

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

### **Decision notice**

**Date:** 15 December 2022

**Public Authority:** Tees Valley Combined Authority  
**Address:** Teesside Airport Business Suite  
Teesside International Airport  
Darlington DL2 1NJ

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

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1. The complainant requested from Tees Valley Combined Authority ("TVCA") information in respect to job creation since May 2017, as a result of the specific intervention of the Tees Valley Mayor's office. TVCA provided some information.
2. The Commissioner's decision is that TVCA failed to provide an adequate response to the request. Consequently, the Commissioner finds that TVCA breached section 1(1) and section 10(1) of FOIA.
3. The Commissioner requires TVCA to take the following steps to ensure compliance with the legislation.
  - TVCA must issue a fresh response to the request which is adequate for the purposes of FOIA.
4. TVCA must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of FOIA and may be dealt with as a contempt of court.

#### **Request and response**

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5. On 1 March 2022, the complainant made the following request for information:

“• I would like you to state how many jobs you can demonstrably prove have been created through the specific intervention of the Mayor’s office since Ben Houchen assumed office in May 2017.

• I would like the Mayor’s office to state how many of these jobs for that period are full-time and part time.

• I would like the Mayor’s office to state how many of these jobs for that period were and are fixed term or temporary contracts, as well as how many were and are permanent.

• I would like the Mayor’s office to state how many of these jobs for that period have involved the use of ‘zero hours’ contracts (where workers were employed with no set hours), and jobs created via employment agencies, and external bodies, and where workers were contracted on a self-employed basis.

• I would like the Mayor’s office to state how many of these jobs for that period pay a rate that is at or above the ‘Real Living Wage’ supported by trade unions and the Living Wage Foundation of £9.90 per hour.

• I would like the Mayor’s office to state how many trade union recognition agreements are in place at workplaces, where the Mayor’s Office demonstrably intervened to create jobs in the period since Ben Houchen assumed office in May 2017.

6. On 6 May 2022, TVCA refused the request citing section 12 of FOIA, but did provide some information on a discretionary basis.

7. On 10 May 2022, the complainant made a refined request as follows:

“• I would like you to state how many jobs you can demonstrably prove have been created through the specific intervention of the Mayor’s office since Ben Houchen assumed office in May 2017.

• I would like the Mayor’s office to state how many of these jobs for that period are full-time and part time.

• I would like the Mayor’s office to state how many of these jobs for that period were and are fixed term or temporary contracts, as well as how many were and are permanent.

• I would like the Mayor’s office to state how many of these jobs for that period pay a rate that is at or above the ‘Real Living Wage’ supported by trade unions and the Living Wage Foundation of £9.90 per hour.”

8. On 12 May 2022 TVCA replied as follows:

**You asked:-** I would like you to state how many jobs you can demonstrably prove have been created through the specific intervention of the Mayor's office since Ben Houchen assumed office in May 2017.

**Our response:-** We don't hold any further information beyond the TVCA figures that we provided previously.

**You asked:-** I would like the Mayor's office to state how many of these jobs for that period are full-time and part time.

**Our response:-** The jobs numbers provided are FTE numbers.

**You asked:-** I would like the Mayor's office to state how many of these jobs for that period were and are fixed term or temporary contracts, as well as how many were and are permanent.

**Our response:-** TVCA does not hold this information.

**You asked:-** I would like the Mayor's office to state how many of these jobs for that period pay a rate that is at or above the 'Real Living Wage' supported by trade unions and the Living Wage Foundation of £9.90 per hour.

**Our response:-** TVCA does not hold this information."

9. On 20 July 2022 TVCA provided an internal review in which it stated that it was satisfied that it had answered the request appropriately as it had searched its systems correctly to reach the conclusion that it either did not hold the information requested or that it did not hold any further information beyond that previously provided to the complainant.

### **Scope of the case**

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10. The complainant contacted the Commissioner on 14 July 2022 to complain that his request for an internal review had not been addressed by TVCA.
11. The Commissioner wrote to TVCA on 16 July 2022 regarding the lack of an internal review response.
12. On 20 July 2022, TVCA provided an internal review response. However, the complainant was not satisfied and approached the Commissioner again. The case was accepted for investigation at that point.
13. The complainant is concerned that TVCA has not addressed their specific questions and is of the understanding that TVCA is under an obligation to supply information of the nature requested to the UK Government's

Gate Review every five years and so should have the information to hand.

14. The Commissioner considers the scope of his investigation is to determine if TVCA has correctly provided the information requested under section 1 of FOIA.

## **Reasons for decision**

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### **Section 1 FOIA - determining whether information is held**

15. Section 1(1) of FOIA states:

"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."

If a public authority does not hold recorded information that falls within the scope of the request, the Commissioner cannot require the authority to take any further action.

16. In cases where there is a dispute as to the information held by a public authority, the Commissioner will use the civil standard of proof, i.e., the balance of probabilities. In order to determine such complaints, the Commissioner must decide whether, on the balance of probabilities, a public authority holds any information which falls within the scope of the request.
17. Accordingly, the investigation will consider the scope, quality, thoroughness, and results of the searches, and/or other explanations offered by TVCA as to why the information is not held.
18. The Commissioner will also consider any arguments put forward by the complainant as to why the information is likely to be held (as opposed to why it ought to be held).
19. Finally, the Commissioner will consider whether there are any further steps the public authority could be required to take if the complaint were upheld.

### **TVCA's position**

20. In response to the Commissioner's investigation letter, TVCA provided further details of the way in which its projects and programmes are managed.

The TVCA Investment Plan sets out a list of projects and programmes that TVCA has made or is planning to make or has funded. Each of these projects and programmes will have associated with them a number of outputs and outcomes specific to the project. For each of the projects/interventions which are delivered, TVCA has in place a Funding Agreement/Grant Offer Letter with the relevant delivery organisation. This sets out the contracted outputs and outcomes, which could include, if relevant to the project, job creation. The relevant delivery organisation is required by TVCA to report, on a regular basis on its progress against all contracted outputs and outcomes, as detailed in their Funding Agreement/Grant Offer Letter.

21. TVCA explained that in response to the information request in this case, the information access officers checked the list of projects to identify those which had been contracted to deliver job creation outputs. Once these had been identified, the officers considered the terms of the relevant Funding Agreements/Grant Offer Letters and the latest monitoring claims for each individual project where job creation was listed as a required output, to identify what had been delivered. Where job creation is a required output from a funded project, a delivery organisation is required to confirm to TVCA how that organisation is performing against the agreed output. This information is confirmed by the delivery organisation in their claim forms, which are received and processed by TVCA's claims and monitoring team.
22. In its original response to the requestor, TVCA confirmed that it had created 6,463 jobs over the period April 2017-December 2021, and that in addition, TVCA has safeguarded an additional 1,928 jobs, which would otherwise have been lost. Of those 6,463 jobs created, 1,596 have been created by projects delivered directly by TVCA. TVCA advised the Commissioner that the remainder have been delivered by external organisations of which 10 audits have been carried out by TVCA to date which have confirmed the creation of 573 jobs and 43 safeguarded jobs.
23. TVCA explained to the Commissioner that it was clear to TVCA where the relevant job creation numbers were held, and therefore where TVCA needed to look in order to respond to the request. TVCA was confident that it had searched in all the places where the information was likely to be held and that the information would not be held anywhere else.
24. TVCA also explained in detail to the Commissioner the searches it had carried out to try to find any information held in relation to the request.

### **The Commissioner's view**

25. The Commissioner has carefully considered the points made by the complainant and TVCA.
26. The Commissioner appreciates that the complainant believes that TVCA should hold the specific information requested. However, the role of the Commissioner is to decide whether, on the balance of probabilities, a public authority actually holds any information which falls within the scope of the request, not whether it ought to hold the information.
27. The Commissioner considers that in its initial response and internal review, TVCA did not adequately explain to the complainant how its projects were managed and how job creation was monitored.
28. TVCA has now explained to the Commissioner how it manages and monitors its job creation output and that its searches have not revealed all the information requested by the complainant.
29. However, the Commissioner is not satisfied that TVCA has carried out as comprehensive searches as it could in the circumstances. TVCA advised the Commissioner that searches of individual computers and email accounts had not been carried out because all relevant information would be held in the project folders which have been searched. Whilst TVCA is confident that no information is missing from the project folders, the Commissioner is of the view that in order to mitigate the risk of individuals having failed to upload information to the project folders, that individual accounts should be checked by TVCA.
30. The Commissioner's decision is that TVCA has failed to provide the complainant with an adequate response to the request and, therefore, TVCA has breached section 1(1) (general right of access to information) and section 10(1) (time for compliance) of FOIA.
31. The Commissioner requires TVCA to provide the complainant with a fresh response to their request which relies on thorough and comprehensive searches. TVCA should either provide the complainant with the requested information, if held, or an adequate refusal notice.

## **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: 0203 936 8963  
Fax: 0870 739 5836  
Email: [grc@justice.gov.uk](mailto:grc@justice.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 .....**

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