

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 27 June 2018

**Public Authority:** Bournemouth Borough Council

**Address:** Town Hall  
Bourne Avenue  
Bournemouth  
BH2 6DY

#### **Decision (including any steps ordered)**

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1. The complainant has requested information about the costs of senior management posts, payments made to individuals and senior management changes within the Council. The requests were made through a number of emails with the Council providing information at various points. In response to the final email sent by the complainant, the Council provided some information but withheld information about the departure of the Chief Executive citing the exemption under section 40(2) of the FOIA – third party personal data. Through the course of the Commissioner's investigation further information was released to the complainant but as well as relying on section 40(2), it also applied sections 36(2)(b)(i) and 36(2)(b)(ii) and 36(2)(c) – prejudice to effective conduct of public affairs, and section 42 – legal professional privilege, to the withheld information.
2. The Commissioner's decision is that Bournemouth Borough Council has correctly applied sections 36(2)(b)(i) and (ii), 40(2) and 42 of the FOIA. It was not necessary to consider the application of section 36(2)(c). The Commissioner also finds that the Council failed to respond to one of the complainant's requests within 20 working days and so has breached section 10(1) of the FOIA.
3. The Commissioner does not require the public authority to take any steps to ensure compliance with the legislation.

## Request and response

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4. Due to its length, a full record of all the complainant's requests and the Council's response is detailed in an appendix at the end of this decision notice. A summary is provided here.
5. On 12 July 2017, the complainant wrote to Bournemouth Borough Council and requested information about changes to senior management posts and the associated savings. He sent two further emails on 18 and 28 July 2017 expanding his request to include more information about payments, salaries, savings and associated approvals by the Council.
6. The Council responded on 9 August 2017 answering the questions in all three emails.
7. The complainant responded on the same day expressing dissatisfaction with the accuracy of the response and maintained some questions had not been answered. He then sent a further email on 10 August 2017 with a number of other questions about the Chief Executive's sick leave, suspension and redundancy and more financial information.
8. The Council responded on 6 September 2017 to the complainant's email sent on 9 August 2017, and considered that it had fulfilled the complainant's request.
9. On 21 September 2017, the Council responded to the complainant's 10 August 2017 and answered the questions he had posed.
10. On 22 September 2017 the complainant replied, raising a further set of questions.
11. The Council responded on 10 January 2018. It provided details of all previous questions and comments from the complainant, along with original and revised responses. It withheld some information regarding the redundancy of the Chief Executive citing section 40(2) of the FOIA – third party personal data.

## Scope of the case

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12. The complainant first contacted the Commissioner on 11 September 2017, and on several occasions thereafter, to complain about the way his request for information had been handled. When the Commissioner began her investigation of the complaint, the outstanding issues for the complainant were:

- When the decision was made to award an honorarium to the then Deputy Chief Executive (financial year 2016/17) for acting up in to the position of Chief Executive;
  - Who this decision was reported to and when; and
  - Information held about the decision to make the post of Chief Executive redundant on the grounds of efficiency, including information about discussions held and decisions taken by officers and Members which resulted in the Special Council Meeting of 31st March 2017.
13. As a result of the investigation, on 14 March 2018 the Council released further information about the decision to make the post of Chief Executive redundant to the complainant but continued its reliance on section 40(2) of the FOIA and applied new exemptions, namely section 36 – prejudice to the conduct of public affairs, and section 42 – legal professional privilege.
14. The Council also provided the Commissioner with answers to the first two outstanding issues:
- The decision was made on the date that the relevant documentation was completed and signed by the persons with the authority to make the decision. These officers were Julian Osgathorpe, Executive Director, Corporate Services and Adam Richens, Strategic Finance Service Director and Statutory 151 Officer; documentation was signed on 15th December 2016.
15. The Commissioner therefore considers the scope of the investigation to be whether the Council is entitled to rely on exemptions in sections 36(2)(b)(i)(ii), 36(2)(c), 40(2), and 42 of the FOIA. She has also considered whether the Council responded to the complainant's requests within the 20 working days as required by the FOIA.

## **Reasons for decision**

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### **Section 40(2) and 40(3)(i)**

16. Section 40(2) of the FOIA states that information is exempt from disclosure if it is personal data as defined by the Data Protection Act 1998, and such disclosure would breach any of the data protection principles (section 40(3)(i)).

Is the information requested personal data?

17. Personal data is defined in section 1 of the DPA 1998 as

“...data which relate to a living individual who can be identified–

(a) from those data, or

(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the data controller or any person in respect of the individual...”

18. The complainant has requested information about the decision to make the Chief Executive redundant on the grounds of efficiency. As this information related to a living individual at the time of the request, Mr Tony Williams, the Commissioner is satisfied that this constitutes the personal data.

Would disclosure breach the data protection principles?

19. The Commissioner has issued guidance on FOIA requests for personal information<sup>1</sup> and more specifically on requests relating to the personal information of public sector employees<sup>2</sup>. In determining whether the processing of personal information (which disclosure under the FOIA would fall) is fair and lawful, there are a series of steps to follow:

- Would disclosure be fair to the data subject? If no, then the information is exempt from disclosure.
- If disclosure would be fair, then consideration must then be given to whether a condition in schedule 2, and schedule 3 in the case of sensitive personal data, is met. If the necessary conditions are not met, then the information is exempt.
- If disclosure would satisfy any necessary conditions, then consideration must then be given as to whether or not it is lawful. If not lawful, the information is exempt.

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<sup>1</sup> <https://ico.org.uk/media/for-organisations/documents/1213/personal-information-section-40-and-regulation-13-foia-and-eir-guidance.pdf>

<sup>2</sup> [https://ico.org.uk/media/for-organisations/documents/1187/section\\_40\\_requests\\_for\\_personal\\_data\\_about\\_employees.pdf](https://ico.org.uk/media/for-organisations/documents/1187/section_40_requests_for_personal_data_about_employees.pdf)

20. In considering whether the disclosure of the information would be fair, the Commissioner poses four key considerations:

- Whether the information includes sensitive personal data;
- The reasonable expectations of the individual to whom the data relates;
- Consequences of disclosure; and
- The legitimate interest of the requester or the public having access to the information versus the rights and freedoms of the individual.

21. The Council has argued that the individual will have no expectation that the information associated with his redundancy that comprises personal data and constitutes part of his personnel file would be released into the public domain, and to do so would result in damage and distress to the individual. It also emphasised the common law duty of confidentiality embodied in the DPA 1998, and that under Article 8 of the Human Rights Act (the right to a private and family life), disclosure would serve no legitimate aim or be proportionate.

*Sensitive personal data*

22. The Council has determined that the personal data is not of a sensitive nature as defined by the DPA 1998. However on scrutiny of some of the detail of the withheld information, the Commissioner finds that it does in fact include some sensitive personal data. Due to its very nature, sensitive personal data is the most private and it is the Commissioner's view that disclosure of this information would not be fair in any of the circumstances of the request.

*The reasonable expectations of the individual*

23. As Mr Williams was the Chief Executive of the Council at the time of his departure, and therefore the most senior paid officer, it is reasonable to expect that his position would be subject to a higher level of accountability and scrutiny than other staff within the Council. However, as the withheld information relates to personnel matters of the individual, rather than the functions of their role, the Commissioner recognises that regardless of their seniority this information is confidential and that they would have a reasonable expectation that it remains so. The expectations of a specific individual is not the only consideration; in the case of *Trago Mills (South Devon) Ltd v the Information Commissioner and Teignbridge District Council*, the First-tier tribunal noted that expectations of privacy should be measured not by the individual concerned, but by '*the reasonably balanced and resilient individual holding the position that X held with the council*'

(EA/2012/0028, 22 August 2012). In view of the content of the withheld information, the Commissioner considers that there is a strong and reasonable expectation by Mr Williams that the information would not be disclosed.

*Consequences of disclosure*

24. The Council believes that disclosure of the withheld personal data would cause damage and distress to the individual. Given that this covers specific personnel information about his position as an employee of the Council rather than his role as the Chief Executive, the Commissioner considers that disclosure is likely to cause distress to the individual and may adversely affect his position in the future.

*The legitimate interests of the individual / public in disclosure versus the rights and freedoms of the individuals concerned*

25. Despite expectations of privacy and consideration of the consequences of disclosure in the form of damage or distress, it may still be fair to disclose the information if there is an overriding legitimate interest in the information. The FOIA is designed to increase openness, transparency and accountability in public authorities through the rights of public access to recorded information. Although section 40 is an absolute exemption and not subject to the public interest test, in determining whether the disclosure is fair and lawful, consideration must be given to the legitimate interests of the requester, and by virtue of any disclosure, to that of the wider public.
26. The complainant maintains that as he has requested information about the decision (and associated processes) to make the Chief Executive's post redundant and that this is not information about the individual.
27. The Commissioner recognises that there is a legitimate public interest in the scrutiny of this decision as it affects the entire structure and leadership of the Council. However, the decision to make the post of Chief Executive redundant and associated personnel matters are finely interwoven, and therefore the Commissioner acknowledges that as a result information held about the post of Chief Executive and the individual concerned cannot always be strictly separated. Where it has been possible to make this distinction, the Council has also applied an exemption to the information about the post of Chief Executive under section 36 - prejudice to the conduct of public affairs (see later).
28. The Commissioner notes that the complainant has been provided with some information about the decision to make the post of Chief Executive redundant (parts redacted), including the rationale behind it and payments made to the individual. Given the nature of the withheld

information, the expectations of privacy from Mr Williams himself or someone in a similar position, and the likely damage / distress caused by disclosure, the Commissioner is satisfied that in all the circumstances it would be neither fair nor lawful to disclose any of the information that the Council has withheld under section 40(2).

### **Section 42 legal professional privilege**

29. Section 42(1) of the FOIA provides that information is exempt from disclosure if the information is protected by legal professional privilege (LPP) and this claim to privilege could be maintained in legal proceedings.
30. LPP protects the confidentiality of communications between a lawyer and client. It has been described by the Information Tribunal in the case of *Bellamy v The Information Commissioner and the DTA* (EA/2005/0023) (Bellamy)<sup>3</sup> as:

*" ... a set of rules or principles which are designed to protect the confidentiality of legal or legally related communications and exchanges between the client and his, her or its lawyers, as well as exchanges which contain or refer to legal advice which might be imparted to the client, and even exchanges between the clients and their parties if such communications or exchanges come into being for the purposes of preparing for litigation."*

31. There are two categories of LPP – litigation privilege and advice privilege. Litigation privilege applies to confidential communications made for the purpose of providing or obtaining legal advice in relation to proposed or contemplated litigation. Advice privilege applies when no litigation is in progress or contemplated. In both cases, the communications must be confidential, made between a client and professional legal adviser acting in their professional capacity and made for the sole or dominant purpose of obtaining legal advice.
32. Having viewed the withheld information, the Commissioner is satisfied that it constitutes communications between a lawyer and their client and that it clearly relates to legal matters. Furthermore, having considered

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<sup>3</sup>[http://informationrights.decisions.tribunals.gov.uk//DBFiles/Decision/i28/bellamy\\_v\\_information\\_commissioner1.pdf](http://informationrights.decisions.tribunals.gov.uk//DBFiles/Decision/i28/bellamy_v_information_commissioner1.pdf)



the withheld information and her guidance<sup>4</sup>, the Commissioner is satisfied that it attracts LPP.

The public interest test

33. Section 42 is a qualified exemption, subject to the public interest test as set out in section 2(2)(b) of the FOIA. In accordance with that section the Commissioner must consider whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

34. There is a strong inherent general public interest in this exemption as the principle behind LPP - safeguarding openness in communications to ensure access to full and frank legal advice as a fundamental aspect in the administration of justice. The Council has argued that there is a

*'high public interest in preserving the principle that a client can consult with their legal advisor in a full and frank manner. This is necessary so that they can lay out all the issues relevant to the matter they require advice on and so that the lawyer can respond in full to those enquiries.....Without being able to have such frank exchanges it would not be possible for clients to obtain the best legal advice possible and so defend their legal rights, or ensure they are acting in compliance with the law... To outweigh the clear public interest in maintaining the exemption there would need to be a compelling argument for disclosure and there are none in this instance. Disclosure would undermine the fundamental principle of legal professional privilege and potentially the ability in future for the Council to obtain necessarily free, frank and candid legal advice. This in turn may hinder the Council's ability to carry out its functions and make fully informed decisions. Such consequences are not in the public interest.'*

35. The information concerned relates to legal advice obtained regarding the redundancy arrangements of Mr Williams. As this advice protects the rights of an individual, and that disclosure would not add to the principle of accountability or further public debate around the decision to make the post redundant, the Commissioner is satisfied that in all the

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<sup>4</sup> [https://ico.org.uk/media/for-organisations/documents/1208/legal\\_professional\\_privilege\\_exemption\\_s42.pdf](https://ico.org.uk/media/for-organisations/documents/1208/legal_professional_privilege_exemption_s42.pdf)



circumstances of the request, the public interest in maintaining the confidentiality of LPP under section 42 of the FOIA outweighs the public interest in disclosure of the information, and that the Council is entitled to reply on this exemption.

**Section 36(2)(b)(i) and (ii) and (2)(c) – Prejudice to effective conduct of public affairs**

36. Section 36(2) provides that information is exempt if, in the reasonable opinion of the qualified person, its disclosure

(b) would or would be likely to inhibit -

(i) the free and frank provision of advice, or

(ii) the free and frank exchange of views for the purpose of deliberation, or

(c) would otherwise prejudice, or would be likely to prejudice, the effective conduct of public affairs.

37. The Council applied sections 36(2)(b)(i)(ii) and 36(2)(c) to a significant proportion of the withheld information following its final review of its responses to the complainant's requests sent on 14 March 2018.

38. Although the Council has applied section 36 to specific pieces of the withheld information, provided arguments for the use of all sections and considered the public interest test, it has not specifically identified whether section 36(2)(b)(i), 36(2)(b)(ii) and / or 36(2)(c) applies to each piece of information. Having considered the information in detail, the Commissioner has determined that sections 36(2)(b)(i)(ii) apply, and so has not gone on to consider the application of 36(2)(c). The Commissioner reminds the Council that the use of specific FOIA exemptions to information should be clearly identified in any future application.

39. Section 36 of the FOIA is unique in that it requires the public authority's 'qualified person' (QP) to give their reasonable opinion that disclosure of the information requested would or would be likely to cause the prejudice or inhibition envisaged. To determine whether the exemption is correctly engaged, the Commissioner is required to consider the QP's opinion as well as the reasoning that informed that opinion. Therefore the Commissioner must:

- ascertain who the qualified person is;
- establish that they gave an opinion;
- ascertain when the opinion was given; and

- consider whether the opinion was reasonable.
40. The Council confirmed that its QP is its Monitoring Officer, which is in accordance with the list of QPs produced by the Ministry of Justice and now archived<sup>5</sup>. The QP supplied her opinion to the complainant in the Council's letter of 14 March 2018, and to the Commissioner separately on 22 March 2018.
41. The next issue for the Commissioner to consider whether or not the QP's opinion is reasonable. The Commissioner considers the plain meaning of the word reasonable to be sufficient in its application, which according to the Shorter Oxford English Dictionary is 'in accordance with reason; not irrational or absurd'. It is important to note that the QP's opinion may not be the only reasonable opinion, there may be other opinions that are different but also reasonable. However this does not render the QP's opinion unreasonable.
42. The Council considers that the information to which sections 36(2)(b)(i)(ii) apply includes email and notes regarding the exchange of views between senior officers and members, and contain references to the advice of professional finance, legal and HR officers relating to options surrounding the Chief Executive's request for redundancy. The QP's opinion has been informed by direct knowledge of the matters at hand and of the withheld information (she was involved in discussions and communications about the decision to delete the post of Chief Executive at the time), as well as the local context of the Council's current position, most notably a merger in 2019 of nine local councils into two unitary authorities. The Commissioner is therefore of the view that the QP's opinion is a reasonable one.
43. For the application of sections 36(2)(b)(i) and (ii), in her representation to the Commissioner the QP maintains that disclosure of the information:

*'would, and would be likely to, inhibit the free and frank provision of advice and exchange of views for the purposes of deliberation at a time and in a context when this advice, freely given on the basis that it is to remain confidential, is necessary to ensure the stability of the organisation and its staff and services...Many*

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<sup>5</sup><http://webarchive.nationalarchives.gov.uk/20100512160448/http://www.foi.gov.uk/guidance/exguide/sec36/annex-d.htm>

*discussions...related to options for future structures which impacted upon other individual staff members, some of which were speculative and options not taken forward...It is important that records are retained rather than not made of such discussions, however the publication of such notes and emails would prevent such records being kept in the future'.*

44. The Council's arguments under s36(2)(b)(i) and (ii) are based on the concept of the 'chilling effect'. This argument assumes that disclosure of previous discussions on sensitive matters would inhibit free and frank discussions in the future which would in turn adversely affect the quality of advice/deliberation and result in poorer decision making. However, it does not necessarily follow that the threat of disclosure regarding sensitive discussions will deter people from free and frank exchanges in the future – depending on people's agendas and interests it may further honesty and openness. However, in the specific circumstances of this case, and in particular the current restructuring programme in progress, the Commissioner is satisfied that release of the information would be likely to inhibit either the free and frank provision of advice or the free and frank exchange of views for the purposes of deliberation, and that therefore s36(2)(b)(i) and (ii) are engaged.

The Public interest test

45. Section 36 of the FOIA is a qualified exemption and so is subject to a public interest balancing test as set out in section 2(2)(b) of the FOIA. This means that even when the exemption is engaged, the information can only be withheld if, in all the circumstances of the case, the harm of disclosure outweighs the public interest in disclosure. Having accepted that the QP's opinion is reasonable in the circumstances the Commissioner must decide what weight to give that opinion and make her own judgement on the severity, extent and frequency of the anticipated inhibition.

Arguments in favour of disclosure

46. There is a general public interest in promoting transparency, accountability and public understanding and the FOIA is a means of achieving this. In this particular case, the decision to make the post of Chief Executive redundant affected the longer-term structure of the Council, and incurred significant financial cost.
47. By not disclosing information about the discussions behind the decision, the Council could be seen as being secretive and potentially covering up wrongdoing, leading to suspicion and creating an environment of mistrust. At the time of the redundancy there was local and national media coverage of the seemingly high financial package received by the

departing Chief Executive. Disclosure of the information would show that the Council had nothing to hide and that the decision to make the post redundant was in the interests of public efficiency and effectiveness.

*Arguments in favour of maintaining the exemption*

48. In both the QP's and Council's opinion, there is a strong public interest in withholding the information as to disclose it would prevent free and frank discussions in the future on similar matters, thereby hampering full deliberation of such matters. The Council maintains in its communication with the complainant that:

*'Effective local government depends on good decision-making and this needs to be based on the best advice available and a full consideration of the options.*

*There is a strong public interest in senior officials being able to discuss issues freely and frankly and to be able to have a safe and confidential space to consider all issues and make informed decisions. It is in the public interest to ensure that every aspect of these issues are considered frankly and candidly with a view to making a full and informed decision. It would be very likely to cause substantial prejudice to the Council's ability to deliberate, provide advice and exchange views internally in a necessarily candid way. Disclosure of this content would have serious consequences in terms of Council officers' and members' abilities to correspond freely and confidentially on sensitive matters such as this. Such communication is essential to the effective discharge of the Council's functions. It is considered that disclosure is more likely than not to have an adverse effect on the ability of officers of the local authority to communicate internally and give professional advice to members in an impartial and appropriate manner.*

49. The Council has already provided financial information on the payments made to the departing Chief Executive and this is a matter of public record. The Council has also provided the full business case and report to Council as well as further reports to the Audit and Governance Committee, which were a result of the internal discussions and deliberations to delete the post of Chief Executive.
50. As part of its final review response to the complainant the Council provided some redacted information relating to the discussions to make the post of Chief Executive redundant, showing that it had given its consideration to all of the information falling within the scope of the

request and not utilised a blanket approach to the application of the exemptions.

51. In the specific context of this case and the current reorganisation, there will be further senior officer redundancies across the affected authorities. Consequently the Council believes that:

*Disclosure of the negotiations and discussions that were undertaken in relation to Tony Williams's redundancy would....be likely to inhibit the free and frank provision of advice or exchange of views for the purposes of deliberation throughout the process of local government reorganisation.*

*Balance of the public interest*

52. In considering the potential harm caused by disclosure of the withheld information, the Commissioner must consider this specifically in the context of the exemption being applied and the how likely such disclosure would inhibit the free and frank provision of advice, and exchange of views for the purpose of deliberation.
53. As previously stated, the Commissioner has already determined that the QP's opinion is a reasonable one, particularly given her specific knowledge of and involvement with the issue concerned. The question now is the extent to which disclosure of the withheld information would, or would be likely to inhibit the free and frank exchange of advice, or views for the purpose of deliberation, and with what consequences.
54. In determining the likelihood of inhibition, the Council has drawn on the local context of ongoing restructuring. The decision to make the post of Chief Executive was informed by this restructuring which is still very active and live, with plans to create two unitary authorities out of nine local councils from April 2019. Consequently there are currently, and will continue to be, highly sensitive discussions about redundancies and redeployments of senior officers. The Commissioner accepts the Council's position that these need to happen in a safe environment that facilitates free and frank exchanges of views and advice and that release of the requested information at this time would inhibit such exchanges, leading to poorer decisions. The Council considers that the opportunity for this inhibition to arise is high, and that the occurrence of it during the opportunity is more probable than not.
55. The Commissioner is mindful that the Council's withholding public records relating to significant decisions, in this case the redundancy of the Chief Executive's post, is not without consequences. It may give rise to false speculation about the decision, foster concerns that the Council is trying to hide something, and make the decision making

processes seem opaque. The Commissioner recognises that even if the advice and reasons for a decision are complex, this does not lessen the public interest in disclosure. The complainant knows that discussions must have taken place regarding the deletion of the post prior to its ratification at the Council meeting, and it is this information he seeks under the FOIA.

56. However, in this case the withholding of the information is not concerned with its complexity, but the inhibition that the Council considers is likely to result to the provision of free and frank advice and exchange of views for the purposes of deliberation in the context of a large Council reorganisation. The Commissioner has paid due attention to the QP's and Council's opinion, which holds that the ability to have free and frank discussions, exchange of views and advice is necessary to ensure stability of the organisation and that the likely 'chilling effect' of disclosure of the information on decision making, given the current changes, is a real risk. The Commissioner therefore concludes that the public interest in maintaining the exemptions under sections 36(2)(b)(i) and (ii) outweigh the public interest in disclosure of the information.

## Section 10

57. Section 10(1) of the FOIA 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.'*

58. The complainant made his requests through a series of emails, which often overlapped with previous emails or was in response to information provided by the Council. The Council has dealt with his requests under two distinct reference numbers, even though it has at times responded to both in the same correspondence.
59. The first set of emails sent by the complainant on 12, 18 and 28 July 2017 were responded to on 9 August 2017. The Council therefore complied these requests within 20 working days.
60. The complainant sent another request on 10 August 2017, on the back of the Council's response to his first three emails. The Council classed this as a new request, and replied on 21 September 2017. This was beyond the 20 working day time for compliance and the Commissioner therefore finds a procedural breach of section 10(1) of the FOIA by the Council.

## Right of appeal

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

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

62. 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.
63. 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 .....**

**[Name of signatory]**

**[Job title of signatory]**

**Information Commissioner's Office**

**Wycliffe House**

**Water Lane**

**Wilmslow**

**Cheshire**

**SK9 5AF**



**Appendix – FOI Requests to Bournemouth Borough Council (RFI 10329 and RFI 10453) by Mr Adrian Fudge**

Initial request made on 12 July 2017:

*'With reference to Report 12, Monthly Budget Monitoring Report to 31<sup>st</sup> May 2107 to Cabinet on 19<sup>th</sup> July 2107*

*Para 14 Executive Board indicates a saving due to the Senior Leadership ream re-structure of £164K*

*Could you confirm that*

- 1) The Chief Executive Post has been deleted saving £164K pa*
- 2) A new post of Managing Director has been created at a very similar cost*

*In light of the above can you inform me how the saving of £164K has been achieved.*

*Since I also believe that it is Council Policy to provide details of the cost of the officer, formerly Chief Executive now Managing Director, heading the staff structure I would be grateful if you could provide those details*

*Furthermore could you explain why the saving is only £164K when the Financial Analysis attached to the report of 31<sup>st</sup> May 2017 relating to the deletion of the Chief Executives post gives an Annual Saving of £253K'*

The complainant followed this with 2 further emails. In the first, dated 18 July 2017, he said:

*'Further to my request I would be grateful if you could also address the following which refers to the same topic*

- 1) The cost of the Chief Executives post in 2016/16 was £164,383, which is the same as the amount claimed to have been saved with his redundancy, but as you know there was a pay award in the subsequent 2 years of 1%. In 2016/17 this cost had risen to £168,573. Whilst I appreciate that National Insurance also altered, the amount included in the Budget must have been circa £170,259. Why is this not the amount being saved.*
- 2) Since the Deputy chief Executive is now Managing Director who is now the Deputy to that post and have they been awarded an increase in salary to acknowledge the additional responsibility. If so what is the additional allowance.*
- 3) What is the salary of Director of Adults and Children which appears to above to be above Service Director level as in BG07.*
- 4) Could you confirm that this is based on a SWLGEA recommendation*

*I appreciate that (3) might be confidential for some reason but the salaries are given in the annual chief Officers Pay Policy Statement. If it is being treated as confidential the salary scale range would suffice'*

In the second follow up email, dated 28 July 2017, he said:

*'I have just had a look at the draft Statement of Accounts for 2016/17*

*I notice that in the section giving Senior Officers Pay it shows that Executive Direct Adults and Children/Deputy Executive Director recived a salary of £117K*

*This means that the Executive Director received an additional payment of approx. £6K more than the statutory award*

*Could you please inform me*

- 1) What was the justification for the additional remuneration*
- 2) Who approved it and when*
- 3) Who was it reported to and when'*

On 9 August 2017 Bournemouth Borough Council responded. It answered all the questions across the three emails with the following:

Response to email sent on the 12<sup>th</sup> July 2017

- 1) The Chief Executive Post has been deleted saving £164K pa –

*This information is already in the public domain and can be found here:*  
<https://www.bournemouth.gov.uk/councildemocratic/CouncilMeetings/CommitteeMeetings/Council/2017/03/31/agenda/agenda-and-report-package.pdf>

- 2) A new post of Managing Director has been created at a very similar cost –

*This information is already in the public domain and can be found here:*  
<https://www.bournemouth.gov.uk/councildemocratic/CouncilMeetings/CommitteeMeetings/AuditandGovernanceCommittee/2017/05/25/agenda/agenda-and-reports-package-25-may-2017.pdf>

In the light of the above can you inform me how the saving of £164K has been achieved.

*Provision was made within the Council report of 31 March 2017 for passing the additional responsibility to one of the Executive Directors and therefore the full budget allocated to the Chief Executive post could be given as a saving in 2017/18.*

Since I also believe that it is Council Policy to provide details of the cost of the officer, formerly Chief Executive now Managing Director, heading the staff structure I would be grateful if you could provide those details

*The Managing Director post has a basic salary of £127,893, pension cost £19,440 and NI £16,523.*

Furthermore could you explain why the saving is only £164K when the Financial Analysis attached to the report of 31st March 2017 relating to the deletion of the Chief Executives post gives an Annual Saving of £253K.

*The saving from the Chief Executive's post is only part of the £253k stated. The analysis related not only to the redundancy of the Chief Executive, but also to savings relating to Joint Heads of Service and also took account of some increased costs, in total the annual saving is expected to be £253k.*

#### Response to second email sent on the 18 July 2017

- 1) The cost of the Chief Executives post in 2015/16 was £164,383, which is the same as the amount claimed to have been saved with his redundancy, but as you know there was a pay award in the subsequent 2 years of 1%. In 2016/17 this cost had risen to £168,573. Whilst I appreciate that National Insurance also altered, the amount included in the Budget must have been circa £170,259. Why is this not the amount being saved.

*In addition to the NI changes you mention there was a change to the way pension costs are allocated within the Council. Pension costs paid by the Council to the Dorset County Pension Fund are made up of two elements, one relates specifically to the rate required to cover on-going pension liabilities, and the other relates to re-covering the pension deficit. Up to and including 2016/17 both elements were charged to individual service areas and equivalent budget provided to cover the costs. From 2017/18 the cost of re-covering the deficit is charged centrally, and the equivalent budget was removed from service areas. It is coincidental that the 2017/18 budget for the Chief Executive's salary is the same as the cost for 2015/16.*

- 2) Since the Deputy Chief Executive is now Managing Director who is now the Deputy to that post and have they been awarded an increase in salary to acknowledge the additional responsibility. If so what is the additional allowance.

*The Executive Director for Corporate Services is the Deputy Chief Executive and he is not paid any additional allowance for this responsibility.*

- 3) What is the salary of Director of Adults and Children which appears to be above Service Director level as in BG07.

*This information is already in the public domain and can be found here:  
<https://www.bournemouth.gov.uk/councildemocratic/AboutYourCouncil/StrategicFinance/StatementofAccounts/draft-statement-of-accounts-2016-17.pdf>*

*This post until 31/3/17 had an additional allowance for being Deputy Chief Executive and an honorarium was paid for the time the Chief Executive was absent due to long term sickness.*

- 4) Could you confirm that this is based on a SWLGEA recommendation.

*The payment was approved in line with internal procedures and following guidance from SWLGEA.*

Response to third email sent on the 28 July 2017

- 1) What was the justification for the additional remuneration

*See question 3 in second email*

- 2) Who approved it and when

*See question 4 in second email. The honorarium form covering the Chief Executive's sick leave was approved by Senior Officer in line with the Council's scheme of delegation.*

- 3) Who was it reported to and when

*The additional remuneration for the Deputy Chief Executive when it existed, had been paid for many years. This can be seen in previous statement of accounts under remuneration for senior officers.*

On 9 August the complainant replied to the Council, saying he was dissatisfied with its response with the following reasons:

*'Regrettably I am not satisfied with this communication and wish to lodge a complaint for a review*

*Again regrettably the link you have provided for making such a request does not work so I am unable to use this process*

*Can I therefore lodge a Formal Complaint regarding the response to my Freedom of Information requests*

*1) The response to question (2) of my e-mail of 12th July 2017 confirms that a new post of Managing Director has been created yet your next paragraph states "Provision was made within the Council report of 31st March 2017 for passing the additional responsibility to one of the Executive Directors". This is factually incorrect since as you have confirmed the duties have been passed to a post entitled Managing Director to whom the Executive Directors are subservient. The Managing Director receives the same salary as the former Chief Executive*

*2) The response given to question (3) of my e-mail of 18th July 2017 clearly refers to the DIRECTOR Adults and Children (Sue Ross) and not the former*

*EXECUTIVE DIRECTOR Adults and Children (Jane Portman) which is the response provided, this is unless you are confirming that Sue Ross is receiving the same salary as paid to the former Executive Director Adults and Children*

*3) The response to question (3) of my e-mail of 18th July 2017 refers to the former Executive Director Adults and children. My question clearly related to the DIRECTOR Adults and children*

*4) The previous response regarding whether the salary level for the post of DIRECTOR Adults and Children referred to the post of EXECUTIVE DIRECTOR Adults and Children. I requested that you confirm that the post of DIRECTOR Adults and Children was referred to SWLGEA*

*5) The response give to question (1) of my e-mail 28th July 2017 confirms that the additional payment was in respect of an "honorarium" paid for the time the Chief Executive was "absent due to a long tern sickness". I can not find any reference to this "long term sickness" only to the Mayor welcoming Tony Williams back after "a short illness"*

*6) In question (2) of my e-mail of 28th July 2017 I requested to be advised as to who approved the "honorarium" and when. Stating that this was "by Senior Officer in line with the Councils scheme of delegation", is not an answer. The scheme of delegation would place the authority with the Deputy Chief Executive, Jane Portman which is who received the payment. The question remains who approved it and when.*

*7) For some unknown reason when all the questions in my e-mail of 28th July 2017 refer to the additional "honorarium" the answer given to question (3) refers to the additional payment for having the duties of Deputy Chief Executive.'*

On 10 August 2017 the complainant contacted the Council again with further follow-up questions:

*'Can I please submit this final FOI request which should enable outstanding matters to be finalised*

*1) Between which dates was the Chief Executive on sick leave?*

*2) Since the difference between the salaries of the Chief Executive and the Deputy Chief Executive is £10K and the Honorarium paid to the Deputy Chief Executive is £6k this would represent, on a pro-rata basis, a period of over 7 months. It is known that the Chief Executive was not on sick leave for one period for that length of time which would indicate that the Deputy was rewarded at a higher rate than that of Chief Executive. Is that the case ,and who proposed, calculated and approved the Honorarium and when?*

*3) When was the Chief Executive suspended?*

4) *What were the grounds for his suspension, who brought the allegation/s, and who confirmed the suspension. When did these actions occur?*

5) *When was the suspension terminated and by whom. Were the allegation/s withdrawn or did a review consider the suspension to be unwarranted?*

6) *When was it decided that the post of Chief Executive was "redundant on the grounds of efficiency" and by whom?*

7) *The Executive Director Adults and Children was on a salary of £111K including additional remuneration for acting as Deputy Chief Executive. The Financial Analysis attached to the report to Council on 31st March 2017 showed "provision for a current Executive Director who will now be designated in the Head of Paid Service roll" £22K plus On costs. Since this clearly refers to Jane Portman, Executive Director Adults and Children the new salary for the Head of Paid Service would have been £133K ie £6K higher than the outgoing Chief Executive. You informed me in your latest e-mail that the Managing Director/Head of Paid Service is receiving a salary of £127K , the same as the outgoing Chief Executive. This being the case, and since you also state that the new Deputy Managing Director is not receiving any additional payment for undertaking that position where has this money been allocated?*

8) *Can you confirm the date from which the above salary was paid?'*

On 6 September 2017 the Council responded to the complaint of 9 August, saying that it had reviewed its response, and did not provide any further information to that already supplied.

The complainant contacted the Commissioner on 11 September 2017 to complain about the way his FOI requests had been handled by the Council.

On 21 September 2017, the Council responded to the questions in the complainant's email dated 10 August with the following:

- 1) Between which dates was the Chief Executive on sick leave?

*Information pertaining to an employee's sickness absence is not accessible in the public domain nor appropriate to be in order to protect an individual's sensitive personal data.*

- 2) Since the difference between the salaries of the Chief Executive and the Deputy Chief Executive is £10K and the Honorarium paid to the Deputy Chief Executive is £6k this would represent, on a pro-rata basis, a period of over 7 months. It is known that the Chief Executive was not on sick leave for one period for that length of time which would indicate that the Deputy was rewarded at a higher rate than that of Chief Executive. Is that the case, and who proposed, calculated and approved the Honorarium and when?



*The Council confirms that the Deputy Chief Executive was not paid any more than the Chief Executive for covering the post during this period, Information regarding the approval of the Honorarium has previously been provided, the payment was approved in line with internal procedures and following guidance from South West Councils LGA.*

- 3) When was the Chief Executive suspended?

*No suspension occurred.*

- 4) What were the grounds for his suspension, who brought the allegation/s, and who confirmed the suspension. When did these actions occur?

*No suspension occurred.*

- 5) When was the suspension terminated and by whom. Were the allegation/s withdrawn or did a review consider the suspension to be unwarranted?

*No suspension occurred.*

- 6) When was it decided that the post of Chief Executive was "redundant on the grounds of efficiency" and by whom?

*At an extraordinary meeting of the members of Bournemouth Council on 31st March 2017 at 5pm. The recommendations regarding the Senior Leadership Team Re-structure was presented by the Executive Director, Corporate Services - Julian Osgathorpe and was moved by Councillor Anne Filer, Cabinet portfolio Holder for Corporate Efficiency and Seconded by Councillor Beverley Dunlop. The recommendations were adopted by Members, Details of the minutes of this meeting can be found;*

*<https://www.bournemouth.gov.uk/councildemocratic/CouncilMeetings/CommitteeMeetings/Council/2017/03/31/minutes/Extraordinary-Council-31-March-2017.pdf>*

- 7) The Executive Director Adults and Children was on a salary of £111K including additional remuneration for acting as Deputy Chief Executive. The Financial Analysis attached to the report to Council on 31st March 2017 showed "provision for a current Executive Director who will now be designated in the Head of paid Service roll" £22K plus on costs. Since this clearly refers to Jane Portman, Executive Director Adults and Children the new salary for the Head of Paid Service would have been £133K ie £6K higher than the outgoing Chief Executive. You informed me in your latest e-mail that the Managing Director/Head of Paid Service is receiving a salary of £127K, the same as the outgoing Chief Executive. This being the case, and since you also state that the new Deputy Managing Director is not receiving any additional payment for undertaking that position where has this money been allocated?



*The Council can confirm that the salary paid to the Managing Director (Head of Paid Service) is £127,893. Furthermore, there is no Deputy Managing Director post. It is unclear what further information is required, please clarify.*

8) Can you confirm the date from which the above salary was paid?

*01.07.2017*

On 22 September the complainant replied to the Council's response, with a further set of comments and clarification questions.

*1) I find it hard to believe that the time period the Chief Executive was not available to fulfil his duties is not in the public domain, but will have to pursue that elsewhere.*

*2) As I stated it is known, from Council records, that the Chief Executive was not absent for a period equal to that of the remuneration paid in the honorarium. Since you state that the Deputy Chief Executive was not paid at a higher rate than the Chief Executive these two facts do not correspond. Can you explain how the honorarium was calculated. You state that it was approved "following guidance from SWLGEA" but in the light of a response that I have received from that organisation, which appears to conflict with that statement, could you please confirm when this guidance was given and confirm whether it is possible to view the information provided.*

*3-5) I note that no suspension occurred which is contrary to the statement apparently attributed to the Chief Executive in the Bournemouth Echo. It would appear that somehow he formed, apparently incorrectly, the opinion that he was suspended. Can you please confirm that he was in post for the whole period following his return on 7th March 2017 up until the Council Meeting 31st March 2017 since it is also known that he cancelled appointments at that time.*

*6) The answer provided is clearly not responding to the question. A report was produced and released into the public domain on 24th March 2017 which was subsequently discussed at Council on 31st March 2017. Clearly someone decided prior to that date that the post of Chief Executive was "redundant", the terms of that "redundancy" must have been compiled enabling the report to be prepared, and discussions must have been held with the Chief Executive relaying to him what the Council were offering him as a severance payment for him to agree to the terms. The foregoing must have involved several Members and Officers and the discussions were presumably recorded. What I require is those details to know how this decision came about and who made it, which is clearly in the public interest. The response given purely relates to the eventual Council decision.*

*7) The question is quite specific. The report to Council 31st March 2017 indicates that there were additional costs of £22K in relation enhancing the salary of the Executive Director Adults and Children/Deputy Chief Executive to the salary of the Head of Paid Service. The difference between the two*

salaries is £16K. What was the reason for the additional £6K and where has this been allocated?

8) *In the light of your response that the salary was paid from the 1st July 2017 can you confirm, for complete clarity, what the remuneration was for the Head of Paid Service between 1st April 2017 and 30th June 2017 including any honorarium, bonuses etc. It would seem strange that Jane Portman was being paid on a salary equivalent to that of the Chief Executive on the 31st March 2017 but it would appear that you are now informing me that, although she was still undertaking the duties of the former Chief Executive her salary had reverted to that of Executive Director Adults and Children/Deputy Chief Executive, unless she was still receiving some form of enhancement i.e. honorarium, bonus etc. What remuneration did she receive for that period? Are you indicating that the salary paid to the Managing Director commenced 1st July 2017 because this was the date the Council officially changed the title of Jane Portman from Head of Paid Service to Managing Director?'*

On 11 October 2017 the complainant contacted the Commissioner again to complain that his requests had not been properly responded to. The Commissioner contacted the Council to request that they undertake a review of its responses to him. On 7 December the complainant informed the Commissioner that he had not yet received a review response, but had received an email saying that the Council hoped to reply by 22 December 2017. The Council eventually replied to on 10 January 2018. In its response it included all previous questions and comments, with the original and revised responses:

**RFI 10329 – received 12<sup>th</sup> July 2017**

With reference to Report 12, Monthly Budget Monitoring Report to 31st May 2017 to Cabinet on 19th July 2017. Para 14 Executive Board indicates a saving due to the Senior Leadership team re-structure of £164K. Could you confirm that:

**1) The Chief Executive Post has been deleted saving £164K p.a.**

*Information is exempt under the Freedom of Information Act, Section 21, Information accessible by other means. The purpose of the section 21 exemption is to ensure that there is no right of access to information via FOIA if it is available to the applicant by another route. Section 21 is an absolute exemption which means there is no requirement to carry out a public interest test if the requested information is exempt*

*This information is already in the public domain and can be found here:*

<https://www.bournemouth.gov.uk/councildemocratic/CouncilMeetings/CommitteeMeeting/Council/2017/03/31/agenda/agenda-and-report-package.pdf>

*The link provided includes a document called the Restructure of the Executive and Service Director Team Financial Analysis where it states that the total saving from the Chief Executive post is £164K as per below:*

**Annual Savings**

Chief Executive Post Basic (128)

On costs (National Insurance & Superannuation) (36)

**Total saving from Chief Executive post (164)**

**2) A new post of Managing Director has been created at a very similar cost**

*As Managing Director the salary is:*

Managing Director Post Basic £127,893

On-costs (National Insurance & Superannuation) £35,962

*Total of £163,855.*

**In the light of the above can you inform me how the saving of £164K has been achieved. Since I also believe that it is Council Policy to provide details of the cost of the officer, formerly Chief Executive now Managing Director, heading the staff structure I would be grateful if you could provide those details.**

*Provision was made within the Council report of 31 March 2017 for passing the additional responsibility to one of the Executive Directors and therefore the full budget allocated to the Chief Executive post could be given as a saving in 2017/18.*

*The Executive Director for Adults & Children's salary for 2016/17 was:*

*Post Basic £104,888*

*On-costs (National Insurance & Superannuation) £34,663*

*Total of £139,551*

*Please note: The above breakdown is without the additional allowance for the Deputy Chief Executive or the honorarium for when the post holder was standing in for the Chief Executive when he was absent due to illness.*

**Furthermore, could you explain why the saving is only £164K when the Financial Analysis attached to the report of 31st March 2017 relating to the deletion of the Chief Executive's post gives an Annual Saving of £253K.**

*The saving from the Chief Executive's post is only part of the £253k stated. The analysis related not only to the redundancy of the Chief Executive, but also to savings relating to Joint Heads of Service and also took account of some increased costs; in total the annual saving is expected to be £253k*

**RFI 10329 – additional questions received 18<sup>th</sup> July 2017**

**1)The cost of the Chief Executive's post in 2015/16 was £164,383, which is the same as the amount claimed to have been saved with his redundancy, but as you know there was a pay award in the subsequent 2 years of 1%. In 2016/17 this cost had risen to £168,573. Whilst I appreciate that National Insurance also altered, the amount included in the Budget must have been circa £170, 259. Why is this not the amount being saved.**

*In addition to the NI changes you mention there was a change to the way pension costs are allocated within the Council. Pension costs paid by the Council to the Dorset County Pension Fund are made up of two elements, one relates specifically to the rate required to cover on-going pension liabilities, and the other relates to re-covering the pension deficit. Up to and including 2016/17 both elements were charged to individual service areas and equivalent budget provided to cover the costs. From 2017/18 the cost of re-covering the deficit is charged centrally, and the equivalent budget was removed from service areas. It is coincidental that the 2017/18 budget for the Chief Executive's salary is the same as the cost for 2015/16.*

**2)Since the Deputy Chief Executive is now Managing Director who is now the Deputy to that post and have they been awarded an increase in salary to acknowledge the additional responsibility. If so what is the additional allowance.**

*There is no post of Deputy Managing Director. The Executive Director Corporate Services and/or the Executive Director Environment & Economy deputise for the Managing Director as/when it is required or appropriate. There is no additional remuneration provided to these posts or individuals in this regard*

**3)What is the salary of Director of Adults and Children which appears to be above Service Director level as in BG07.**

On 26 April 2017, the Health and Adult Social Care Overview & Scrutiny Panel considered and approved a report outlining the proposed allocation of Statutory and Line Management responsibilities required to give effect to the decision of the Extraordinary Council held on 31st March 2017. The structure approved by the Committee designates Jane Portman the Managing Director and has her undertaking the statutory role of Head of Paid Service as well as maintaining a strategic oversight of Adults and Children's Directorate. The current statutory duties of Director of Children's Services and Director of Adult Social Services will become the remit of a Service Director post reporting to the Managing Director and filled by Dr Sue Ross, the current Service Director of Children's Social Care.

The salary of the (now) Director of Adults & Children, Dr Sue Ross is as follows:

### S ROSS

MONTHLY	Pay	Super	NI	Total
Salary	7,647.33	1,162.39	981.10	9,790.82
Market Supplement	2,019.33	306.94	259.06	2,585.33
<b>TOTAL</b>	<b>9,666.66</b>	<b>1,469.33</b>	<b>1,240.16</b>	<b>12,376.15</b>

ANNUAL	Pay	Super	NI	Total
Salary	91,767.96	13,948.68	11,773.20	117,489.84
Market Supplement	24,231.96	3,683.28	3,108.72	31,023.96
<b>TOTAL</b>	<b>115,999.92</b>	<b>17,631.96</b>	<b>14,881.92</b>	<b>148,513.80</b>

The salary is in line with Service Director remuneration as in BG07. In addition, the post attracts market supplements which reflects the difficulty in attracting and retaining suitably qualified staff into this critical post.

#### 4) Could you confirm that this is based on a SWLGEA recommendation

There was no requirement to refer to South West Councils. However, market data research was undertaken.

#### RFI 10329 – additional questions received 28th July 2017

I have just had a look at the draft Statement of Accounts for 2016/17. I notice that in the section giving Senior Officers Pay it shows that Executive Director Adults and Children/Deputy Executive Director received a salary of £117K. The salary for this post in 2015/16 was £110k and was limited by Government legislation to a wage award of 1% which would increase the salary to slightly over £111K. This means that the Executive Director received an additional payment of approx. £6K more than the statutory award. Could you please inform me:

##### 1) What was the justification for the additional remuneration

Please note - the draft Statement of Accounts for 2016/17 have now been replaced with the final Statement of Accounts for 2016/17 which can be located on the website here:

<https://www.bournemouth.gov.uk/councildemocratic/AboutYourCouncil/StrategicFinance/StatementofAccounts.aspx>

The honorarium covered the period the Chief Executive was absent due to illness.

##### 2) Who approved it and when

The honorarium for the (then) Deputy Chief Executive to act up into the role of Chief Executive was authorised by the Executive Director Corporate Services and the Chief Finance Officer/Section 151 Officer. These individuals are Julian Osgathorpe and Adam Richens respectively.



**3) Who was it reported to and when**

*The honorarium for the (then) Deputy Chief Executive to act up into the role of Chief Executive was authorised by the Executive Director Corporate Services and the Chief Finance Officer/Section 151 Officer. These individuals are Julian Osgathorpe and Adam Richens respectively*

**RFI 10329 – Complaint received 9th August 2017**

**1)The response to question (2) of my e-mail of 12th July 2017 confirms that a new post of Managing Director has been created yet your next paragraph states, "Provision was made within the Council report of 31st March 2017 for passing the additional responsibility to one of the Executive Directors". This is factually incorrect since as you have confirmed the duties have been passed to a post entitled Managing Director to whom the Executive Directors are subservient. The Managing Director receives the same salary as the former Chief Executive.**

**2)The response given to question (3) of my e-mail of 18th July 2017 clearly refers to the DIRECTOR Adults and Children (Sue Ross) and not the former EXECUTIVE DIRECTOR Adults and Children (Jane Portman) which is the response provided, this is unless you are confirming that Sue Ross is receiving the same salary as paid to the former Executive Director Adults and Children**

*Response revised – please see answer to Q3 within this response which provides the salary detail for the Director of Adults and Children (Sue Ross).*

**3)The response to question (3) of my e-mail of 18th July 2017 refers to the former Executive Director Adults and children. My question clearly related to the DIRECTOR Adults and children**

*As above.*

**4)The previous response regarding whether the salary level for the post of DIRECTOR Adults and Children referred to the post of EXECUTIVE DIRECTOR Adults and Children. I requested that you confirm that the post of DIRECTOR Adults and Children was referred to SWLGEA**

*There was no requirement to refer to South West Councils. However, market data research was undertaken.*

**4)The response given to question (1) of my e-mail 28th July 2017 confirms that the additional payment was in respect of an "honorarium" paid for the time the Chief Executive was "absent due to a long term sickness". I cannot find any reference to this "long term sickness" only to the Mayor welcoming Tony Williams back after "a short illness"**

*The Chief Executive was absent from the 14<sup>th</sup> November 2016 to the 7<sup>th</sup> March 2017.*

**5) In question (2) of my e-mail of 28th July 2017 I requested to be advised as to who approved the "honorarium" and when. Stating that this was "by Senior Officer in line with the Councils scheme of delegation", is not an answer. The scheme of delegation would place the authority with the Deputy Chief Executive, Jane Portman which is who received the payment. The question remains who approved it and when.**

*The honorarium for the (then) Deputy Chief Executive to act up into the role of Chief Executive was authorised by the Executive Director Corporate Services and the Chief Finance Officer/Section 151 Officer. These individuals are Julian Osgathorpe and Adam Richens respectively*

**6) For some unknown reason when all the questions in my e-mail of 28th July 2017 refer to the additional "honorarium" the answer given to question (3) refers to the additional payment for having the duties of Deputy Chief Executive.**

*We apologise for the confusion. To clarify, when the (then) Chief Executive was on long term sickness the Deputy received an honorarium for acting up in his absence.*

*The honorarium for the (then) Deputy Chief Executive to act up into the role of Chief Executive was authorised by the Executive Director Corporate Services and the Chief Finance Officer/Section 151 Officer. These individuals are Julian Osgathorpe and Adam Richens respectively*

**RFI 10453 – received 11<sup>th</sup> August 2017**

**1) Between which dates was the Chief Executive on sick leave?**

*The Chief Executive was absent from the 14th November 2016 to the 7th March 2017.*

**2) Since the difference between the salaries of the Chief Executive and the Deputy Chief Executive is £10K and the Honorarium paid to the Deputy Chief Executive is £6k this would represent, on a pro-rata basis, a period of over 7 months. It is known that the Chief Executive was not on sick leave for one period for that length of time which would indicate that the Deputy was rewarded at a higher rate than that of Chief Executive. Is that the case, and who proposed, calculated and approved the Honorarium and when?**

*The Council confirms that the Deputy Chief Executive was not paid any more than the Chief Executive for covering the post during this period. Information regarding the approval of the honorarium has previously been provided; the payment was approved in line with internal procedures and following guidance from South West Councils.*

**3) When was the Chief Executive suspended?**

*For the purposes of the FOIA – the response to this question is 'No recorded information held' as the Chief Executive was not suspended.*

**4) What were the grounds for his suspension, who brought the allegation/s, and who confirmed the suspension. When did these actions occur?**

*For the purposes of the FOIA – the response to this question is 'No recorded information held' as the Chief Executive was not suspended.*

**5) When was the suspension terminated and by whom. Were the allegation/s withdrawn or did a review consider the suspension to be unwarranted?**

*For the purposes of the FOIA – the response to this question is 'No recorded information held' as the Chief Executive was not suspended.*

**6) When was it decided that the post of Chief Executive was "redundant on the grounds of efficiency" and by whom?**

*At an extraordinary meeting of the members of Bournemouth Council on 31st March 2017 at 5pm. The recommendations regarding the Senior Leadership Team Restructure was presented by the Executive Director, Corporate Services, Julian Osgathorpe and was moved by Councillor Anne Filer, Cabinet Portfolio Holder for Corporate Efficiency and Seconded by Councillor Beverley Dunlop. The recommendations were adopted by Members. Details of the minutes of this meeting can be found;*

*<https://www.bournemouth.gov.uk/councildemocratic/CouncilMeetings/CommitteeMeetings/Council/2017/03/31/council31-mar-2017.aspx>*

**7) The Executive Director Adults and Children was on a salary of £111K including additional remuneration for acting as Deputy Chief Executive. The Financial Analysis attached to the report to Council on 31st March 2017 showed "provision for a current Executive Director who will now be designated in the Head of Paid Service roll", £22K plus on costs. Since this clearly refers to Jane Portman, Executive Director Adults and Children the new salary for the Head of Paid Service would have been £133K, i.e. £6K higher than the outgoing Chief Executive. You informed me in your latest e-mail that the Managing Director/Head of Paid Service**

is receiving a salary of £127K, the same as the outgoing Chief Executive. This being the case, and since you also state that the new Deputy Managing Director is not receiving any additional payment for undertaking that position where has this money been allocated?

*The Council can confirm that the salary paid to the Managing Director (Head of Paid Service) is £127,893.*

*There is no post of Deputy Managing Director. The Executive Director Corporate Services and/or the Executive Director Environment & Economy deputise for the Managing Director as/when it is required or appropriate. There is no additional remuneration provided to these posts or individuals in this regard.*

**8) Can you confirm the date from which the above salary was paid?**

*1<sup>st</sup> July 2017. From the 14<sup>th</sup> November 2016 to 30<sup>th</sup> June 2017 an honorarium was paid. From 1<sup>st</sup> July 2017 the new salary for the Managing Director post was paid.*

**RFI 10453 – additional questions received 22<sup>nd</sup> September 2017**

**1) I find it hard to believe that the time period the Chief Executive was not available to fulfil his duties is not in the public domain, but will have to pursue that elsewhere.**

*Information provided – the Chief Executive was absent from the 14<sup>th</sup> November 2016 to the 7<sup>th</sup> March 2017.*

**2) As I stated it is known, from Council records, that the Chief Executive was not absent for a period equal to that of the remuneration paid in the honorarium. Since you state that the Deputy Chief Executive was not paid at a higher rate than the Chief Executive these two facts do not correspond. Can you explain how the honorarium was calculated. You state that it was approved "following guidance from SWLGEA" but in the light of a response that I have received from that organisation, which appears to conflict with that statement, could you please confirm when this guidance was given and confirm whether it is possible to view the information provided.**

*South West Councils advised in an email (received on the 13th December 2016) that the Council refer to paragraph 42 of the current version of the JNC Chief Officers' Handbook which relates to honorarium payments (extracted below):*

**HONARARIUM PAYMENTS**

*Paragraph 42: A Council may consider granting an honorarium (of an amount dependent upon the circumstances of each case) to an officer within purview of this Committee who performs duties outside the scope of his/her post over an extended period.*

**3-5) I note that no suspension occurred which is contrary to the statement apparently attributed to the Chief Executive in the Bournemouth Echo. It would appear that somehow he formed, apparently incorrectly, the opinion that he was suspended. Can you please confirm that he was in post for the whole period following his return on 7th March 2017 up until the Council Meeting 31st March 2017 since it is also known that he cancelled appointments at that time.**

*We are unable to comment on information published within the Bournemouth Echo and the source of this. There was no suspension. The Chief Executive was in post during the period following his return from sickness absence from 7<sup>th</sup> March 2017 to 31<sup>st</sup> March 2017. During this period, Jane Portman continued acting up to provide continuity to services to enable a phased return.*

**6) The answer provided is clearly not responding to the question. A report was produced and released into the public domain on 24th March 2017 which was subsequently discussed at Council on 31st March 2017. Clearly someone decided prior to that date that the post of Chief Executive was "redundant", the terms of**



that "redundancy" must have been compiled enabling the report to be prepared, and discussions must have been held with the Chief Executive relaying to him what the Council were offering him as a severance payment for him to agree to the terms. The foregoing must have involved several Members and Officers and the discussions were presumably recorded. What I require is those details to know how this decision came about and who made it, which is clearly in the public interest. The response given purely relates to the eventual Council decision.

*Negotiations or detailed discussions prior to the agreed redundancy would be deemed the personal data of the former Chief Executive. Information of this nature is subject to S40(2) personal information exemption under the FOIA.*

*Section 40(2) is an absolute exemption, so we do not need to apply the public interest test. However, we have considered the public interest and conclude that it has been adequately served through the release of the breakdown of payment. The Council is of the opinion that there is no added value to the release of any negotiations or discussions prior to the final agreed redundancy term.*

**7) The question is quite specific. The report to Council 31st March 2017 indicates that there were additional costs of £22K in relation enhancing the salary of the Executive Director Adults and Children/Deputy Chief Executive to the salary of the Head of Paid Service. The difference between the two salaries is £16K. What was the reason for the addition £6K and where has this been allocated?**

*The Executive Director for Adults & Children's basic salary for 2016/17 was £104,888 – with £34,663 for on-costs, a cost to the Council of £139,551. This is without the additional allowance for assuming the (then) role of Deputy Chief Executive or the honorarium for when the post holder was standing in for the Chief Executive when he was absent due to illness.*

*As Managing Director, the salary is £127,893 with on-costs of £35,962 – a total of £163,855.*

*The difference between Executive Director for Adults and Children's and Managing Director salaries, inclusive of on-costs, is £24,300.*

**8) In the light of your response that the salary was paid from the 1st July 2017 can you confirm, for complete clarity, what the remuneration was for the Head of Paid Service between 1st April 2017 and 30th June 2017 including any honorarium, bonuses etc. It would seem strange that Jane Portman was being paid on a salary equivalent to that of the Chief Executive on the 31st March 2017 but it would appear that you are now informing me that, although she was still undertaking the duties of the former Chief Executive her salary had reverted to that of Executive Director Adults and Children/Deputy Chief Executive, unless she was still receiving some form of enhancement i.e. honorarium, bonus etc. What remuneration did she receive for that period? Are you indicating that the salary paid to the Managing Director commenced 1st July 2017 because this was the date the Council officially changed the title of Jane Portman from Head of Paid Service to Managing Director?**

*From the period 1st April 2017 to 30th June 2017 the remuneration paid to Jane Portman was £30,405 which includes basic salary and honorarium. Jane Portman received an honorarium from 14th November 2016 when she began acting up in the Chief Executive's absence. When she was confirmed into the Managing Director post, which was agreed by Full Council at their meeting on 13<sup>th</sup> June 2017, the salary was made permanent from 1st July 2017.*