

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 20 July 2011

Public Authority: Westminster City Council
Address: Westminster City Hall
64 Victoria Street
London
SW1E 6QP

Summary

The complainant requested information about remuneration arrangements part-funded by Westminster City Council for a role associated with car parking. The public authority confirmed that it held the requested recorded information, but believed that it was exempt under section 21(1) (information accessible by other means) of the Freedom of Information Act 2000 (the "Act"). During the course of the Commissioner's investigation, the public authority discovered further information, some of which it disclosed. The Commissioner has concluded, in light of the additional information found by the public authority, that section 21 was inappropriately applied in this case. He has also found that the public authority breached section 10(1) in failing to disclose all the information falling within the scope of the request to the complainant. As this has now been disclosed, he requires no remedial steps to be taken.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the 'Act'). This Notice sets out his decision.

Background

2. The complainant's request has a connection to an earlier request made to Westminster City Council by another applicant in June 2009. Part of Westminster City Council's response to the earlier request included confirmation that the relevant councillor had approved the remuneration

arrangements for the employee performing the role associated with car parking (which was part-funded by the Council and partly privately funded). This response appeared to conflict with that provided to the complainant in this case, since he was advised that the councillor had not been involved in agreeing any remuneration package relating to this post.

3. There also seemed to be some uncertainty around the interpretation of the request in this case (as described in the *Request* section below). In its internal review response Westminster City Council raised another possible interpretation of the phrase "*the continuation or otherwise of [name redacted] remunerative arrangements*". It advised the complainant that it could have been read as "*the continuation as referred to in the specified announcement of 2009*", which it addressed at the internal review stage, or as "*any continuation subsequent to that referred to in the specified announcement in 2009*", which was Westminster City Council's initial reading of the request. Westminster City Council maintained its application of the exemption in section 21 in relation to both interpretations.
4. The complainant confirmed in his complaint letter to the Commissioner that his intention had been for the request to have been interpreted as being for all meetings at which "*the continuation or otherwise of [name redacted] remunerative arrangements*" were discussed irrespective of whether or not the councillor was present or was otherwise involved, as opposed to meetings the councillor had attended to discuss this issue.
5. All references in this Notice to "name redacted" refer to the individual who was employed in the parking role, initially part-funded by a combination of the Council and the Freight Transport Association.

The Request

6. On 1 October 2010 the complainant requested the following information, via the *WhatDoTheyKnow.com* website, from Westminster City Council (the 'Council'):

"In May 2009, the Freight Transport Association (FTA) announced it was to jointly fund Westminster City Council's parking guru [name redacted] for the following 12 months. The councillor who approved this remuneration arrangement was [a named councillor]."

Please provide me with copies of the following documents:

- 1) *The minutes of all meetings at which the continuation or otherwise of [name redacted] remunerative arrangements were discussed.*
 - 2) *Any and all correspondence to and from [the named councillor] concerning the continuation of [name redacted] remunerative arrangements.*
 - 3) *Any and all correspondence to and from the person or persons that took over [the named councillor's] duties concerning the continuation or otherwise of [name redacted] remunerative arrangements.*
 - 4) *The final proposal or proposals for the continuation or otherwise of [name redacted] above-mentioned remunerative arrangement."*
7. The Council provided a response to the complainant on 20 October 2010 in which it advised that the councillor was not involved in agreeing any remuneration package for this individual and therefore no minutes or correspondence were available. It confirmed there had been no correspondence between the current relevant councillor and the Freight Transport Association (the 'FTA') regarding the funding of the post and explained that this post was no longer funded by the FTA or by any other organisation.
8. The complainant requested an internal review of the public authority's decision on 24 October 2010, highlighting that the Council's response confirming that the (original) relevant councillor was not involved in agreeing any remuneration package relating to this post appeared to conflict with that provided to another freedom of information request made via *WhatDoTheyKnow.com*. This request had been made by another applicant in June 2009, and part of the Council's response included confirmation that it had advised that the councillor had approved the remuneration arrangements for the employee performing the role, whereby she was paid partly by the Council and partly by the Commercial Delivery Group.
9. On 26 November 2010 the public authority wrote to the complainant with the result of its internal review. It advised that there were two possible interpretations of part of his request, namely that "*continuation or otherwise of [name redacted] remunerative arrangements*" could be interpreted as any continuation subsequent to that referred to in the specified announcement in 2009 (which the Council had responded to initially); or as continuation as referred to in the specified announcement in 2009. It advised that having considered the second of these possible interpretations, it considered that the

information held was reasonably accessible by other means via the *WhatDoTheyKnow.com* website and issued a refusal notice citing section 21.

The Investigation

Scope of the case

10. On 1 December 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:

"...

- *Release the documents I have requested.*
- *Clarify whether [the relevant councillor] did or did not approve [name redacted] salary arrangements from May 2009 to May 2010 and beyond.*
- *Provide details of ALL discussions that took place (regardless of when they took place and in who's [sic] presence) concerning [name redacted] salary."*

11. The Commissioner's investigation focussed on the Council's application to this request of the exemption in section 21 of the Act. He investigated what recorded information, if any, was held relating to the Council's earlier confirmation that the councillor had approved the remuneration arrangements for the postholder, and whether or not he had been involved in approving such arrangements. The Commissioner also sought to determine what, if any, information was held in respect of the postholder's salary arrangements after May 2010. Given the complainant's clarification of the intended interpretation of his request the Commissioner sought to ascertain whether the Council still considered section 21 to be applicable.

12. The complainant also raised another point he wished the Commissioner to consider but this is not addressed in this Notice because it is not a requirement of Part 1 of the Act.

Chronology

13. On 16 March 2011 the Commissioner wrote to the Council seeking additional clarification, which included whether the Council still considered section 21 to be applicable in this case.

14. Having advised the complainant that same day, the Commissioner received a letter from him on 24 March 2011 which provided some background to associated requests from various applicants on the topic of parking and funding.
15. The Council provided further clarification on 7 April 2011 and forwarded some additional documentation, some of which it had found during a further search of its systems.
16. On 27 April 2011 the Commissioner asked the Council for its views on releasing the additional documentation to the complainant, and for an explanation of why it considered parts of it to be exempt from disclosure.
17. The Council responded on 17 May 2011 with the requested clarification.
18. On 18 May 2011 the Commissioner wrote to the complainant with the outcome of his investigation and invited him to withdraw his complaint.
19. The complainant declined to withdraw his complaint, confirming this in writing on 29 May 2011.

Analysis

Exemptions

20. The sections of the Act referred to below are set out in full in the legal annex to this notice.

Section 21(1)

21. Section 21(1) states that information is exempt from disclosure if it is reasonably accessible to the applicant by other means. The purpose behind the exemption is that if there is an alternative route by which a requester can obtain information there is no need for the Act to provide the means of access. This lessens the burden to public authorities of responding to requests under the Act.
22. In order for the exemption in section 21(1) to be appropriately applied to this category of information the Commissioner needs to be satisfied that all the relevant recorded information that is held by the public authority is available to the applicant (i.e. the list is not incomplete).
23. In relation to the first part of the complainant's request (for "*The minutes of all meetings at which the continuation or otherwise of [name redacted] remunerative arrangements were discussed*"), the Council has explained that there had been "*a miscommunication of the*

circumstances surrounding [name redacted] role". It confirmed that the councillor did not directly approve the postholder's salary details from May 2009 to May 2010, explaining that the post for which that individual had originally been interviewed at the Council had been created in a restructure of Parking Services. This restructure was detailed in a Cabinet Member Report dated April 2008 and it was this which was approved by the councillor.

24. The Council's view is that, as the role was within an internal department and the salary paid by the Council, the councillor indirectly approved the remunerative arrangements by way of approving the aforementioned report. The Council has clarified that the councillor was not involved in any negotiations or decisions with regard to the part-funding of the role by the FTA. The Commissioner's view is that the Council's explanation about the apparent miscommunication of the circumstances surrounding the postholder's role is a reasonable account as to why there has been a discrepancy in the information provided in response to the complainant's request compared to that provided by the Council in response to an earlier request made by another applicant.
25. The second part of the request was for *"Any and all correspondence to and from [the relevant councillor] concerning the continuation of [name redacted] remunerative arrangements"*. During the investigation the Council confirmed that it does not hold any recorded information about the councillor directly approving any remunerative arrangements for the postholder, explaining that his involvement with regard to the funding of this role was limited to the approval of Council restructure reports.
26. It provided the Commissioner with a copy of the relevant Cabinet Member Report, together with a link to the document via its website, both of which were forwarded to the complainant on 18 May 2011. For clarity, a copy of this report was sought by the Commissioner to assist his understanding of the councillor's role in the restructure; however, the Commissioner is satisfied that the Council was under no obligation to release this to the complainant in response to his specific request.
27. The Council provided the Commissioner with copies of three emails during the investigation which it considered at the internal review stage were out of scope of the complainant's request. Having reviewed the emails, the Commissioner concluded that some of the content fell within the scope because one email from the postholder to the councillor on 10 December 2009 referenced the joint funding of the parking role and suggested a meeting to review progress thus far. The councillor's acknowledgement email of 19 December 2009 agreed to such a meeting. Whilst the Commissioner concedes that the emails do not provide any further detail as to the postholder's specific remunerative arrangements, the joint funding aspect is referenced and as such he

deems that redacted versions should have been provided to the complainant in response to his request. Although the Council maintained that the emails related more to achievements by the postholder in the role as opposed to the continuation of funding, it nevertheless agreed to provide the complainant with the relevant extracts.

28. The third element of the complainant's request was for *"Any and all correspondence to and from the person or persons that took over [the councillor's] duties concerning the continuation or otherwise of [name redacted] remunerative arrangements"*. The Council confirmed that it did not hold any information with regard to discussions about the continuation or otherwise of the salary arrangement, explaining that the arrangement had been terminated as a result of the postholder going on long-term leave in March 2010. It advised that prior to March 2010 the postholder's salary had been paid for by the Council, which then invoiced the FTA to claim their part-funding contribution. Once the postholder had gone on long-term leave the Council had ceased invoicing the FTA.
29. In seeking to respond to the Commissioner in relation to the fourth part of the request (for *"The final proposal or proposals for the continuation or otherwise of [name redacted] above-mentioned remunerative arrangement"*), the Council undertook a further search of its systems and located an email and key task list sent to the postholder's manager by the FTA. It provided the Commissioner with copies of this information, and a version redacted to exclude personal data was provided to the complainant during the Commissioner's investigation.
30. The Council maintained that, with the exception of the email and key task list referenced above, it considered that the requested information was either not held or was reasonably accessible via other responses published on the *WhatDoTheyKnow.com* website.

Procedural Requirements

Sections 1 and 10

31. Section 10(1) provides that public authorities should comply with the requirements of section 1 within twenty working days.
32. The complainant made his request on 1 October 2010. At this time, extracts of emails referencing joint funding, together with an email and key task list about the proposed part-funding of the role, were not in the public domain and so were not available to the complainant otherwise than under section 1 of the Act.
33. Notwithstanding the Council's view that some of the email exchange did not fall within the scope of this request, the Council recognised that it

did in fact hold information which was not reasonably accessible and provided the complainant with copies of all the documentation the Commissioner deemed to be in scope on 18 May 2011.

34. The failure to disclose this information in twenty working days constitutes a breach of section 10(1); failure to rectify this breach by the time of the internal review is a breach of section 1(1)(b).

The Decision

35. The Commissioner's decision is that the public authority did not deal with the request for information fully in that it inappropriately withheld some of the information by reference to section 21(1) of the Act.
36. The public authority also breached sections 1(1)(b) and 10(1) of the Act because it failed to provide the complainant with all the requested information in the scope of the request by the time of its internal review.

Steps Required

37. Since the public authority has now provided the complainant with the information which was not reasonably accessible, the Commissioner requires no steps to be taken.

Right of Appeal

38. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

39. 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.
40. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 20th day of July 2011

Signed

**Jon Manners
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

General Right of Access

Section 1(1) provides 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."

Section 1(2) provides that -

"Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14."

Section 1(3) provides that –

"Where a public authority –

- (a) reasonably requires further information in order to identify and locate the information requested, and
- (b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information."

Section 1(4) provides that –

"The information –

- (c) in respect of which the applicant is to be informed under subsection (1)(a), or
- (d) which is to be communicated under subsection (1)(b),

is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request."

Section 1(5) provides that –

“A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b).”

Section 1(6) provides that –

“In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as “the duty to confirm or deny”.

Time for Compliance

Section 10(1) provides that –

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

Section 10(2) provides that –

“Where the authority has given a fees notice to the applicant and the fee paid is in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.”

Section 10(3) provides that –

“If, and to the extent that –

(e) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or

(f) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.”

Section 10(4) provides that –

“The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later

than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with the regulations.”

Section 10(5) provides that –

“Regulations under subsection (4) may –

- (g) prescribe different days in relation to different cases, and
- (h) confer a discretion on the Commissioner.”

Section 10(6) provides that –

“In this section –

“the date of receipt” means –

- (i) the day on which the public authority receives the request for information, or
- (j) if later, the day on which it receives the information referred to in section 1(3);

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.”

Information Accessible by other Means

Section 21(1) provides that –

“Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.”

Section 21(2) provides that –

“For the purposes of subsection (1)-

- (k) information may be reasonably accessible to the applicant even though it is accessible only on payment, and
- (l) information is to be taken to be reasonably accessible to the applicant if it is information which the public authority or any other person is obliged by or under any enactment to communicate (otherwise than by making the information available for inspection) to members of the public on request, whether free of charge or on payment.”

Section 21(3) provides that –

“For the purposes of subsection (1), information which is held by a public authority and does not fall within subsection (2)(b) is not to be regarded as reasonably accessible to the applicant merely because the information is available from the public authority itself on request, unless the information is made available in accordance with the authority's publication scheme and any payment required is specified in, or determined in accordance with, the scheme.”