

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 January 2014

Public Authority: Bradford Metropolitan District Council

Address: City Hall
Centenary Square
Bradford
BD1 1HY

Decision (including any steps ordered)

1. The complainant has requested information relating to job evaluation and grading. Bradford Metropolitan District Council provided some information and withheld other information under the exemption for prejudice to commercial interests (section 43(2) of the FOIA).
2. The Commissioner's decision is that Bradford Metropolitan District Council has:
 - Correctly confirmed that the information requested under request part 4) is not held. In doing so, the council complied with section 1(1) of the FOIA;
 - Failed to demonstrate that the exemption at section 43(2) of the FOIA is engaged.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
 - Disclose the information withheld under section 43(2) of the FOIA.
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 8 May 2013, the complainant wrote to Bradford Metropolitan District Council (the "council") and requested information in the following terms:
- "(in relation to the complainant's regraded job post)*
- 1) Full details of the decision & the scheme used to grade the post & and information used to make the decision in respect of the post of Assistant Manager Service Support.*
 - 2) What are the differences between other posts in the R&B structure (e.g. Assistance Manager Technical, Assistant Manager Discretionary Payments) that account for the difference in salary?*
 - 3) What is the appeal process? I have received conflicting information about whether the appeal must be made within 6 months or after 6 months.*
 - 4) What account in the grading process was taken of the matrix management of staff?"*
6. The council responded on 1 July 2013. In relation to request 1 and 2 it provided a general explanation of the job evaluation process but refused to provide the specific details requested, citing the exemption for prejudice to commercial interests (section 43(2) of the FOIA). The council also provided a response to requests 3 and 4.
7. Following an internal review the council wrote to the complainant on 2 September 2013. It stated that it was maintaining its original position.

Scope of the case

8. On 1 October 2013 the complainant contacted the Commissioner to complain about the way their request for information had been handled.
9. The Commissioner confirmed with the complainant that his investigation would consider whether the council has provided all the information it holds in relation to request 4 and correctly withheld the information requested at 1 and 2.

Reasons for decision

Section 1 – duty to provide information held

"4) *What account in the grading process was taken of the matrix management of staff?"*

10. Section 1 of the FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds the information and if so, to have that information communicated to them.
11. The Commissioner has considered whether, in relation to the information specified in part 3) of the request, the council holds any relevant information.
12. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and argument. He will also consider the actions taken by the authority to check that the information is not held and any other reasons offered by the public authority to explain why the information is not held. He will also consider any reason why it is inherently likely or unlikely that information is not held. For clarity, the Commissioner is not expected to prove categorically whether the information was held, he is only required to make a judgement on whether the information was held on the civil standard of the balance of probabilities.
13. In order to assist with this determination the Commissioner asked the council a number of questions. These, along with the council's responses are reproduced below.

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 explained that there is no document in existence which specifically mentions "matrix management" in relation to post grading. It confirmed that it operated a Grading Scheme which has been in force for many years and which predates the concept of matrix management. The council explained that staff involved in the grading process are trained to take matrix management into account where this is relevant factor. In short, the council confirmed that it did not hold specific information relating to the grading process which explicitly refers to matrix management.

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 explained that the grading exercise was "highly confidential" and no grading records are allowed to be held in individuals' PCs/laptops. It confirmed that all relevant information is stored on a restricted shared drive and any personal notes made during the grading process are not retained.

If searches included electronic data, what search terms are used?

16. The council confirmed that, as the request related to specific post titles, these terms were used in its searches.

If the information were held would it be held as manual or electronic records?

17. The council confirmed that grading outcome records, including those relating to the request, would now all be retained electronically. It explained that, in the past, graded posts were only retained as hard copy records and these had not been converted into electronic records.

Was any recorded information ever held relevant to the scope of the complainant's request but deleted / destroyed?

18. The council confirmed that no relevant information had been deleted or destroyed.

What does the council's formal records management policy say about the retention of records of this type? If there is no relevant policy can the council describe the way in which it has handled comparable records of a similar age?

19. The council confirmed that grading outcomes information are retained for the life of the post, i.e., they would only be destroyed if the post became obsolete and was completely removed from the council's structure.

Is there a business purpose for which the requested information should be held? If so, what is this purpose?

20. The council confirmed that information relating to grading is retained to maintain consistency, for the purposes of moderation and in the event of appeals.

Are there any statutory requirements on the council to retain the requested information?

21. The council confirmed that there are no statutory requirements regarding retention of the requested information.

Conclusions

22. In determining where the balance of probabilities lies in this case, the Commissioner has considered the council's and complainant's submissions.
23. In their internal review submission the complainant stated that the council had failed to explain what account was taken of those with matrix management responsibilities in determining job evaluation scores.
24. The Commissioner appreciates the complainant's position and understands why they might consider that the council would hold relevant information. However, the complainant has not provided any direct evidence which contradicts the council's position.
25. The council has explained that its evaluation process was introduced prior to the development of the matrix management concept. It has confirmed that, whilst it is a factor which is considered as part of the job evaluation scoring process, it is not explicitly referred to in the recorded information held. So, whilst the responsibilities assumed by those with matrix management roles are (where relevant) considered as part of the grading process, there is no recorded information which explicitly refers to these responsibilities as being characteristic of "matrix management".
26. The Commissioner is mindful that there appears to be a contradiction between the council saying that it *does* consider matrix management as part of the job evaluation scoring process but this is not explicitly referred to in the recorded information held. However, he accepts that this is likely to be due to an anachronism of the job evaluation scheme which predates the matrix management concept, rather than down to an attempt to conceal relevant recorded information.
27. The Commissioner acknowledges that the FOIA is not prescriptive about the types of information which public authorities should record and retain. It is for authorities to determine what information is required for business needs or in order to carry out public functions. He has no reason or evidence to doubt the council's explanation in this case and so, on the balance of probabilities, he has concluded that the requested information is not held. He, therefore, finds that the council has complied with section 1 of the FOIA.

Section 43(2) – prejudice to commercial interests

28. Section 43(2) of the FOIA provides an exemption from disclosure of information which would or would be likely to prejudice the commercial interests of any person (including the public authority holding it). This is a qualified exemption and is, therefore, subject to the public interest test.
29. The withheld information relates to the grading of public authority employees' posts and sets out the criteria for determining point scores and associated pay grades.
30. In its submissions the council has stated that disclosure of the information would prejudice the effective conduct of council affairs. It has argued that disclosure of the details of the scheme would provide employees with the opportunity and motivation to claim that they are operating at a higher level than they actually are.
31. The council considers that, as a result of disclosure, there would inevitably be attempts to manipulate the grading scheme to achieve particular results, i.e., to "rig" the outcome of a post grading by padding the Job Description / Person Specification to weight it towards higher scoring areas, resulting in a post getting a higher grade than may necessarily be warranted. The council has also asserted that disclosure would result in an increase in requests for regarding, requiring additional time and effort. This would undermine the integrity of the pay and grading process and result in a higher staffing spend. The council has concluded that, for these reasons, release of the information would be prejudicial to its interests.
32. The term 'commercial interests' is not defined in the FOIA, however, the Commissioner has considered his awareness guidance on the application of section 43. This comments that:

*"...a commercial interest relates to a person's ability to participate competitively in a commercial activity, i.e. the purchase and sale of goods or services."*¹
33. The Commissioner's guidance draws a distinction between commercial interests and financial interests. Whilst there may be instances where

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http://www.ico.gov.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/AWARENESS_GUIDANCE_5_V3_07_03_08.aspx

prejudice to financial interests might also affect commercial interests this is not always the case and the causal relationship (or identification between the two interests) must be shown in each specific case.

34. Having considered the withheld information and the relevant context, the Commissioner is not convinced that this relates to the council's commercial interests. He considers it more likely that it relates solely to its financial interests, namely the potential impact of disclosure of the information on its capacity for staff budgeting.
35. Even if the Commissioner were to accept that the information relates to the council's commercial interests, the arguments submitted by the council identify "prejudice to the effective conduct of council affairs" as the outcome of disclosure. The Commissioner notes that this uses the terminology of the exemption provided by section 36(2)(c) of the FOIA, rather than of section 43(2). The council has not applied section 36(2)(c) in this case and, although the withheld information relates, albeit obliquely, to financial matters, the council has not explained how disclosure would prejudice its commercial interests.
36. Even if disclosure of the information were to allow employees to present their job roles in terms which would inflate their point score the council has not explained how this relates to or how it would prejudice its commercial interests.
37. Having considered the withheld information and the council's submissions, the Commissioner has concluded that the council has not demonstrated the exemption is engaged. He has, therefore, not considered the public interest arguments in this case.

Right of appeal

38. 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

39. 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.
40. 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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