

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 December 2022

Public Authority: Carmarthenshire County Council
Address: County Hall
Carmarthen
SA31 1JP

Decision

1. The complainant asked a series of questions about the Councils pension funds and administration. Carmarthenshire County Council (the "Council") answered each question in turn and at internal review clarified some responses and made a further disclosure.
2. The Commissioner's decision is that, on a balance of probabilities, the Council does not hold any further information in scope of the request.
3. No steps are required as a result of this decision notice.

Request and response

4. The complainant made the following information request to the Council on 11 July 2022:

"After the brief context below, please read and respond to the nine questions which follow.

Chris Moore is the s.151 officer for Carmarthenshire County Council. He is the Director of Corporate Services and has responsibility for the Dyfed Pension Fund.

A s.151 officer has the role of treasurer for the council. He "owes a duty and stands in a fiduciary responsibility to the burgesses as a body" (Farwell, J. in Attorney-General v. de Winton [1906] 2 CH 106)

In light of the above, please answer the following questions:

- 1) Please provide information, for the financial year 2021-22, as to which tobacco companies were invested in by the Dyfed Pension Fund and the magnitude of each investment (including but not necessarily limited to market value and total investment in GBP);
- 2) Please provide information, for the financial year 2021-22, as to all investments pertaining to defence and /or warfare (including but not limited to arms/munitions, delivery systems). If there are no such investments, whether directly or indirectly (such as through an investment broker where it is known or reasonably foreseeable that the broker has made such investments on behalf of the Dyfed Pension Fund), state categorically that no such investments have been made by or for the Dyfed Pension Fund/Carmarthenshire County Council.
- 3) Does Chris Moore have any fiduciary responsibility to the men and women of Carmarthenshire, regardless of whether they be "freemen" or "inhabitants" (as per the definition of a "burgess" in Blacks Law Dictionary 4th edition)? If not, state categorically that Chris Moore does not have any fiduciary responsibility to the men and women of Carmarthenshire.
- 4) Does Chris Moore have the authorisation and/or consent of the men and women of Carmarthenshire to invest funds in tobacco companies? If so, please provide proof of this.
- 5) Is Chris Moore exempt from the judgment of Lord Wrenbury in O'Rourke v Darbishire (1920) wherein he stated that "[a] beneficiary has a right of access to the documents which he desires to inspect upon what has been called in the judgments in this case a proprietary right. The beneficiary is entitled to see all trust documents, because they are trust documents, and because he is a beneficiary. They are, in this sense, his own."
- 6) Is it the case that all investments in the Dyfed Pension Fund have only ever been drawn from accounts, assets, holdings and/or revenue streams (hereafter "assets") separate to and independent of the accounts, assets, holdings and/or revenue streams ("assets") collected, held and used by Carmarthenshire County Council, i.e. such that assets

used for investment in the Dyfed Pension Fund have never been the same assets into which Council Tax has been paid and/or which has been used for expenditure on "Central Services", "Cultural, Environmental and Planning Services", "Education & Children's Services", "Highways, Roads and Transport Services", "Housing Services" and/or "Adult Social Services"?

Be aware that if an initial payment – or any subsequent payment – was made from an account held by Carmarthenshire County Council into an account held by Dyfed Pension Fund, or if any funds have ever been transferred directly from Carmarthenshire County Council to an investment broker or into an investment fund/account, your answer to this question must be "No" unless you can reason otherwise.

7) Please provide all evidence you hold which demonstrates that increased investment and/or expenditure in the tobacco industry does not result in increased harm to men and women from direct or indirect effects of tobacco and/or smoking, and please provide all evidence of meeting minutes, memoranda, consultations etc. wherein the subject of this harm was discussed.

8) Please provide all evidence you hold which demonstrates that the men and women of Carmarthenshire are not adversely effected, whether directly or indirectly, by tobacco and/or smoking, and please provide all evidence of meeting minutes, memoranda, consultations etc. wherein the subject of these adverse effects were discussed.

9) Please provide the following for each of the three financial years, 2019-20; 2020-21; 2021-22:

(a) a breakdown of costs incurred by Carmarthenshire County Council in obtaining liability orders during that financial year (this should make clear the items, labour, processes etc. needed to produce liability orders and the costs incurred in respect of each of these component aspects of obtaining liability orders); and

(b) the total sum of liability orders made in favour of Carmarthenshire County Council during that financial year."

5. The Council responded on 8 August 2022 answering each point in turn and advising of the information it does not hold.
6. The complainant expressed their dissatisfaction with the Councils response and requested an internal review and requested clarification of some points.

7. After further clarification, the Councils internal review response was sent on 12 September 2022 further clarifying some points and advising the scope of their obligations regarding the request and FOIA.

Reasons for decision

8. This reasoning covers whether the Council is correct when it says that it has disclosed all information in scope of the request.
9. The Commissioner understands that the request in this case is asking for specific information about a pension scheme and funds as well as some other general questions about Council policies. The Commissioners role is to determine whether the Council disclosed all the information it held in scope under FOIA.
10. The Council provided further information in scope of the request at internal review and explained to point 6 that pension investments are held outside the Councils accounts and funds transferred either by employer contributions or indirectly by employee contributions, they also provided a spreadsheet which shows how fees were calculated in response to clarification of point 9.
11. The complainant asked for further clarification: "please describe and explain the process by which funds are accepted by CCC in its own name in respect of the Dyfed Pension Fund" and "Further, there are aspects of the spreadsheet which require some explanation and/or clarification, which I mention below. I have created a separate Freedom of Information Request."

In its response the Council said: "The Freedom of Information Act does not require public bodies to provide explanations regarding recorded information that has been disclosed, just to provide that recorded information. As regards the further recorded information that you now seek, I am afraid you will need to submit a further information request to our FOI team in the usual way."

12. There is no requirement for the Council to create information in order to answer the requesters questions, their obligation is to supply information they held at the time of the request.
13. From the information provided to him, the Commissioner is satisfied that, on the balance of probabilities, the Council has supplied all the relevant information it held in scope of the request.

Right of appeal

14. 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

15. 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.
16. 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

Phillip Angell
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