

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 02 August 2010

Public Authority: The Isle of Anglesey County Council
Address: Council Offices
Llangefni
Anglesey
LL77 7TW

Summary

The complainant requested full details of the income of the Chief Executive of the Isle of Anglesey County Council. The Council stated that the individual referred to in the request was its Interim Managing Director and that he was employed by a third party company to whom the Council paid a fee for his services. The Council stated that the individual concerned was employed directly by the Council in a limited role for which he received a nominal fee. The Council disclosed that fee. The complainant did not accept that the Council did not hold further information about the income of the Interim Managing Director and the Council maintained that it had disclosed all the relevant information it held. The Commissioner is satisfied that, on the balance of probabilities, the Council does not hold further information but he finds procedural breaches in relation to the Council's handling of the request. The Commissioner requires no steps to be taken.

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.

Background

2. In August 2009, the Welsh Assembly Government took intervention action to address matters of corporate governance within the Isle of Anglesey County Council (the "Council") identified in a report by the Auditor General for Wales. The action included taking over the Council's power to appoint a Managing Director. This is confirmed in a statement made by Local Government Minister, Dr Brian Gibbons, on 12 August 2009¹.
3. According to information already in the public domain, the Assembly directed the Council to make arrangements via a third party company to secure the services of an Interim Managing Director.

The Request

4. On 31 March 2010 the complainant emailed the Council to request full income details for its "Chief Executive". The complainant referred to a request he had made for this information 20 working days earlier, to which he had received no response. The complainant stated he had not retained a copy of his original request. The complainant stated that his request was as follows:

"On the day that your Chief Executive was interviewed on BBC Radio 4 I sent you a Freedom of Information Act request asking for full details of his income. I have not received a reply. Will you, therefore, provide me with an answer in accordance with the requirements set out in section 10 of the Act"
5. On 31 March 2010 the Council acknowledged the request and confirmed it did not have a record of any earlier request.
6. On 1 May 2010 the complainant contacted the Council to chase a response to his request.
7. The Council responded on 4 May 2010 and provided some information relevant to the request. The Council stated that it did not hold details of the exact salary of its Interim Managing Director, as he was employed via a contractual arrangement with a third party. The Council

¹<http://wales.gov.uk/newsroom/localgovernment/2009/090812anglesey/:jsessionid=p3nFM2WZ4cJpy1fFypPcQBBQMgbk27VjhzshLJJ6DfTsRkVyp51LI-612830727?lang=en&status=closed%2525252525252525253Bjsessionid>

stated that the amount paid directly to the individual in question was one pound and that this related to his limited role as Head of Paid Service. The Council also explained that further information regarding the fee paid to a third party, by the Council, for the services of the individual in question in his role as Interim Managing Director would be published shortly in response to other similar requests it had received.

8. On 13 May 2010 the complainant requested, via email, an internal review of the Council's decision that it did not hold "full details" of the income of the individual in question.
9. On 14 May 2010 the Council provided details of the outcome of the internal review. The Council maintained its position, stating that it had disclosed all information held relevant to the income paid to the individual in question by the Council. It also re-stated that in accordance with its "duty to offer reasonable advice and assistance" it intended to provide the complainant with information about the sums paid to the third party for the services of the Interim Managing Director.

The Investigation

Scope of the case

10. On 14 May 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant indicated that the reason for his complaint was that the information he had received from the Council was not what he had requested.
11. The scope of the Commissioner's investigation was to determine whether the Council had disclosed all of the information it held or whether it held further information relevant to the request; i.e. did it hold details of the income of the Interim Managing Director.

Chronology

12. On 9 July 2010, the Commissioner wrote to the Council to confirm that the complaint had been deemed eligible for formal consideration.
13. On 13 July 2010 the Commissioner spoke to the complainant to discuss his information request and the scope of the case. The complainant advised the Commissioner that he had not received any further information from the Council in respect of the fees paid to a third

party, as referred to in the Council's response dated 4 May 2010. The Commissioner advised the complainant that his initial view was that the Council had provided a reasonable explanation of why it did not hold further information and asked whether he would be content to withdraw his complaint on that basis. The complainant stated that he was not content to withdraw his complaint.

14. On 14 July 2010 the Council telephoned the Commissioner to confirm its position that it did not hold details of the exact salary of its Interim Managing Director as he was employed via a contractual arrangement with a third party.

Analysis

Substantive Procedural Matters

Is further information held by the Council?

15. The Council advised the complainant that it did not hold details of the income of the Interim Managing Director, other than the information it disclosed about the amount paid to him in his limited role as Head of Paid Service. The complainant did not accept that the Council did not hold further information. In particular the complainant did not accept that the Council did not hold information about the amount of money paid to the Interim Managing Director by a third party.
16. In the Commissioner's view, the normal standard of proof to apply in determining whether a public authority holds any requested information is the civil standard of the balance of probabilities.
17. This is in line with the approach taken by the Information Tribunal in the case of *Bromley & others v the Environment Agency* (EA/2006/0072), in which it stated:

"...we must consider whether the Information Commissioner's decision that the Environment Agency did not hold any information covered by the original request, beyond that already provided, was correct. In the process, we may review any finding of fact on which his decision is based. The standard of proof to be applied in that process is the normal civil standard, namely, the balance of probabilities..."

because

"...there can seldom be absolute certainty that information relevant to a request does not remain undiscovered somewhere within a public authority's records"

18. In deciding where the balance lies, the Commissioner will usually consider, among other things, any reasons offered by the public authority to explain why the information is not held.

Explanations offered by the Council

19. In its response to the complainant dated 4 May 2010 the Council explained that since the Interim Managing Director is not directly employed by the Council, it did not hold details of his exact salary.
20. The Commissioner is also aware of other information in the public domain that provides further detail on the Council's position and sets out the amount it pays to the third party for the services of the Interim Managing Director². In its response to information requests on substantively the same matter as raised by the complainant in this case, the Council disclosed the costs that are paid to the third party, but maintained that it did not hold specific salary details – i.e. it did not know how much of the fee it paid to a third party was passed on to the individual concerned.

The Commissioner's position

21. The Commissioner considers that the Council had no business need to hold the requested information, as the information relates to a contract between the Interim Managing Director and a third party. The Commissioner considers that the explanations provided to the complainant and other information in the public domain, as referenced in paragraph 20, above, provides a reasonable explanation of the contractual position and the reason that further information is not held by the Council.
22. Although the Council clearly held further information on the cost of the Interim Managing Director to the Council (the fee it paid to the third party) this was not the information requested. The complainant made it clear in his correspondence with the Council and discussions with the Commissioner that the information he sought was the "income" of the Interim Managing Director. The Commissioner has seen no evidence that suggests that the Council holds the details of the income of the Interim Managing Director.

² <http://www.scribd.com/doc/31797754/FoI-Bowles-Salary-Redacted>

23. The Commissioner has concluded that, on the balance of probabilities, the Council does not hold further information on the income of the Interim Managing Director.

Procedural Requirements

24. All sections of the legislation are reproduced in the attached legal annex.

Section 1

25. Section 1(1)(a) of the Act states that any person making a request for information to a public authority is entitled to be informed in writing by that public authority whether it holds any information of the description specified in the request.
26. It is the Commissioner's view that the Council informed the complainant that the information was not held, within its response dated 4 May 2010. The Commissioner therefore considers that the Council complied with section 1(1)(a) of the Act.

Section 10

27. Section 10(1) requires a public authority to respond to a request promptly and in any event no later than 20 working days after the date of receipt.
28. The first information request from the complainant was dated 31 March 2010. The Council's first substantive response was issued on 4 May 2010. Accordingly, the Commissioner finds that, in failing to confirm or deny within 20 working days whether it held the requested information, the Council breached the requirements of section 10(1) of the Act.

The Decision

29. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:
 - On the balance of probabilities, the Council did not hold the specific information requested by the complainant.

30. However, the Commissioner has also decided that the following elements of the request were not dealt with by the Council in accordance with the Act:
- It breached section 10(1) by not confirming to the complainant within the statutory timescale whether it held the requested information.

Steps Required

31. The Commissioner requires no steps to be taken.

Right of Appeal

31. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

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.

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

Dated the 2nd day of August 2010

Signed

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

Legal Annex

General Right of Access

Section 1(1) provides that -

“Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him.”

Section 1(2) provides that -

“Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.”

Section 1(3) provides that –

“Where a public authority –

- (a) reasonably requires further information in order to identify and locate the information requested, and
- (b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.”

Section 1(4) provides that –

“The information –

- (a) in respect of which the applicant is to be informed under subsection (1)(a), or
- (b) which is to be communicated under subsection (1)(b),

is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request.”

Section 1(5) provides that –

“A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b).”

Section 1(6) provides that –

“In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as “the duty to confirm or deny”.”

Time for Compliance

Section 10(1) provides that –

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

Section 10(2) provides that –

“Where the authority has given a fees notice to the applicant and the fee paid is in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.”

Section 10(3) provides that –

“If, and to the extent that –

- (a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or
- (b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.”

Section 10(4) provides that –

“The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with the regulations.”

Section 10(5) provides that –

“Regulations under subsection (4) may –

- (a) prescribe different days in relation to different cases, and
- (b) confer a discretion on the Commissioner.”

Section 10(6) provides that –

“In this section –

“the date of receipt” means –

- (a) the day on which the public authority receives the request for information, or
- (b) if later, the day on which it receives the information referred to in section 1(3);

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.”