

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 November 2024

Public Authority: Liverpool City Council
Address: Cunard Building
Water Street
Liverpool
L3 1AH

Decision (including any steps ordered)

1. The complainant requested information relating to a settlement agreement made between the former CEO and Liverpool City Council ("the council"). The council provided a redacted copy of the agreement but said that it does not hold any other information falling within the scope of the request.
2. The Commissioner's decision is that the council does not hold any further information for the purposes of section 1 of FOIA.
3. The Commissioner does not require the council to take any further steps.

Request and response

4. On 5 March 2024, the complainant wrote to council and requested information in the following terms:

"Can you please disclose to me under the FOI Act 2014 [*sic*] the following please.

1. What mutual agreement was made with Tony Reeves the then CEO of Liverpool City Council between him and LCC allowing him to leave with a financial package worth £175,000
2. Was there a NDA between Mr Reeves and LCC
3. Please provide me with a copy of what external legal advice that was given to LCC around Mr Reeves termination/agreement.

I provide a extract from an article from the Liverpool Echo for assistance which claims there was agreements made and external legal advice provided see below:

'A Liverpool City Council spokesperson said: 'In June 2022, the Commissioners came to a mutual agreement with Tony Reeves that he would step down as Chief Executive of Liverpool City Council. As part of the agreement, and following external legal advice, Mr Reeves received a payment. The Council has recently published the details of this as part of the Annual Statement of Accounts, as is appropriate.'"

5. The council responded on 9 April 2024. It refused the request on the basis that section 40(2) of FOI applied, (personal data of third parties).
6. Following an internal review, the council wrote to the complainant on 23 May 2024. It maintained its position that the information was exempt under section 40(2) of FOIA. However, it also said that the information requested in part 3 of the request is not held by it.

Scope of the case

7. The complainant contacted the Commissioner on 2 May 2024 to complain about the way their request for information had been handled. Initially this was prior to the internal review response being issued. Following the receipt of the internal review, the complainant again contacted the Commissioner to consider the council's response.
8. During the course of the Commissioner's investigation, on 11 October 2024, the council revisited the request and disclosed a redacted copy of the settlement agreement between the council and its former CEO. It

also confirmed that no non-disclosure agreement is held by it. It thereby responded to parts 1 and 2 of the request. It reiterated, however, that it does not hold a copy of the legal advice requested in part 3 of the request.

9. The complainant argues that the council will hold a copy of the legal advice in question.
10. The Commissioner therefore considers that the scope of his investigation is to decide, for the purposes of section 1 of FOIA, whether the council holds information falling within the scope of part 3 of the complainant's request, (i.e., a copy of the legal advice).

Reasons for decision

Section 1(1) – is further information held by the council

11. Section 1(1) of FOIA requires that a public authority must inform a requestor, in writing, whether it holds information falling within the scope of the request. If it does hold relevant information, it also requires that it communicates the information to the requestor, subject to any exclusions or exemptions applying.
12. In scenarios where there is some dispute between the amount of information held which a public authority says it holds, and the amount of information that a complainant believes is held, the Commissioner, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
13. In other words, in order to determine such complaints, the Commissioner must decide whether, on the balance of probabilities, a public authority holds any - or additional - information which falls within the scope of the request (or was held at the time of the request). For clarity, the Commissioner is not expected to prove categorically whether the information/further information is held.
14. In such cases, the Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the authority to search for relevant information, and will take into account any other reasons offered by the public authority to explain why the information is not held. Finally, he will consider any reason why it is inherently likely or unlikely that information is not held.

Background to the request

15. The request revolves around a settlement agreement between the council and its former CEO. The Liverpool Echo reported that a sum of £175,000 was provided to the CEO when he left his role in July 2022.¹

The complainant's position

16. The complainant argues that the public have a right to know why a significant amount of public money was paid to the former CEO when it was stated that he had resigned from his post at the council.
17. He also considers that the council's suggestion, that he should remake part 3 of his request to the DLUHC, (now called the Ministry of Housing, Communities and Local Government ("the MHCLG")), is not helpful as the MHCLG would respond by stating that it does not hold the information.
18. The complainant further argues that the council will hold the information falling within the scope of part 3 of his request. He argues that the council employed the former CEO, not the MHCLG, and, therefore, information on why public money was paid to the CEO upon his resignation will be held by it and should be disclosed.

The council's position

19. The council argues that it does not hold a copy of the legal advice. It said that on 10 June 2021, the Secretary of State appointed Commissioners for the council following the publication of a Best Value Inspection report. The Commissioner's took over some of the decision-making powers of the council.
20. It said that in a letter dated 24 March 2021, the Secretary of State for Housing, Communities and Local Government proposed a number of interventions to the Chief Executive of Liverpool City Council, including all non-executive functions relating to the appointment and dismissal of persons designated as statutory officers, and the designation of those persons as statutory officers.
21. The definitions provided included that 'statutory officer' included within its definition, the head of paid service designated under section 4(1) of the Local Government and Housing Act 1989.

¹ <https://www.liverpoolecho.co.uk/news/liverpool-news/ex-liverpool-council-chiefs-bumper-27966944>

22. It clarified that the functions associated with this included:
- a) designating a person as a statutory officer and removing a person from a statutory office, and
 - b) the functions under section 112 of the Local Government Act 1972 of
 - a. appointing and determining the terms and conditions of employment of an officer of the Authority, insofar as those functions are exercised for the purpose of appointing a person as an officer of the Authority principally in order for that person to be designated as a statutory officer; and
 - b. dismissing any person who has been designated as a statutory officer from his or her position as an officer of the Authority.
23. The council said that the Commissioners team² was put into place on 10 June 2021, and was supported by a chief of staff and a small administrative team. This included access to a protected area of the council's case management system which the council confirmed it does not have access to.
24. The council said that it had asked the Commissioner's about the legal advice. The Commissioners confirmed the legal advice had been sought by them, however they had also advised the council that:
- "...the role and activities of Commissioners are not defined as a public authority for purposes of the Freedom of Information Act 2000, therefore, Commissioners are not directly subject to the requirements of the 2000 Act. Instead, Commissioners are independent appointees rather than a public body, their appointment being at the direction of the Secretary of State and the Department for Levelling Up, Housing and Communities (DLUHC). This request cannot therefore not be processed by Commissioners under the 2000 Act."
25. The council therefore argues that it is the Commissioner's, not the council, which holds a copy of the requested legal advice, and that this was why it had recommended to the complainant that he remake part 3 of his request to the DLUHC.

² <https://liverpool.gov.uk/council/improvement-and-assurance/commissioners-archive-intervention-expired/about-the-commissioners/>

The Commissioner's conclusions

26. The Commissioner has considered the arguments and evidence of both parties.
27. The complainant believes that the council holds the information. He notes that the use of public money to settle the issue of the former CEO's employment is a use of public money, and that this should be transparent and open to taxpayers and the people of Liverpool.
28. However, the council has confirmed that at the time, oversight of many of the council functions was under the remit of the Commissioners, not the council. It said that it was the Commissioners who sought the legal advice, and who hold a copy of it.
29. The Commissioners have confirmed to the council that they sought the advice, but as they are not directly subject to FOIA, they will not disclose the requested information.
30. The council has additionally confirmed that, for the reasons outlined above, it does not have access to the advice, and therefore it has concluded that it does not hold it. Under the circumstances of this case the Commissioner accepts the council's arguments in this respect.
31. There is no contradictory evidence available to the Commissioner that indicates the council's position is wrong.
32. On this basis the Commissioner has concluded that, on the balance of probabilities, the council does not hold the requested information for the purposes of section 1 of FOIA.

Right of appeal

33. 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

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

34. 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.
35. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Ian Walley
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