

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

### **Decision notice**

**Date:** 15 November 2023

**Public Authority:** St Albans City and District Council  
**Address:** Civic Centre  
St Peter's Street  
St Albans  
Hertfordshire  
AL1 3JE

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

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1. The complainant requested information relating to the payments to Presiding Officers and Poll Clerks.
2. St Albans City and District Council (the Council) provided some information but denied holding the remainder for the purposes of FOIA.
3. The Commissioner's decision is that the information sought by the complainant is not held by the Council for the purposes of FOIA and that the Council is entitled to rely on section 3(2)(b) (public authorities) of FOIA.
4. The Commissioner requires no steps to be taken as a result of this decision.

#### **Request and response**

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5. On 20 June 2023, the complainant wrote to the Council and requested information in the following terms:  
  
"Request to explain the payments to Presiding Officers & Poll Clerks and how they are determined for the years 2021,2022 & 2023

- 1) Could you kindly explain how the payments are determined, what benchmarks are used and how these are obtained? (ie nearby local authorities.)
  - 2) If the figures are set centrally by government which department it is?
  - 3) Who determines the hours of work at a Polling Station and what are they?
  - 4) Are Polling Station staff paid for all the time they are on duty at the station including clearing up after the day? If not, why not?
  - 5) Are SADC [St Albans City and District Council] full time or part time staff given paid leave to work in these rolls on election day or do they have to take unpaid leave? Or do they lose a days leave entitlement?
  - 6) If they are given paid leave are they paid as Presiding Officers and Poll Clerks in addition to their normal daily pay?
  - 7) What were the daily or hourly rates for a Presiding Officer & Poll Clerk in 2021,2022 & 2023?
  - 8) Given the increased responsibilities (re voter ID) how long would it take (would you give a considered estimate) to successfully complete the mandatory online training for a Poll Clerk?
  - 9) Are Poll Clerk & Presiding Officers paid a training fee in addition to their daily rate? If so, how much?
  - 10) Do you know of nearby councils that pay such a fee, if so, how much?
  - 11) Can & do SADC staff complete the mandatory online training during their normal working hours?
  - 12) If no, what is there in place to stop them doing so?
  - 13) How many full time & part time staff from SADC have been engaged as Presiding Officers and Poll Clerks?
  - 14) Can SADC staff claim mileage or expenses if engaged in these rolls on election day and what they are?"
6. The Council responded on 12 July 2023. It told the complainant that the information is held by Electoral Registration and there is no obligation to provide it.

7. Following an internal review, the Council wrote to the complainant on 14 July 2023. It clarified its response, citing section 3(2) of FOIA and saying that any information that may be held by the Council is not held for the purposes of FOIA.

## **Scope of the case**

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8. The complainant contacted the Commissioner to complain about the way their request for information had been handled. They told the Commissioner that, in their view, staff working as Poll Clerks are employed by Councils and not The Returning Officer.
9. During the course of the Commissioner's investigation, the Council revisited its handling of the request, disclosing information within the scope of part (5) of the request to the complainant.
10. The following analysis considers whether the Council holds information of the description specified in parts 1-4 and 6-14 of the request for the purposes of FOIA (section 3(2) of FOIA).

## **Reasons for decision**

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### **Section 1 general right of access to information held by public authorities**

11. Section 1 of FOIA states:

“(1) 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.”

### **Section 3(2) – information held by a public authority**

12. Section 3(2) sets out the circumstances in which information is considered to be 'held' for the purposes of FOIA:

“For the purposes of this Act, information is held by a public authority if—

(a) it is held by the authority, otherwise than on behalf of another person, or

(b) it is held by another person on behalf of the authority.”

13. The Commissioner interprets the phrase “otherwise than on behalf of another person” to mean that a public authority holds information for the purposes of the FOIA if it is held to any extent for its own purposes.
14. The Commissioner’s guidance<sup>1</sup> ‘Information you hold for the purposes of FOIA’ makes it clear that whether information is held by a public authority, or is held on behalf of a public authority, depends on the facts of the case.

### **The Council’s position**

15. The Council told the complainant that their request relates to Electoral Registration and that the individual appointed as the Electoral Registration Officer carries out their duties in their own personal capacity and not on behalf of the local authority.

16. It subsequently explained:

“... information is only held for the purposes of the Act if we hold it for our own purposes. The Returning Officer holds these details for their purposes, and it is therefore not a council function and we do not hold the requested information for our purposes. The information requested relates to the powers and the duties of the Returning Officer and is consequently not held by the Council for the purposes of the Act.

Although we may hold some of the information requested, it is held solely by the Returning Officer for the purposes relating to her powers and duties, and it is not data subject to [the] Act”.

17. In its submission to the Commissioner, the Council described the multipart request for information as questions relating to how the Returning Officer operates the Elections. It confirmed that it considers

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<sup>1</sup> <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/information-you-hold-for-the-purposes-of-foia/>

that the information within the scope of the request relates to Elections and is held by the Returning Officer and not by the Council.

18. It told the Commissioner that information held about the appointments and payments of the officers and clerks at the Election is held by the Returning Officer.
19. Referring the complainant to the list of public bodies and local authorities that are subject to FOIA, the Council told the complainant that FOIA does not list any person appointed under the Registration of the People Act 1983.
20. In its submission to the Commissioner, the Council explained what it had told the complainant, namely that the Returning Officer is responsible for the Elections process and carries out that work under their role as Returning Officer, under section 35 of The Representation of the People Act 1983.
21. It explained that the role operates without oversight from the Council, and those appointed to work at the Elections are given those roles by the Returning Officer, not by the Council.
22. It told the Commissioner that the Council does not have a part in the functions carried out by the Returning Officer.
23. In response to the Commissioner's questions about who employs Poll Clerks, and how they are paid, the Council said:

"All staff working at the Elections, as Presiding Officers or Poll Clerks, are specifically employed for that purpose. The payroll is operated entirely separately and held by the Elections Team on behalf of the Returning Officer. Each year a specific payroll is built for Elections and terminates at the end of the Election. All staff working at the Elections complete a form each year to gain employment as a Presiding Officer or a Poll Clerk, and they receive a P45 terminating that employment after the Elections. The payroll information is held by the Returning Officer and is entirely separate from any payroll held by the Council".

24. It also confirmed that these arrangements are exactly the same regardless of whether an individual also works for the Council.

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

25. The Commissioner has referred to his published guidance 'Information you hold for the purposes of FOIA' which addresses the scenario of information held by electoral registration officers in the discharge of their statutory duties:

“Electoral registration officers are appointed by local authorities to compile and maintain the electoral register. However, they exercise functions which are separate from those of the appointing authority. They are also not public authorities in their own right. If you are a local authority and are holding information produced by the electoral registration officer, you are holding that information solely on their behalf, not for your own purposes”.

26. The Commissioner understands that an Electoral Registration Officer has a statutory duty to compile and maintain the electoral roll. Returning Officers ensure that an election is administered effectively. The Returning Officer is personally responsible for the conduct of the local government election.
27. The Commissioner acknowledges that the Council's position is that the requested information is not held by the Council and to the extent that it is held, it is held by and for the Returning Officer.
28. From the evidence he has seen, the Commissioner is satisfied that the requested information relates solely to the powers and duties of the Returning Officer/ Electoral Registration Officer. As it is not a Council function, the Council has no reason to hold the requested information for its own purposes.
29. It follows that he is satisfied that the Council does not hold the requested information within the scope of parts 1-4 and 6-14 of the request for the purposes of FOIA and that it was entitled to rely on section 3(2) to refuse the request.

## Right of appeal

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30. 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)

31. 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.
32. 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**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**