

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 April 2013

Public Authority: Hartlepool Borough Council
Address: Civic Centre
Victoria Road
Hartlepool
TS24 8AY

Decision (including any steps ordered)

1. The complainant requested a large amount of information from Hartlepool Borough Council ("the council") in the form of multiple requests relating to equal pay claims and job evaluations. The council provided a significant amount of information. However, in relation to seven of the requests, the council relied on the exclusion under section 12(1) of the Freedom of Information Act 2000 ("the FOIA"). This exclusion relates to requests where the costs of compliance would exceed the "appropriate limit".
2. The Commissioner's decision is that the council correctly relied on section 12(1) to refuse the requests. However, he found that the council failed to offer appropriate advice and assistance, breaching its obligation under section 16(1) of the FOIA.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Provide appropriate advice and assistance to the requester in accordance with the obligation under section 16(1). The authority should consider providing an indication of what information could be provided within the cost ceiling. The authority should also consider advising the applicant that by reforming or re-focusing their request, information may be able to be supplied for a lower or no fee.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the

Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 10 March 2012, the complainant requested information from the council in the following terms:

"Could you please supply me with the information listed below. Please include copies of material which you hold in the form of paper and electronic records including emails..."

Prior to the Job Evaluation

- 1. Have any HBC employees made any Equal Pay Claims to the Employment Tribunal, and if so*
- 2. How many claims were made? (please specify how many single and how many group claims – number of employees involved in group claims)*
- 3. How many claims were successful?*
- 4. How many claims were dismissed?*
- 5. How many claims were settled by compromised agreements?*

Job Evaluation Essential Information

- 6. Approximately, how many employees were employed at HBC at the time when the main Job Evaluation exercise/process took place? About the period of (2004-2008)*
- 7. Please state approximately how many of the them took part in the job evaluation process, and what methods were used in determining the pay grades of those who did not take part? And why? (brief explanation)*
- 8. Please provide a complete list of all the different posts which were evaluated during the main Job Evaluation process with their original and final grades? (the posts' name and grades prior and post job evaluation)*
- 9. Please provide a complete list showing the number of employees employed at each post and*
- 10. Please state, how many male and how many female were employed at each post?*

Following the job evaluation process, can you please state,

- 11. How many posts were upgraded?*
- 12. How many posts remained at the same grade?*

13. *How many posts were downgraded?*
14. *What was the highest pay increase gained as a result of the job evaluation?*
15. *What was the average pay increase? (approximate)*
16. *What was the highest loss suffered by an employee, as a result of the job evaluation?*
17. *What was the average pay loss? (approximate)*
18. *How many employees appealed against the results of their job evaluation?*
19. *How many appeals were successful?*
20. *Have any HBC employees made any claims to the Employment Tribunal, in relation to the result of the job evaluation? If so,*
21. *How many? And*
22. *What was the outcome?*

General Information

23. *Please provide copies of the relevant information provided to employees, as part of the consultation, the application and implementation procedure relating to the job evaluation process, including a copy of the appeal procedure*
 24. *Are there still any outstanding cases/issues relating to the job evaluation? If so please provide brief details?*
 25. *What was the total cost of employees' pay (salaries/wages) prior to job evaluation?*
 26. *What was the total cost of employees' pay (salaries/wages) following the job evaluation, excluding normal agreed pay rise? Namely, has there been a net increase in labour cost following the job evaluation, and if so what was the total amount?"*
6. The council responded on 17 April 2012. It provided some information and asked for the complainant's clarification on some points.
 7. The complainant responded on 19 April 2012 expressing dissatisfaction with the response on the basis that the council had not provided all the information requested. He said he would contact the council again when he had looked through the information to ascertain the extent of the information that had not been provided.
 8. The complainant wrote to the council again on 25 April 2012. He clarified that he considered that the council had failed to provide information answering his questions at various numbered points. He also provided some clarification.
 9. It is apparent that there was telephone discussion between the complainant and the council at this stage to discuss the request. The

council sent an email on 26 April 2012 providing some additional information and clarifying how it holds information.

10. The council wrote to the complainant again on 27 April 2012. It said that it had attached some information that should have been provided to him earlier. It apologised for this error. The council also said that it had identified that some of the information requested was not "readily available" and it referred to the costs limit under the FOIA. The council also said that it was still making enquiries in relation to some of the requests.
11. The complainant wrote to the council on 29 April 2012 expressing further dissatisfaction with the response. He said that he did not accept that the information was not "readily available".
12. The council completed an internal review on 26 July 2012. It provided some additional information and apologised for the way it had handled certain aspects of the request.

Scope of the case

13. On 4 May 2012, the complainant contacted the Commissioner to complain about the way his request for information had been handled. Commissioner asked the complainant to clarify his complaint but as no further clarification was provided, the Commissioner decided to limit his investigation to those requests where the council's response had been that the information was not "readily available". The requests in question are numbered 8, 9, 10, 14, 15, 16 and 17.

Reasons for decision

Section 12(1) – Costs exceeds limit

14. The council confirmed to the Commissioner that it was seeking to rely on the exclusion under section 12(1) of the FOIA although this was not specifically cited in the council's refusal. This exclusion states that section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.
15. When considering whether section 12 applies, the authority can only take into account certain costs as set out in Statutory Instrument no 3244 "The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004". Paragraph 4(3) states the following:

"In a case in which this regulation has effect, a public authority may, for the purpose of its estimate, take account only of the costs it reasonably expects to incur in relation to the request in –

- (a) determining whether it holds the information*
- (b) locating the information, or a document which may contain the information*
- (c) retrieving the information, or a document which may contain the information and*
- (d) extracting the information from a document containing it".*

16. When estimating the cost of a staff member carrying out the above activities, the costs are taken to be at a rate of £25 per hour which equates to 18 hours work.
17. In cases where an authority has made an estimate in accordance with section 12, the Commissioner would expect the authority to justify its reliance on the exclusion with reference to the activities in the regulations shown above at a - d and estimate the time it would take to provide a response to the requests.
18. The Commissioner asked the council to explain more fully why it considered that section 12 was engaged in this particular case. The council provided clarification about what information was held and provided an account of the significant amount of work that would be required to provide a response to the requests.
19. The Commissioner understood from the council's responses that it accepted that it held information that would allow it to provide a response to the requests in question although the Commissioner notes from the council's responses that it appears that it would not have held, at the time of the request in 2012, full details allowing it to respond to the requests since the Commissioner understands that some of the job evaluations were subject to appeals. The final position was not finalised until March 2013.
20. However, although it is apparent that the council would hold a significant amount of the information requested, the council maintained throughout the Commissioner's investigation that to respond to the requests would involve a substantial amount of work that would far exceed the appropriate limit provided by section 12(1). The council explained to the Commissioner that the information is not held centrally as suggested by the complainant. The council said that the information crosses over periods where two payroll systems were used and involves information recorded on multiple spread-sheets. The council said that an integrated HR system was not in place until 2010 and prior to this information was extracted from the more limited payroll systems in

place and was copied to multiple spread-sheets corresponding to the various service areas at the council, which would include additional information. The council added that the job evaluation has been a long and complicated process, involving multiple on-going reviews and appeals which were only concluded in March 2013 some six years after the initial assessment date in 2007. The council also said that the issues were further complicated because of the fact that some employees held multiple posts.

21. The council said that to respond fully to the remaining requests, it would need to extract information from more than one thousand separate spread-sheets. The council said that extracting further information from individual employee record cards is also likely to be required because all of the relevant information would not be recorded in the various spread-sheets. The council said that it estimated that the amount of employee's details it would need to consider would be in excess of 4,800 including leavers, many of which have or had more than one role. The council said that it would need to run a separate report to extract information about payments from its old and new payroll systems, which would then need to be matched to the other information it had collated.
22. By way of example, the council undertook a sample of the work required and produced part of the information in the form of a table. The council said that the ten employees concerned represented more "straightforward" examples and it stressed that extracting information relating to other employees would be likely to involve a more complex process. The council said that it had produced the table including information that it had extracted from its records relating to ten employees and that this took 45 minutes. The council said that to create this sample, it had extracted information from multiple spread-sheets and copied and pasted it on to one spread-sheet. The council said this took 15 minutes. The council then looked at individual employee handwritten record cards to see which band the employees were matched with which took 10 minutes. The council then created a further report using its payroll system to extract the spinal column point the employees were paid at the time of the job evaluation and to identify arrears of pay. The council said this took 20 minutes. This information was then subsequently transferred to the same single spread-sheet. The council said that using this sample as a projection and, even if it had reduced the time taken to compile the information for the ten employees to 30 minutes, it had estimated that it would take in excess of 200 hours to look at all the relevant records held and respond fully to the requests.
23. The council also provided a good deal of additional detail to the Commissioner regarding the finer points of the processes that would be involved in complying with the full requests. Although the council provided a significant amount of additional detail to the Commissioner,

the Commissioner considered that the council's arguments suffered from a lack of clarity. This was perhaps caused in part by the complexities of extracting the information because of the way it is held. Nonetheless, the Commissioner does not therefore consider that it would be useful to attempt to set out or explain the additional detail provided to the Commissioner. The Commissioner was satisfied, based on the broader outline detail provided, that compliance with these requests would be particularly time-consuming because of the more basic methods that the council had for recording the information at the time. The requests are also clearly very broad in scope and it is apparent that compliance would involve complex activities looking at multiple electronic and hard copy records and attempting to combine these together to form a coherent response. The council has in addition conducted a small sample of the work that it would need to undertake as further direct evidence of the time-consuming nature of these particular requests. The Commissioner therefore accepts that compliance would significantly exceed the appropriate limit provided by section 12(1) on this occasion.

Advice and assistance section 16(1)

24. If the authority wishes to maintain that section 12 is engaged, it then needs to consider its duty to provide advice and assistance under section 16 of the FOIA. The Code of Practice under section 45 of the FOIA states the following on the subject:

"Where an authority is not obliged to comply with a request for information because, under section 12(1) and regulations made under section 12, the cost of complying would exceed the appropriate limit (i.e. cost threshold) the authority should consider providing an indication of what, if any information could be provided within the cost ceiling. The authority should also consider advising the applicant that by reforming or re-focusing their request, information may be able to be supplied for a lower or no fee".

25. The Commissioner notes that it would have been possible for the council to apply section 12(1) to all of the requests that were made and then engage with the complainant about the work to be undertaken. However, the council responded to many of the requests without engaging with the complainant and only sought to rely on section 12(1) in relation to a smaller subset of the requests. Therefore, although the council has clearly already undertaken a significant amount of work in responding to the various requests made, the duty under section 16(1) must be considered in relation to the requests to which section 12(1) was applied.
26. Although the council says that it had numerous telephone discussions with the complainant about his requests in an attempt to help him to

understand how the information was held, and obviously it has already provided a significant amount of information, on the face of the evidence available to the Commissioner, no clear attempt was made by the council to indicate what information could be provided within the cost ceiling or to advise the complainant about ways in which he could refine his requests following the application of section 12(1). Although it may well turn out to be the case that the complainant is not interested in any refinement of the requests, the council has indicated to the Commissioner that such an offer would be possible. In correspondence to the Commissioner, the council indicated that it would be possible, for example, to respond partially to requests 8 to 10. The Commissioner has therefore ordered steps for the council to take in this regard.

Right of appeal

27. 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: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

28. 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.
29. 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
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