

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 July 2016

Public Authority: Rhondda Cynon Taf County Borough Council
Address: The Pavilions
Cambrian Park
Clydach Vale
Tonypany
CF40 2XX

Decision (including any steps ordered)

1. The complainant requested figures relating to the number of Bridgend County Borough Council ('BCBC') employees who had voluntarily retired from 1 April 2014. She also requested information about BCBC's Discretions Policy. Rhondda Cynon Taf County Borough Council ('the Council') disclosed some information and stated other information was not held. The Commissioner is satisfied that, on the balance of probabilities, the Council does not hold any further recorded information. The Commissioner does not require any steps to be taken.

Request and response

2. On 21 February 2016 the complainant wrote to the Council and requested information for the previous five years in the following terms:

"The information that I'm requesting refers to information processed by Rhondda Cynon Taf CBC, relating to Bridgend County Borough Council employees / retired employees."
 1. In Bridgend County Borough Council, the total number of employees aged 55 to 60 who have voluntarily retired early under the 85 year rule from 1st April 2014 to date.
 2. In Bridgend County Borough Council, the number of males aged 55 to 60 (who would be 60 by 31st March 2016) who have

voluntarily retired early under the 85 year rule with no actuarial reductions from 1st April 2014 to date.

3. In Bridgend County Borough Council, the number of females aged 55 to 60 (who would be 60 by 31st March 2016) who have voluntarily retired early under the 85 year rule with no actuarial reductions from 1st April 2014 to date.
 4. In Bridgend County Borough Council, the number of males aged 55 to 60 (who would NOT be 60 by 31st March 2016) who have voluntarily retired early under the 85 year rule with actuarial reductions waived in full or part from 1st April 2014 to date.
 5. In Bridgend County Borough Council, the number of females aged 55 to 60 (who would NOT be 60 by 31st March 2016) who have voluntarily retired early under the 85 year rule with actuarial reductions waived in full or part from 1st April 2014 to date.
 6. In Bridgend County Borough Council, the number of males aged 55 to 60 (who would NOT be 60 by 31st March 2016) who have voluntarily retired early under the 85 year rule with full actuarial reductions from 1st April 2014 to date.
 7. In Bridgend County Borough Council, the number of females aged 55 to 60 (who would NOT be 60 by 31st March 2016) who have voluntarily retired early under the 85 year rule with full actuarial reductions from 1st April 2014 to date.
 8. A copy of Bridgend County Borough Council's LGPS 2014 Discretions Policy relating to the 2014 LGPS Scheme that must have been prepared, published and copied to the Pension Fund administrating authority.
 9. The date which the above policy was submitted to the Pension Fund administrating authority and verification of this date.
 10. A copy of any subsequent revisions to the above policy that have been copied to the Pension Fund administrating authority, the date that these were submitted to the Pension Fund administrating authority and verification of this date.
3. The Council responded on 24 March 2016 and provided a table of information showing the voluntary retirements in BCBC since 1 April 2014, showing age, gender and whether reductions were applied. The Council also provided a copy of BCBC Discretions Policy. The Council explained that details of revisions, dates, etc would need to be obtained directly from BCBC.

4. On 29 March 2016 the complainant requested an internal review of the Council's handling of the request. She specifically raised concerns that the Council had not provided the date of issue of BCBC's Discretions Policy, the date that it was copied to the pension fund (the Council). In addition, she stated that any revisions to the policy should have also been copied to the Council as pension fund administrator. She also asked the Council to clarify that the table of information provided relating to 18 voluntary retirements related to "voluntary early retirements under the 85 Year Rule....and not just voluntary retirements" which is the specific information she had requested.
5. The Council provided the outcome of its internal review on 21 April 2016. It confirmed that it did not hold any further information relating to the request, specifically the dates that BCBC's Discretions Policy was issued, submitted, revised etc. The Council also stated that the table of figures previously provided related to all voluntary retirements, but the employer had discretion to switch on the 85 rule protection or not. It confirmed that "for the 17 cases shown in the table....full reductions were applied and as such the 85 year rule protection was not applied. There was 1 individual case included in the table where 'Employer Consent' was approved to apply the discretion of the 85 year rule protection".

Scope of the case

6. The complainant contacted the Commissioner on 22 April 2016 to complain about the way her request for information had been handled.
7. The scope of the Commissioner's investigation into this complaint is to determine whether the Council holds any additional information relevant to the request.

Reasons for decision

Background

8. The Local Government Pension Scheme ('LGPS') is a nationwide pension scheme and is part of the pay and reward package for employees working in local government or working for other employers participating in the LGPS and for some councillors. The LGPS is administered locally for participating employers through 99 regional pension funds. Rhondda Cynon Taf County Borough Council is one of the administering authorities and administers the regional pension fund

for a number of admitted bodies and scheduled and designated bodies, including BCBC.

9. The normal retirement age in the LGPS is 65. It is possible for an individual to retire and receive benefits from an earlier age, but their benefits may be reduced.
10. The 85 year rule¹ is a provision within the LGPS Regulations that entitles the benefits in respect of some scheme members (provided they meet the criteria) to not have their reductions applied, either to a part or the whole of their benefits if they take retirement before their normal retirement date. On 1 October 2006, the 85 year rule was removed from the LGPS Regulations for new members but if an individual was an active member of the scheme as at 30 September 2006, some or all of their membership will still be protected by the 85 Year Rule. The various levels of protection depend on the individual's date of birth.
11. With the introduction of the LGPS 2014 from 1 April 2014, an individual is able to voluntarily retire from age 55 (without their employer's consent). If they choose to voluntarily retire between age 55 and 60, any 85 Year Rule protections will not automatically apply and their benefits will therefore be reduced in full. However, if they choose to retire on or after age 60, any 85 Year Rule protections will apply. The ability to apply the 85 Year Rule to voluntary retirement between age 55 and 60 is at the discretion of the employer, in accordance with any discretions policy they have in place.

Section 1 – general right of access

12. Section 1 of the FOIA states that any person making a request for information is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request and, if that is the case, to have that information communicated to him.
13. 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 arguments. He will also consider the actions taken by the authority to check that the information is not held and he will consider 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

¹ <http://www.rctpensions.org.uk/EN/RelatedDocuments/Factsheets/85-Year-Rule---English.pdf>

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.

14. The Council advised that the Discretions Policy which it disclosed to the complainant was the most up to date BCBC policy held at the time the request was received in February 2016. The Council confirmed that although such policies should be dated, in this case when the document was received from BCBC it was undated. In light of this, the Council confirmed that it does not hold a copy of the date of issue of the BCBC Discretions Policy it disclosed.
15. The Council confirmed that the Directions Policy was sent to it by BCBC electronically. The Council has retained a copy of the policy itself, but advised that the covering email under which it was sent has been deleted. The Council explained that although the Pension Fund requires participating employers to submit a copy of such policies, there is no reason or rationale to retain the covering email and as there was no business need to retain it, it was deleted.
16. The complainant raised additional queries during the Commissioner's investigation relating to how the Council knew the Discretions Policy was received by email when the covering email had been deleted. In addition, she asked whether the document had been "downloaded" and if so whether the Council held a download date which would indicate the date received. The Council explained that the BCBC Discretions Policy disclosed is not a scanned image of a document received by post and all postal documents received are imaged into a different file format. As such, the Council stated that the document must have been sent by BCBC to the pension fund electronically by email. The Council also advised that it was not necessary to "download" the document and as such the file has simply been saved into the relevant electronic file for BCBC. The Council advised that it has located a "last saved" date of 20 January 2016 attributable to the document, but confirmed that this does not necessary reflect the date the document was received.
17. In light of the above, the Council confirmed that it does not hold any recorded information relating to the date that the Discretions Policy was submitted to the Pension Fund.
18. In terms of the dates of any revisions to the Policy the Council advised that such policies are not necessarily reviewed annually by employers and are only changed as and when employers feel it necessary to do so or as a result of any changes in legislation. The formal approval process/delegated authority relating to such policies would be determined by the individual employer, in this case BCBC. The Pension Fund itself does not use any Discretion Policies submitted to it as it is up

to the employer in question to apply its own policy as they see fit. However, employers are required to submit a copy of their policies to the Pension Fund and these are retained on the individual employer file.

19. The Council advised that, as well as the Directions Policy which it disclosed it holds an 'older' BCBC Discretions Policy dated 2010 and also a 'draft' Discretions Policy dated January 2014. The Council advised that, although the copy of the Discretions Policy it disclosed is undated, its content dates it to the 1 April 2014 LGPS Regulations. It explained that its rationale for reaching this view is that clause 2.4 of the policy relates specifically to a provision that was introduced by the LGPS Regulations dated 1 April 2014. As such the document must have been written after the April 2014 Regulations came into force. As such, the Council's position is that the Discretions Policy it disclosed was the "latest" policy held at the time of the request.
20. The complainant pointed out that BCBC had approved a "new" Discretions Policy on 17 February 2016. However, the Council confirmed that it had not been provided with a copy of this policy by BCBC and it would chase this up with BCBC.
21. The Council provided the Commissioner with details of the searches it conducted on receipt of the request in order to ascertain recorded information held relevant to the request which are summarised below.
22. The Pension Fund holds a separate electronic folder for each of the 42 employers that participate in the LGPS that it administers. There is only one Pension Officer designated as the employer contact for Discretion Policies and the post is occupied by the same person as in 2014 when the BCBC Discretions Policy disclosed would have been effective. Comprehensive searches were conducted of the electronic records held for BCBC which included a manual review of emails to determine whether any record was held of the date of receipt of BCBC's current Discretions Policy.
23. Based on the representations provided by the Council the Commissioner is satisfied that it has carried out adequate searches of the places where relevant information would be held. There is no evidence of any inadequate search or grounds for believing there is a motive to withhold information. The Commissioner has also considered the Council's representations in relation to the subject matter of the request, and its involvement and role in the LGPS scheme. Based on the searches undertaken and the other explanations provided, the Commissioner is satisfied that, on the balance of probabilities, the Council does not hold any further recorded information relating to the request

Right of appeal

24. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

25. 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.
26. 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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