

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 4 July 2007

Public Authority: East Hampshire District Council
Address: Penns Place
Petersfield
Hampshire
GU31 4EX

Summary

The complainant asked the Council for information concerning the job descriptions of employees who had attended particular training courses. The complainant also requested information concerning the Council's application of the Hay job evaluation process.

The Council withheld part of the requested information under section 40 (personal information). It withheld information concerning the Hay job evaluation process under section 36 (prejudice to the effective conduct of public affairs).

The Commissioner agreed that part of the requested information was exempt under section 40 but decided that the information withheld under section 36 should be released. He also found that the Council had breached section 17 of the Act by its failure to address the public interest test in respect of its application of section 36.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 ('the Act'). This Notice sets out his decision.

The Request

2. On 4 January 2005 the complainant requested the following from the Council:

'In accordance with the above Act can you please make available to me the following limited and finite set of information related to EHDC (East Hampshire District Council) remuneration assessment, recruitment and training records:

(i) For the Planning Control department positions: Technical Assistant (TA), Enquiries Assistant, Technical Team Leader, Service Support Team Leader, Enquiries Team Leader, Technical Team Supervisor and Planning Administration Manager – the latter three positions now being defunct – all Hay Panel review meeting notes and records as well as related Job Descriptions (including Person Specifications) from 1998 to the present date. (Please feel free to exclude Planning and Development Department JD TA, Oct 1998; Planning Control JD TA, 6 October 2004; Request for re-evaluation of an existing job by xxx, 6 October 2004; Job Evaluation Rationale TA, 24 November 2004).

(ii) For the above positions the factor plans (points rating) identifying the lower and upper boundaries for each of the grades 1, 2, 3, 4, 5 and 6 applicable at the time of review.

(iii) Copies of internal and /or external advertisements as well as dates advertised for the recruitment of the Planning Control positions of Technical Team Leader, Service Support Team Leader and Enquiries Team Leader.

(iv) List of all EHDC employed staff positions, job title and department, not names of staff, for April 2002 – April 2005 financial years that have an element of performance related pay/bonus as part of their remuneration.

(v) List of all NVQ courses undertaken by EHDC staff. The list should identify the time the courses started, the number of students by department and the total personal financial contribution by course and department made by the EHDC NVQ students towards the course fee. The list can be restricted to the April 2003 – April 2005 financial years and need not name students.

(vi) Copies of current Job Descriptions (including Person Specification) for all staff undertaking a Management NVQ level 3 who started in financial year 2004 - 2005.'

3. The Council provided part of the requested information on 1 February 2005 but withheld the remainder under section 40 (personal information) and section 36 (prejudice to effective conduct of public affairs) of the Act.
4. On 12 March 2005 the complainant requested an internal review of the Council's decision and on 17 May 2005 the local authority upheld its original decision to withhold part of the requested information.

The Investigation

Scope and chronology of the case

5. The complainant contacted the Commissioner on 4 January 2005 to formally complain about the Council's decision to withhold the following elements of her request for information:
 - (i) copies of current job descriptions and person specifications of all employees who attended NVQ level 3 management courses in the financial year 2004 – 2005
 - (ii) the number of employees listed by department who had attended NVQ courses in the financial years 2003 – 2005
 - (iii) the factor plans (points rating) identifying the lower and upper boundaries for each of the grades 1, 2, 3, 4, 5 and 6.
6. With reference to 5(i) the complainant informed the Commissioner that the request for job descriptions related to her employer's decision not to fund her place on an NVQ training course. Three colleagues who attended the same course were funded by the employer. The complainant was told that the decision not to provide her with funding was because there was no requirement in her job description for that qualification. The complainant believed this also applied to her colleagues and so requested sight of their job descriptions in order to make a case for equal treatment.
7. In relation to 5(iii) the Council employs the Hay method of job evaluation and grading. The Council's pay review panel compares the size of different jobs by use of evaluation factors set out in a table (entitled the Hay guide chart). Each evaluation factor has a number of defined levels that are scored according to job complexity. The complainant argues that the final job score and the table which relates the score to the job (and therefore its ultimate grading) should be made transparent. In the complainant's view this is particularly necessary because in this Council only the chair of its pay review panel is privy to the score table. Consequently, the complainant maintains that there is no control mechanism to guarantee that a score correctly appertains to the relevant grade.
8. From the Commissioner's understanding, the minimum information that is required to adequately fulfil the request as outlined in 5(iii) comprises:
 - (a) provision of the relevant job evaluation sheets which record the Council's analysis and conclusions resulting from its application of the guide charts
 - (b) provision of the guide charts used by the Council as the basis for its job evaluations.
9. In the form of a corollary to the complaint, the complainant also asked the Commissioner to:

- (a) *'advise on the correctness of EHDC's appeal procedures and timescales'*
- (b) *'give a ruling as to whether the 2004 or the 1998 format is appropriate for serving FOI requests for Hay Panel review meetings'*
- (c) *'give a ruling as to whether the withholding of the 1998 and 2004 decision making tables which relate scores to grades is justifiable under the FOI Act'*
10. The corollary in 9(a) relates to the Council's appeal procedure. This stated that if dissatisfied with the Council's refusal to disclose information, the requestor should appeal within 40 days to the Monitoring Officer who would respond within 40 working days.
 11. In respect of this corollary the Commissioner is satisfied that the Council's appeal procedures and timescales were consistent at the time of the request with the requirements of the Secretary of State's code of practice issued under section 45 of the Act. The Commissioner has since produced additional guidance concerning time limits on the carrying out of internal reviews by public authorities. In his FOI Good Practice Guidance No. 5 (published February 2007) the Commissioner considers that a reasonable time for completing an internal review is 20 working days from the date of the request for review. This additional guidance was unavailable at the time of the complainant's request for information.
 12. The corollaries outlined in 9(b) and 9(c) refer to the Council's release of a job evaluation rationale dated 1998. The Council had redacted the Hay points from this document. However, the complainant had acquired a similar job evaluation rationale dated 2004 from which the Hay points had not been redacted. In respect of 9(b), the Commissioner is minded that his remit does not extend to deciding on the appropriateness or otherwise of a document's formatting. His decision in this Notice will turn on whether or not the requested job evaluation information is exempt from disclosure under the Act. His opinion in respect of 9(c), as to whether or not the Council's withholding of the 1998 and 2004 tables is justified, is also dependant on this decision. Both corollaries are answered by the Commissioner's investigation of the complaint expressed in 5(iii).
 13. On 8 January 2007 the Commissioner requested a copy of the withheld information from the Council to enable him to ascertain whether the exemptions under the Act had been applied appropriately.
 14. The Commissioner consulted with Hay Group during the course of his investigation and requested a copy of Hay's Local Authorities Guide Charts in order to examine the job evaluation methodology employed by the Council.
 15. Hay advised the Commissioner that it expects an organisation to hold formal job evaluation records indicating the evidence and scores that led evaluators to the relevant results. In Hay's opinion there is nothing inherently confidential about these records and it would be common practice for the HR department of an organisation to share such information with the job holder along with an explanation of the Hay job evaluation process.

16. The Commissioner consequently asked the Council to consider providing an explanation to the complainant in the manner advised by Hay. The Council however was unwilling to consider this as a way forward.

Background information

17. Hay Group is a global business operating in more than 90 countries. It provides management consultancy services to both public and private organisations. The company states that its 'Profile Method of Job Evaluation' is used by more organisations on a worldwide basis than any other single type of job evaluation scheme. A recent survey found that of all the organisations in the UK that use a proprietary job evaluation scheme 83% use the Hay method.
18. The Hay scheme evaluates jobs against a set of common factors that measure inputs (required knowledge, skills and capabilities), throughputs (processing of inputs to achieve results) and outputs (expectation of end results). The content of a job is analysed relative to each factor and represented by a numerical value. The factor values are then totalled to determine the overall job size. Hay Group provides organisations that purchase the system with relevant training and guide charts to enable the necessary analysis that the process requires.

Analysis

Procedural matters

19. In its refusal notice of 1 February 2005 the Council failed to address the public interest arguments that should have been weighed in its decision to maintain the exemption under section 36 of the Act. In failing to address the public interest test the Council breached section 17(3)(b) of the Act.

Exemptions

Section 40 (personal information)

20. The Council relied on section 40 of the Act to withhold the job descriptions and person specifications of employees who attended NVQ level 3 management courses in the financial year 2004 - 2005.
21. The Commissioner acknowledges that it is common practice for organisations to provide individuals with job descriptions on request. However, in this instance the complainant's request for job descriptions was linked to information about employees which is personal data within the meaning of the Data Protection Act 1998 (DPA). Section 1(1) of the DPA defines personal data as,

*'data which relate to a living individual who can be identified –
(a) from those data, or*

(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller.'

22. The first data protection principle states that personal data shall be processed fairly and lawfully. The Commissioner considers that disclosure of the information outlined in 5 (i) without the expectation or consent of the individuals concerned would in these circumstances contravene this principle. The Commissioner is therefore satisfied that the information is exempt from disclosure.
23. The Council also relied on section 40 of the Act to withhold information which identified the number of staff listed by department who had attended NVQ courses in the financial years 2003 - 2005.
24. The Council had provided the complainant with a list of all NVQ courses undertaken by its employees together with an indication of how many had undertaken each course. However, it had not identified the departments in which the employees worked. The Commissioner asked the Council for further clarification of its argument for withholding this part of the information. The Council's explanation was that it is a relatively small district authority with approximately 300 employees. In the Council's opinion it would be easy for some employees to be identified from the information when it was broken down into departmental segments.
25. The Commissioner upholds the Council's view that individuals could be identified from such information. In his view release of the information outlined in 5(ii) without the expectation or consent of the individuals concerned would in these circumstances contravene the first data protection principle and he is therefore satisfied that the information is exempt from disclosure.

Section 36 (prejudice to effective conduct of public affairs)

26. The Council disclosed the relevant job evaluation sheets but redacted the final points scores from these records. It also withheld the factor plans (guide charts) on which the scores are based. The Council relied on section 36 of the Act to withhold this information.
27. Section 36 exempts information from disclosure if in the reasonable opinion of a qualified person its release would be prejudicial to the effective conduct of public affairs. Accordingly, the chief executive of the Council stated that in his view the information is exempt by virtue of section 36(2)(c) of the Act. It is clear from the Council's correspondence that the opinion is based on the proposition that the integrity of the job evaluation process would be undermined because disclosure could lead to attempts to manipulate the system to achieve particular results and distortions, for example at the extremities of the grades.
28. The Commissioner is mindful of the decision of the Information Tribunal in EA/2006/0011 and EA/2006/0013 of *Guardian/Brooke v the Information Commissioner* issued on 8 January 2007. In its decision, the Tribunal concluded that in order to satisfy the statutory wording in section 36 of the phrase - '*in the*

reasonable opinion of a qualified person - the opinion must be both reasonable in substance and reasonably arrived at.

29. In this context, the Commissioner first considered whether the opinion was reasonable in substance. He has concluded that it is not. In reaching this conclusion he has taken the following into account:

- (a) Advice received by the Commissioner from Hay Group does not support the view that the integrity of the job evaluation process would be undermined in the manner envisaged by the Council. Hay states that individuals would be misled if they believed the addition of a few points at one grade end would deliver the next grade. The points at which one grade ends and another begins provide insufficient information to enable an individual to mount an adequate case for improving grades. The system's numbering pattern is geometric rather than arithmetic which causes scores to cluster with gaps in between. It means that small changes in job content are extremely unlikely to move it from one grade to another. The Council's opinion rests on the view that the job evaluation process would be undermined if the requested information was released. Hay's advice clearly shows that this is not the case and in light of this professional and considered opinion it would seem unreasonable to suggest otherwise.
- (b) In Hay's opinion, attendance on a training course together with supervised work under the guidance of a Hay consultant is required before any individual can adequately understand and utilise its process. In this regard, the Council's suggestion that the requested information, by itself, would in some way enable an individual to successfully manipulate the system appears to be unfounded.
- (c) Hay recommends and encourages organisations which employ its job evaluation system to explain the details of the process and its outcome to individuals in order to facilitate the resolution of appeals and/or grievances. In Hay's opinion it is common practice for the HR department of an organisation to share this information with employees. The company has no objection to individuals having sight of the guide charts in a controlled environment on the understanding that these are copyright materials and that individuals must not use this knowledge for any reason other than understanding their own grading position. The Council's view that the information that has been requested should not be shared with its employees runs counter to Hay Group's recommendation and appears unreasonable in comparison.
- (d) The Hay's job evaluation system has been in operation since the early 1950s and is clearly a tried and tested product. Its robustness is evident from its widespread use across the world. It is unlikely that this would be the case if the process has not proved impervious to the sorts of manipulation suggested by the Council. Many organisations provide information such as that requested by the complainant as a matter of course. It is provided presumably in the knowledge that the integrity of the process will be unaffected. The Council's apparent and alternative view that the system is somehow open to manipulation is unsupported by any evidence and in the circumstances the Council's opinion in this matter seems unreasonable.

- (e) If an employee believes that current job documentation does not fully represent the job being undertaken, it is a reasonable and standard practice to request that the job grading be reviewed. Rather than regard the matter as prejudicial to the effective conduct of public affairs, the normal management response is to provide a reasoned consideration as to why the grading should or should not be improved. On this basis, the Council's own opinion in this matter would appear to be unreasonable in substance.
30. The Commissioner also considered whether the Council's opinion was reasonably arrived at. It is the Council's view that prejudice would arise from an undermining of the job evaluation process by attempts to achieve distortions, for example at the grade ends. However, the Council failed to provide any indication of the relevant factors that it had taken into account to support the process of reaching this opinion. In the Commissioner's view the Council has therefore failed to demonstrate that the opinion was reasonably arrived at.
31. Section 36 is a qualified exemption. This means that in order for the exemption to provide a basis for withholding the requested information the Council must demonstrate that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. The Commissioner notes that the Council failed to address the public interest test when it withheld the information.
32. The Commissioner has examined the issues and considers that there are strong public interest arguments which support the disclosure of this information. However, as his decision is that the exemption at section 36 of the Act is not engaged, the public interest arguments are not explored further in this Decision Notice.

The Decision

33. The Commissioner's decision is that:
- the Council did not deal with the request for information outlined at 2(ii) of this notice in accordance with the Act, insofar as it incorrectly applied the section 36 exemption to that part of the request
 - the Council incorrectly applied the section 36 exemption to redact the job evaluation scores from the information requested at 2(i) of this notice
34. The Council breached section 17(3)(b) of the Act by its failure to address the public interest arguments when it withheld the requested information under section 36.
35. In respect of the information outlined at 5(i) and 5(ii) of this notice, the Commissioner's decision is that the Council dealt with the request for information

in accordance with the Act in that it correctly applied the section 40 exemption to the requested information.

Steps Required

36. The Commissioner requires that the Council shall provide the complainant with the information redacted from that outlined in 2(i) of this notice together with the information outlined at 2(ii). The Council shall provide the information to the complainant within 35 calendar days of the date of this notice.

The information that is necessary to fulfil the request comprises:

- (a) provision of the relevant and unredacted job evaluation sheets which record the Council's analysis and conclusions resulting from its application of the guide charts
- (b) provision of the guide charts used by the Council as the basis for its job evaluations.

Right of Appeal

37. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 4th day of July 2007

Signed

**Richard Thomas
Information Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF**

Legal Annex

Relevant statutory obligations and provisions under the Act

Section 17(3) provides that:

'A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming -

(a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or

(b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.'

Section 36 (2) provides that:

36. - (1) This section applies to-

- (a) information which is held by a government department or by the National Assembly for Wales and is not exempt information by virtue of section 35, and
- (b) information which is held by any other public authority.

(2) Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act-

- (a) would, or would be likely to, prejudice-
 - (i) the maintenance of the convention of the collective responsibility of Ministers of the Crown, or
 - (ii) the work of the Executive Committee of the Northern Ireland Assembly, or
 - (iii) the work of the executive committee of the National Assembly for Wales,
- (b) would, or would be likely to, inhibit-
 - (i) the free and frank provision of advice, or
 - (ii) the free and frank exchange of views for the purposes of deliberation, or
- (c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.