

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 29 March 2018

**Public Authority:** Lancashire County Council  
**Address:** PO Box 78  
County Hall  
Preston  
Lancashire  
PR1 8XJ

#### Decision (including any steps ordered)

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1. The complainant has requested the numbers of employees who were receiving ongoing over and/or under payments identified by a review into staff salaries.
2. The Commissioner's decision is that Lancashire County Council ("the Council") has correctly applied section 12(1) of the FOIA (cost of compliance) of the FOIA. The Commissioner has also determined that there is no further action required under section 16(1) (advice and assistance) of the FOIA.
3. The Commissioner does not require the public authority to take any steps.

#### Request and response

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4. On 17 July 2017, the complainant wrote to the Council and requested information in the following terms:

*"I understand that, as part of Lancashire County Council's (LCC) recent transformation activities, a review of staff salary/grades was undertaken in order to confirm their accuracy to LCC management. I also understand that this exercise identified a number of staff who were being paid incorrectly."*

*I would like to know the numbers of staff identified by this exercise who were receiving ongoing over and/or under payments (i.e the payments were not "one off" errors but continued for a period of months/years). I do not want any personal details or the sums of money involved only the number of staff who were identified (by only requesting "numbers" I do not believe this creates any Data Protection Act concerns for LCC as I do not want "personal" data/ data that would enable a person to be identified).*

*If its numbers could be broken down by the year (1<sup>st</sup> April to 31<sup>st</sup> March basis) in which the error first arose and whether the person was being under paid, over paid or had both under and over payments I would like to know that level of detail. If this level of detail is not available/ would be excessively time consuming to produce then just the absolute numbers of staff found to have had ongoing payment errors will suffice".*

5. The Council asked the complainant to clarify his request on 21 July 2017.
6. The complainant provided the Council with further clarification on 26 July 2017. In his correspondence to the Council, the complainant confirmed he had requested the number of staff found to be in receipt of ongoing, incorrect payments by the Council.
7. The complainant's clarified request stated:

*"I understand that, as part of Lancashire County Council's (LCC) recent transformation activities, a review of staff salary/ grades was undertaken in order to confirm their accuracy to LCC management. I also understand that this exercise identified a number of staff who were being paid incorrectly.*

*I would like to know the numbers of staff identified by this exercise who were receiving ongoing and/or under payments".*

8. The Council responded on 3 August 2017. It stated that it did not hold the requested information.
9. Following an internal review the Council wrote to the complainant on 4 September 2017. It revised its position and applied section 12(1) of the FOIA.

## Scope of the case

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10. The complainant first contacted the Commissioner on 7 September 2017 to complain about the way his request for information had been handled.
11. The Commissioner considers that the scope of the case has been to decide whether the Council dealt with the complainant's request correctly in accordance with section 12(1) of the FOIA. This notice sets out the Commissioner's decision.

## Reasons for decision

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### Section 12 - The cost of compliance

12. Section 12 of FOIA states:

*"Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit".*

13. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Regulations") sets the appropriate limit at £450 for the public authority in question. Under the Regulations, a public authority may charge a maximum of £25 per hour for work undertaken to comply with a request. This equates to 18 hours work in accordance with the appropriate limit set out above.
14. A public authority is only required to provide a reasonable estimate or a breakdown of costs and in putting together its estimate it can take the following processes into consideration:
  - determining whether it holds the information;
  - locating the information, or a document which may contain the information;
  - retrieving the information, or a document which may contain the information; and
  - extracting the information from a document containing it.

Is section 12(1) engaged?

*The Council's position*

15. In its submissions to the Commissioner, the Council argues that the complainant requested information on all cases of staff being over or underpaid. The Council currently has approximately 12,000 employees.
16. The Council considers that compliance with the request would require it to manually search, retrieve and locate information for all employees.
17. At the Council, there is no single report that contains the information requested, despite the complainant's belief that such a report was completed and exists.
18. Whilst making enquiries regarding the complainant's request, the Council established that a previous review concerning the Adults Social Care service had found that, there had been 21 members of staff that had received overpayments. There were no underpayments identified.
19. It was determined that there were two causes for the error. Firstly, a number of the overpayments were caused when the organisation's payroll migrated from Delphi to Oracle in May/June 2012 and the bar at the top of a particular grade did not migrate to the new system.
20. Secondly, a number of overpayments were caused when a member of staff changed post number and the bar at the top of the grade wasn't inputted for the new position.
21. Furthermore, the Council also confirmed to the complainant that these incorrect payments commenced between the financial years of 2012/13 and 2016/17.
22. However, according to the Council, it remains evident that compliance with the request would require the manual review of payroll records relating to its 12,000 employees.

*The Commissioner's decision*

23. The Commissioner has considered the Council's submissions to be both plausible and persuasive.
24. In order to compile the statistics required to answer the complainant's request, the Commissioner has decided that it would be necessary for the Council to manually locate, retrieve and extract information for approximately 12,000 members of staff.
25. To undertake this activity would take the Council comfortably in excess of the 18 hours work set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.

26. Therefore, it is of the opinion of the Commissioner that the Council is entitled to rely on section 12(1) of the FOIA to refuse to comply with the complainant's request.

**Section 16- The duty to provide advice and assistance**

27. Section 16(1) of the FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the Section 45 Code of Practice ("the Code") issued by the Secretary of State, it will have complied with section 16(1).
28. The Code advises that, where an authority is not obliged to comply with a request for information because, under section 12(1) and the Regulations made for that section, the cost of complying would exceed the appropriate limit, it should provide the complainant with reasonable advice and assistance.
29. The ICO guidance states that the minimum a public authority should do in order to satisfy section 16(1) is indicate if it is able to provide any information at all within the appropriate limit. If the complainant understands the way in which the estimate has been calculated to exceed the appropriate limit, it should help them decide what to do next.
30. The Council did not specifically address the section 16 requirement in its initial correspondence with the complainant. However, during the Commissioner's investigation, it did agree to share the information it had produced in relation to the Adults Social Care service. The complainant remained dissatisfied however, believing that information covering the breadth of the organisation could and should be provided.
31. In the circumstances of this case, the Commissioner recognises that the information sought by the request is not held in a manner that allows it to be directly retrieved. The Commissioner believes that as the Council do not record the requested information in a searchable form, they would be unable to provide advice on how to refine the request sufficiently enough to bring it within the 18 hour time limit. On this basis the Commissioner finds that there are no steps that the Council would be required to take under section 16(1) of the FOIA.

## **Right of appeal**

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32. 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)

33. 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.
34. 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 .....**

**Alun Johnson**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**