Evaluation. Derby City Council provided some information and confirmed that further information was not held.
2. The Commissioner's decision is that Derby City Council has:
 - correctly confirmed that (in relation to request part 6) no further information is held and (in relation to request part 2) that it does not hold the information and that, in doing so, it complied with section 1(1) of the FOIA.
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 11 November 2013, the complainant wrote to Derby City Council (the "council") and requested information in the following terms:
 1. *A copy of the Job Information Questionnaire that was submitted for evaluation.*
 2. *The scoring and weighting that was applied for each question and or section together with an explanation of how this data is used to gain a final score.*
 3. *A copy of the calculations themselves with clear explanation of the numerical processes involved whether this is contained in a computer programme or other methods.*
 4. *Copies of guidance given to managers and others, including consultants, on the process of evaluation and any other decision influencing correspondence.*
 5. *Were Job descriptions used along side the questionnaire? If so copies please.*
 6. *Copies of any notes, paperwork and correspondence created during the evaluation process.*
 7. *Copies of information given to me at the time of my appointment/recruitment in October 2012 concerning the Single Status and possible risks to my salary.*
5. The council responded on 6 December 2013. It provided some of the information and withheld the information requested in part 1 and part 6, citing the exemption for information intended for future publication (section 22 of the FOIA).
6. Following an internal review the council wrote to the complainant on 13 January 2014. It stated that it was withholding information under section 43 of the FOIA because it considered the information to be a "trade secret".

Scope of the case

7. On 15 January 2014 the complainant contacted the Commissioner to complain about the way their request for information had been handled.

8. Some elements of the complaint have been addressed in another decision notice¹. The Commissioner confirmed with the complainant that his investigation would consider:
- whether the council had provided all the relevant information it holds in relation to part 6 of the request and,
 - whether the council correctly confirmed that it did not hold the information specified in part 3 of the request.

Reasons for decision

9. Section 1 of the FOIA requires a public authority to confirm or deny whether the information specified in a request is held and, where it is, to provide it to a requester.
10. In this case, the council confirmed that, in relation to request part 2, it did not hold any information; in relation to request part 6, it provided the complainant with (very limited) information and confirmed that no further information is held. The complainant disputes the council's position.
11. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the ICO, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
12. In other words, in order to determine such complaints the ICO must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request (or was held at the time of the request).
13. In order to assist with this determination the Commissioner approached the council with a number of standard questions routinely used in such

¹ Issued 15 May 2014:
http://ico.org.uk/~media/documents/decisionnotices/2014/fs_50527292.ashx

scenarios. He has reproduced these below, together with the council's response in relation to each part of the request.

Request 6 – "Copies of any notes, paperwork and correspondence created during the evaluation process.

- *What searches were carried out for information falling within the scope of this request and why would these searches have been likely to retrieve any relevant information?*
14. The council confirmed that a search was made of project record systems and project team email records – where all relevant information in relation to individual job evaluations are stored.
- *If searches included electronic data, please explain whether the search included information held locally on personal computers used by key officials (including laptop computers) and on networked resources and emails.*
15. The council confirmed that searches did include these elements.
- *If searches included electronic data, which search terms were used?*
16. The council confirmed that search terms included the reference number of the Job Information Questionnaire relating to the complainant and the complainant's name and job title.
- *If the information were held would it be held as manual or electronic records?*
17. The council confirmed that the information would be held electronically.
- *Was any recorded information ever held relevant to the scope of the complainant's request but deleted/destroyed?*
18. The council confirmed that relevant recorded information had never been held.

Request 2 – "The scoring and weighting that was applied for each question and or section together with an explanation of how this data is used to gain a final score."

19. In response to all the standard queries listed above the council explicitly confirmed to the Commissioner that no relevant information was held.
20. The council explained that it had contracted a third party consultancy (the "partner") to act as its partner in developing and implementing a Strategic Equal Pay Review across the council.

21. The council confirmed that its partner has undertaken job evaluation of all job roles within scope which were previously remunerated at Senior Officer Grade 1 and above.
22. The council provided the Commissioner with copies of correspondence from its partner which explain that any records it holds which have not been provided to the council as its client are considered to be outside the scope of the investigation. The council confirmed that the terms of its contract with the partner are such that the methodology applied is the legal property of the partner and is not held by the council. It states that the information which has been provided to the complainant in response to the request and via other disclosure routes is the only relevant information held by the council.

Conclusions

23. In determining where the balance of probabilities lies, the Commissioner has considered the council's submissions and those provided by the complainant.
24. As the request relates to their own job evaluation the complainant clearly has an interest in accessing information to assist their understanding of decisions made in respect of their position. Not unreasonably, the complainant has an expectation that information documenting and justifying the decision-making process will be held by the council.
25. The Commissioner accepts that, as in any other area of decision-making, and particularly in relation to processes with far-reaching implications for public authority employees, it might be considered good practice for audit trails to be maintained, should actions subsequently need to be explained or justified.
26. The Commissioner notes that the code of practice issued under section 46 of the FOIA (the "code") contains recommendations as to good practice in relation to the creation and maintaining of records by public authorities². Paragraph 8.1 of the code recommends that authorities should keep the records they will need in order to meet corporate requirements.

² <http://www.justice.gov.uk/downloads/information-access-rights/foi/foi-section-46-code-of-practice.pdf>

27. Whilst he has taken into account the complainant's expectations and the recommendations of the code, the Commissioner is mindful that it is for public authorities to determine what records should be kept in order to satisfy corporate needs. The Commissioner acknowledges that, to a layperson it might appear improbable that relevant information is not held by the council. However, the Commissioner has considered the council's explanation of its arrangements with its partner for delivering the Strategic Equal Pay Review.
28. To the Commissioner, it seems clear that the arrangements with its partner are such that information held by the council are minimal. It is not the Commissioner's role to judge whether the council's arrangements for conducting this process are appropriate. The council's explicit confirmation that information is not held combined with its explanation of the contractual basis of the partner's role leads the Commissioner to conclude that, on the balance of probabilities, the council has correctly confirmed that the requested information is not held.

Other matters

29. Although they do not form part of this decision notice the Commissioner would like to note the following matters of concern.

Engagement with the Commissioner's investigation

30. When dealing with complaints the Commissioner is reliant upon on the cooperation of public authorities in his investigation. Where public authorities fail to provide timely, comprehensive responses to his enquiries, this can result in the Commissioner's investigation being unnecessarily prolonged. As an investigation can result in information previously withheld being disclosed to complainants, the Commissioner considers that such delays represent a failure by the authority in question to act within the spirit and the letter of the FOIA.
31. The council's repeated failure to respond to the Commissioner's enquiries in this case resulted in him issuing an Information Notice to compel it to respond. The Commissioner is disappointed that, even after he had taken this step, the council still failed to provide a response until being further prompted to do so. The Commissioner considers that the council's practice here has resulted in his investigation being unnecessarily prolonged.
32. In light of this, the Commissioner is concerned that the council has either not provided its staff with adequate training in relation to the

handling of requests for information or that it is not taking these matters sufficiently seriously.

33. In future the Commissioner expects that the council will provide him with satisfactory responses within the timeframes set in his correspondence.

Right of appeal

34. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

35. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
36. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Andrew White
Group manger
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