

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 July 2020

Public Authority: Cornwall Council
Address: County Hall
Treyew Road
Truro
TR1 3AY

Decision (including any steps ordered)

1. The complainant requested information from Cornwall Council (“the Council”) about bonuses paid to employees of Cormac Solutions Limited. The Council stated that this information, if held, would be held by the parent company of Cormac Solutions, Corserv Limited, and the Council itself did not hold the information.
2. The Commissioner’s decision is that, on the balance of probabilities, the Council does not hold the requested information.
3. The Commissioner does not require the Council to take any steps.

Background to the request

4. Corserv Limited (“Corserv”), also known as the Corserv Group, is a limited company which comprises a group of organisations delivering a wide range of services to the Council, including in relation to housing and highways. Corserv is wholly-owned by the Council.
5. Cormac Solutions Limited (“Cormac”) is a member of the Corserv group. According to its website, its remit includes highways, property maintenance and social care.
6. On 9 May 2019, the complainant made a request to the Council, relating to Cormac, asking about any bonuses that had been paid to its employees (not specifying any particular time period). The request was

acknowledged by the Council, and given a reference number by its freedom of information team.

7. A response was provided directly by an officer at Cormac, on 21 May 2019. It included the statement: *"five employees have a small part of their part of salary paid as a bonus based on achieving set business objectives"*.
8. The complainant directed further questions directly to Cormac, by email, on 23 May 2019. This included the following:
"... could you advise me how many Cormac employees received bonuses for 2017/18 and what the total bonus pot was please?"
9. On 9 June 2019, he wrote to the Council. He explained that he wished to chase a response to the points he had raised to Cormac on 23 May.
10. On 13 June 2019, an officer at Cormac wrote again to the complainant, responding to some of his questions. It explained that *"five individuals had a small part of their salary paid as a bonus based on achieving set business objectives for 2017/18."*

Request and response

11. On 13 June 2019, the complainant wrote to the Council. He explained that he had not received a response to the question he had asked about *"the total bonus pot"* from Cormac, and asked that he be provided with a response to it, by the Council, under the FOIA.
12. Specifically, he made the following request to the Council:
"What was the size of the [Cormac] bonus pot for 2017/2018?"
13. He also asked some supplementary questions, which do not form part of his complaint to the Commissioner.
14. On 8 August 2019, the Council responded as follows:
"Bonuses for Cormac are a matter for the parent company of Cormac, Corserv Ltd."
15. The complainant requested an internal review from the Council on 9 August 2019. The Council sent him the outcome of its internal review on 28 August 2019. It stated that it had provided him with all the information held by the Council that was relevant to his requests, including the earlier requests, and stated: *"Where we do not hold the*

information which you have requested, we have waymarked you to the relevant information holder who is also subject to the FOI Act 2000”.

Scope of the case

16. The complainant contacted the Commissioner on 20 September 2019 to complain about the way his request for information had been handled.
17. The Commissioner noted that Corserv, being wholly-owned by Cornwall Council, appeared to be a publicly-owned company within the definition at section 6 of the FOIA and, therefore, a public authority within the definition at section 3(1)(b) of the FOIA. As such, it would be obliged to comply with the provisions of that Act.
18. However, regardless of whether Corserv may hold the information, the complainant considered that the Council itself ought to hold the information and asked the Commissioner to make a determination on this point.
19. During the course of the investigation, the Council located some relevant information in an email thread dating from December 2018, which it provided to the complainant. The emails contained information about bonuses paid to two Cormac employees but did not fully answer the question as to the *“size of the bonus pot”*.
20. This decision considers whether the Council holds the information requested by the complainant on 13 June 2019.

Reasons for decision

Section 1 of the FOIA: what information is held?

21. Section 1(1) of the FOIA states that any person making a request for information to a public authority is entitled:
 - (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
 - (b) if that is the case, to have that information communicated to him.
22. The Commissioner would note that it is not automatically the case that information is held by a “parent” public authority in cases where it is held by a company (also being a public authority) that is wholly-owned by that “parent” authority. In this case, therefore, it is not the case that

information would automatically be said to be held by the Council, if it were found to be held by Corserv.

23. The Commissioner's remit, therefore, has been to establish whether the Council holds the information, regardless of whether it may be held by Corserv.
24. In cases where there is a dispute over whether information is held, the Commissioner applies the civil test of the balance of probabilities in making her determination. This test is in line with the approach taken by the Information Rights Tribunal when it has considered whether information is held in cases which it has considered in the past.
25. The Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the public authority to check whether the information is held, and any other reasons offered by the public authority to explain why the information is not held. She will also consider any reason why it is inherently likely or unlikely that information is held.
26. The complainant's position is that, because Cormac is part of Corserv, which is wholly-owned by the Council, he expected the Council to hold the information and, moreover, for it to be made available to the public.
27. The Council's position is that it does not hold the information, either manually or on its electronic servers. Initially, it established its position by carrying out a number of face-to-face enquiries with relevant officers, including the Business Analyst (who monitors financial arrangements between the Council and Corserv) the Head of Commercial, and the Democratic and Governance Officer.
28. These officers advised that the Council did not hold the information. In particular, the Head of Commercial confirmed that the Council would not expect to be provided with the requested information and that it would be held by Corserv.
29. In relation to this, the Council has explained to the Commissioner that Corserv, while being a wholly-owned subsidiary of the Council, has complete autonomy over the pay and bonuses of its employees.
30. It explained: "*Payroll and bonus decisions are made by Corserv. The relationship between [Corserv and] the Council is governed through a shareholder board. I can confirm that through this shareholder board, the Council is not made privy to the details which [the complainant] has requested*".
31. The Council advised the Commissioner that there is no business purpose for which it is required to hold the information.

32. The Council also carried out further searches during the Commissioner's investigation.
33. Using the search terms "*CORMAC Bonus Payment*", "*CORMAC Bonus 2017/18*" and "*CORMAC Bonus*", the Council located an email thread dating from December 2018 which contained information about bonuses paid to two staff, but did not provide a full answer to the request. The emails have now been provided to the complainant, as explained previously. The Council did not locate any other relevant information.

The Commissioner's decision

34. Having reviewed the evidence and submissions from both parties, the Commissioner considers that the Council may not have carried out adequate searches at the time it dealt with the request. Some confusion was caused by the handling of the complainant's earlier requests, which the Council evidently passed to Cormac for response. This did not, at that stage, enable a clear understanding as to which organisation would hold information about the remuneration of Cormac employees.
35. However, the Commissioner notes that the Council carried out more thorough searches during the course of the investigation. She is satisfied that these searches would have been likely to locate the information. Indeed, some relevant information was uncovered; however, it did not amount to the information which was being sought: the size of the bonus pot at Cormac, for the relevant year.
36. She also notes the Council's explanations as to why it does not hold the information, and its description of the relationship between itself and Corserv, the parent company for Cormac, particularly with regard to information about remuneration.
37. Whilst the Council's handling of the request was inadequate in that it failed to specify clearly in its responses to the complainant whether or not it held the information requested, she is satisfied that, on the balance of probabilities, the Council does not hold the requested information.

Other matters

38. The Commissioner notes that, since Corserv may be a public authority within the definition at section 3(1)(b) of the FOIA as previously explained, it may be appropriate for the complainant to request the information directly from Corserv. Should he be dissatisfied with the handling of that request, he would be entitled to bring a complaint to her about Corserv under section 50 of the FOIA.

39. As noted above at paragraph 37, the Council failed to specify clearly in its correspondence with the complainant whether it held the information requested. It was also necessary for the Commissioner to push the Council for a clear response on this point during her investigation. When responding to future information requests, including any relating to Corserv, the Council must ensure that it is clear both internally and in its responses to the requester on whether it holds the requested information.

Right of appeal

40. 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@justice.gov.uk

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

41. 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.
42. 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

Ben Tomes
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