

**Freedom of Information Act 2000 (FOIA)  
Environmental Information Regulations 2004 (EIR)**

**Decision notice**

**Date:** 19 March 2015

**Public Authority:** Huntingdonshire District Council  
**Address:** Pathfinder House  
St Mary's Street  
Huntingdon  
Cambridgeshire  
PE29 3TN

**Decision (including any steps ordered)**

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1. The complainant has requested information on job evaluation(JE) scores provided for each job that exists at the council. The council claimed that the information was exempt under section 43(2) (commercial interests) and section 41 (information provided in confidence). It also applied section 21 (information available by other means) to some information falling within the scope of the request. On review the council withdrew its reliance upon section 41 but continued to apply the other exemptions.
2. The Commissioner's decision is that the council was not correct to apply sections 43(2). He has however decided that section 21 was correctly applied to the information which the council outlined was already available via the council intranet and via cabinet papers.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - to disclose the information to which section 21 does not apply.
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

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5. On 27 February 2014 the complainant wrote to the council and requested information in the following terms:

*"I am formally submitting to you a freedom of information request in relation to the single status review of pay and grading at Huntingdon District Council...*

*The information I seek therefore is the JE score for each job that exists in the authority be it full-time, part-time, temporary or zero hours. A list of the factors and the scores on a factor by factor basis for each of the roles in the organisation regardless of their contractual status."*

6. The council responded on 12 March 2014. It said that the information was held in confidence and that it was commercially sensitive as it was the intellectual property of the company who carried out the review; INBUCON.
7. Following an internal review the council wrote to the complainant on 8 September 2014. It upheld its initial decision as regards the application of section 43(2), however it withdrew its reliance upon section 41 stating that it considered that the information had not been provided to it by any third party. It also sought to apply section 21 to information which it had previously provided to staff as regards the scoring of individual posts as this was available to the complainant.

## Scope of the case

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8. The complainant contacted the Commissioner 2 June 2014 to complain about the way his request for information had been handled.
9. The Commissioner considers that the complainant believes that the information which he has asked for should have been disclosed to him.

## Reasons for decision

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### Section 43

10. Section 43(2) provides that:

*'Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).'*

11. To engage the section 43(2) exemption it is therefore necessary for the public authority to demonstrate that a disclosure of the information would, or would be likely to, cause some relevant prejudice.
12. The Commissioner's interpretation of 'likely to prejudice' in section 43 cases is that there should be evidence of a significant risk of prejudice to a person's commercial interests. The degree of risk must be such that there 'may very well' be prejudice to those interests. For "would prejudice" whilst it would not be possible to prove that prejudice would occur beyond any doubt whatsoever, prejudice must be at least more probable than not. Whether prejudice exists is decided on a case by case basis.
13. The council argued that a disclosure of the information would result in prejudice INBUCON's commercial interests. It said that INBUCON had invested substantially in their intellectual property and this would be damaged by a disclosure of the information.
14. It explained that the formula used by INBUCON to undertake the job evaluation process is unique to them, and that INBUCON considers it to be a trade secret. It does not release the formula publically and only makes available a tool to organisations who use it. The tool uses the formula to reach its judgements, but the formula itself is not disclosed to its clients. It has therefore actively used its resources to develop and refine the formula and actively takes steps to protect the details of the formula.
15. The council argues that the complainant's request for all scores and weightings would make it possible to reverse engineer the formula used by INBUCON, thus damaging its business edge over its competitors. Essentially its argument is that a disclosure of the information would allow data analysis which would uncover the formula. Presumably this would be by comparing the data input with the resultant job scores to see where correlations lie.
16. The council added that the job evaluation process is a competitive market and INBUCON has devoted time and resources to developing their methods. Releasing this information would reveal this method and would be detrimental to its ability to continue to operate in the job evaluation market. Effectively its competitors could copy its methods and use these to provide a competitive edge over INBUCON when tendering for contracts.

17. The Commissioner therefore understands that the formula will be one of the central aspects of INBUCON's business methods. It is this formula which generates the job evaluation scores from the data collected from employees on the roles they undertake.
18. The council asked INBUCON for its stance on a disclosure of the information. INBUCON was strongly against the disclosure of the information for the reasons provided above. It also said that it would consider taking legal action against the council to protect its intellectual property should this prove necessary.
19. INBUCON's competitiveness partially rests in its use of a formula which it considers provides it with an advantage over its competitors – its 'selling point' would presumably be to argue that its business methods in carrying out job evaluations provides results which are comparably better than that of its competitors. The formula it has developed is a fundamental part of that approach. The secrecy surrounding this part of its process therefore ensures INBUCON's competitiveness within the market.
20. Countering this, the complainant provided arguments that similar details of job evaluation scores by INBUCON had been disclosed previously. The Commissioner therefore asked the complainant to provide him with details of this previous disclosure as it would demonstrate that INBUCON's formula was already in the public domain. This would substantially undermine the council's arguments in this respect. The complainant did not however provide this evidence to the Commissioner. The Commissioner has therefore had to consider the evidence as pointing to the formula not currently being in the public domain.
21. After considering the above the Commissioner is satisfied that section 43(2) is engaged by the information. The Commissioner must therefore consider whether the public interest in the exemption being maintained outweighs the public interest in the information being disclosed as required by section 2 of the Act.

### The public interest

22. Section 2 requires the authority to carry out a public interest test to ascertain whether the information should be disclosed in spite of the exemption in section 43(2) being engaged. The test is whether the public interest in the exemption being maintained outweighs the public interest in the information being disclosed. If it does not then the information should be disclosed in spite of the exemption being engaged.

### Public interest arguments in favour of maintaining the exemption

23. The central public interest in maintaining the exemption rests mainly in the factors which were argued to introduce the exemption in the first instance. In this case the Commissioner has identified the following factors:
- a) Protecting the commercial interests of a private organisation in a competitive market – retaining a level playing field as regards competition within the market.
  - b) The public interest in protecting intellectual property rights. This has a dual effect. The organisation funds research and development of its products to provide an edge over its competitors when tendering for contracts. A failure to protect such rights would result in damage to the company's individual competitiveness. This in itself may result in a reduction of an organisations willingness to put funds and resources into research and development to perfect systems which may ultimately be copied by their competitors if information on their methods is subsequently disclosed.
24. These points hold significant weight as a disclosure of the information would provide its competitors the ability to understand its approach to job evaluation and consider how to copy, counter or better this in future negotiations.
25. The Commissioner accepts the council's argument that a disclosure of the information would be likely to allow competitors to establish INBUCON's formula, and that this would be prejudicial to INBUCON's commercial interests. Nevertheless with the public eye on financial budgets of local authorities and how these are spent there are strong arguments for greater transparency as to how salary awards are made and justified.
26. The council said that it has made the job evaluation scores available to the individual members of staff. It also said that it has disclosed a list of the factors considered (but not their weighting) via cabinet council papers. The council therefore argued that sufficient information had

been released into the public domain already to allow a meaningful understanding of the council's decision making process. It argued that this would not be furthered by disclosing the requested information. The council therefore argued that the public interest in this instance is served by maintaining the exemption in relation to this information because of the damage that this would do to INBUCON's commercial interests as compared to the limited value it would have to the employees in further understanding their job evaluation scores.

#### Public interest arguments in favour of disclosing the requested information

27. The central public interest in the disclosure of the information relates to transparency and fairness in a job evaluation process which the complainant argues has resulted in a number of its members losing significant amounts from their annual salary. It argues that the full details of the job evaluations and how they have been measured has not been disclosed to the employees and so it is difficult to establish whether the system has been carried out fairly and appropriately.
28. The obvious perception which may arise in times where local authorities are under significant pressure to lower their financial budgets is that the aim of the evaluation process is to lower the wage budget rather than to provide a fair and transparent job evaluation process where the results may equally have resulted in staff benefitting from the evaluation.
29. Historically there have been examples of unfair pay practices in some local authorities. Vice-Chairman (Local Government) of the Conservative Party Bob Neill publicly stated that:  
  
*"Pay inequalities of the past have left thousands of hard-working council employees, mainly women, out of pocket for doing the same work as their colleagues."*
30. The Equalities Act (2010) which replaced the Equal Pay Act (1970), sets out in legislation that all employees are entitled to be paid equally for 'work of equal value'. Once historical gender pay inequalities are exposed, employees are legally entitled to claim up to six years of arrears of remuneration or damages. (from <https://www.gov.uk/government/news/bob-neill-gives-more-councils-the-go-ahead-to-tackle-historic-pay-inequalities--2>)
31. The Single Status agreement of 1997 set out equality aims for local authorities and provided national job evaluation tools to provide a transparent system for analysing job roles within an authority to address the historic inequalities in pay and grading in local authority pay systems. Local authorities were intended to have carried out evaluations and made any necessary changes before 2007 in preparation for the

introduction of the Equality Act 2010. However few authorities had completed this by 2007. The Local Government Employers estimated that two thirds of local authorities failed to meet the target of 31 March 2007. This was reported in a Parliamentary Briefing available at <http://www.google.co.uk/url?url=http://www.parliament.uk/briefing-papers/SN04992.pdf&rct=j&frm=1&q=&esrc=s&sa=U&ei=5maAVMrnEO6V7AbLroGgDw&ved=0CCKQFjAE&usq=AFQjCNGSvIKVNLk6rsK5D8Oxmrm2QLIHg>

32. The complainant suggests that the job evaluation process carried out by the council in this case formed part of that process, and that two previous attempts to carry this out had not been completed.
33. The complainant has pointed out that the council could have chosen to carry out their job evaluation exercise using a nationally recommended scheme which is transparent and open, but chose instead to use INBUCON. This will obviously lead to staff concern as the use of a process which is not totally transparent will lead to suspicion and the perception of unfairness in the process.
34. The intention of the Single Status Process was to ensure equality across authorities. Trust in the process is an essential part of ensuring the success of that process.
35. The complainant highlighted a case which was decided by the first-tier Tribunal at [http://www.informationtribunal.gov.uk/DBFiles/Decision/i1348/Bradford%20Metropolitan%20District%20Council%20EA.2014.0027%20\(24.07.14\).pdf](http://www.informationtribunal.gov.uk/DBFiles/Decision/i1348/Bradford%20Metropolitan%20District%20Council%20EA.2014.0027%20(24.07.14).pdf). In this case the Tribunal overturned the application of section 36 (2) on the basis that creating greater transparency on a job evaluation exercise outweighed arguments in favour of maintaining the exemption. The Commissioner had initially decided the council was not correct to apply section 43(2) to the requested information on the basis of the arguments provided. Effectively the Commissioner decided that the arguments provided by the council in that case related to its financial, rather than commercial interests and so commercial prejudice arguments were overturned. This case is different in that the council has provided arguments relating to the commercial interests and the intellectual property of INBUCON.
36. Nevertheless the Tribunal in that case highlighted arguments (submitted by the Commissioner) which quoted extensively from guidance issued by the Equality and Human Rights Commission:

***'Transparency is a key feature of tackling equal pay problems: A transparent pay system is one where employees understand not only their rate of pay but also the components of their individual pay***



*packets. A transparent pay system avoids uncertainty, perceptions of unfairness and reduces the possibility of individual claims.*

**Grading structures:** *A grading structure provides a framework for managing a pay system. Used properly a grading structure should ensure jobs of equal value are paid equally'*

*(EHRC, "Grading and equal pay", Equal Pay in Practice Checklist 4, emphasis in original)."*

37. The council argues that it has disclosed much of the information which it holds. It has disclosed details of the factors which were considered and It says that it provided job evaluation scores relating to the role to individual staff. It says that this already allows staff a clear understanding of the process which was undertaken and explains how their individual job evaluation scores were reached. The complainant considers that that is not the case. He considers that the information which has been withheld has disadvantaged staff when they have sought to appeal their new grading.
38. The Commissioner questions however whether it is possible to fully understand how a job evaluation rating has been reached for a particular role unless details as to the weighting used on individual factors in order to reach that rating is disclosed.

#### Balance of the public interest arguments

39. The Commissioner has considered the above. Transparency in the provision of job evaluations provides greater trust in pay equality issues and ensures fairness in pay practices.
40. The range of different job roles within an authority is large, ranging from unskilled manual labour to skilled professional positions requiring years of technical and academic training. How those factors are weighted lies at the heart of determining whether equal pay is being awarded to jobs being carried out across a wide range of activities. Understanding the weighting of different tasks or roles within an authority will allow employees to better judge whether there are any equality issues over particular roles. The disparity between the weighting awarded to such roles might clarify whether there are any underlying issues which affect equality in pay or grading.
41. There is clearly a strong public interest in allowing access to such information in order to develop trust that the weightings are fair and appropriate. Particularly since the historic issues which have surrounded pay equality and that the intention behind the evaluations in the first instance was to address historic equality issues.



42. Greater transparency on the pay evaluations would also provide trust in pay awards made to public employees. Where the evaluation has resulted in pay increases for certain grades it may aid in clarifying why roles have been increased on the grading scale.
43. There is also a wider public interest in allowing the public as a whole to understand how funds are spent by public authorities. A large proportion of taxpayer's money and the councils overall budget will be spent on salaries. There has been recent interest in the pay awarded to officers of public bodies over the last few years with the introduction of austerity measures and a reduction in funds available for public services. The public therefore has a vested interest in knowing how the taxes they pay to local government are spent.
44. There is therefore a public interest in demonstrating that salary levels are fair and appropriate, not only in their overall level but in the factors which are taken into consideration and the weight which those factors are provided with when establishing the salary rates for particular roles.
45. The complainant suggests that the job evaluation process in the council has led to appeals being sought to evaluation results by a large number of employees who have been detrimentally affected. He argues that the appellants may have been disadvantaged when preparing their cases by a lack of full information of the process carried out by INBUCON when compared to the council's representatives.
46. The Commissioner considers that there is an extremely high onus on the authority to provide as much transparency as possible to the process given the legal requirements for equality, the historical issues surrounding this and that the council could instead have chosen to use a fully transparent process which has been nationally agreed.
47. On the counter side, the Commissioner is satisfied that the formula is an essential part of INBUCON's approach to business and that its disclosure would cause prejudice to its commercial interests. The information which has already been disclosed allows council employees to understand the approach of the council.
48. However not all of the information which is required to fully understand the process has been disclosed. The system therefore still has areas which are not transparent and there is a strong public interest in allowing employees and the public to fully understand how the evaluation was carried out, particularly given the historical inequality recognised within local government as a whole.

49. Having considered the above the Commissioner's decision is that the balance of the public interest rests in the disclosure of the information in this instance.

### Section 21

50. Section 21(1) of the Act provides that:

*"Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information."*

51. The exemption in section 21 of the Act therefore says that an authority is not under an obligation to disclose information in response to a request where the requested information is otherwise easily accessible to the applicant.
52. The council confirmed to the complainant that the factors used by the Council as part of the Job Evaluation process of the pay and grading review were made available to all staff as part of their notification. These factors were published for staff on the council's Pay Review project site. It provided the web link to access this to the complainant.
53. The Commissioner is satisfied that as this information was made available then the information is easily accessible to the complainant. Section 21 was therefore correctly applied to this information by the council.

## Right of appeal

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54. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

55. 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.
56. 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 .....**

**Gerrard Tracey**  
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