

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 October 2013

Public Authority: Wakefield Metropolitan District Council

Address: Town Hall
Wood Street
Wakefield
West Yorkshire
WF1 2HQ

Decision (including any steps ordered)

1. The complainant requested information relating to payments made to various council employees in order to leave the council's employment since 1974. This followed a number of previous requests of a substantially similar nature which had previously been refused or partly refused by the council. Although complaints were then made to the Commissioner these were subsequently withdrawn by the complainant during the course of the Commissioner investigations. The request was refused by the council on the grounds that section 14(2) applied; that the request was a repeated request.
2. The Commissioner considers that the council's application of section 14(2) was correct. The Commissioner does not require any steps to be taken.

Request and response

3. On 5 April 2013 the complainant wrote to Wakefield Council and requested information in the following terms:

"Severence Payments

Will you please supply me with the total number of senior employees (Chief Executives, Chief Officers, Heads of Departments, and any other Third Tier Officers) who have left Wakefield MDC with a severence payment similar to that paid to Mr John Foster, Chief Executive, when

*he left the employ of the authority?
Will you please supply me with the total number of those employees who signed a confidentiality agreement?
Will you please supply me with the total value of such payments dating back to 1974?
Will you please supply me with the number of records for which you may claim not to have all the information?
Will you please explain why you do not have complete records?"*

4. The council responded on 3 May 2013. It stated that the request was a repeated request and therefore it applied Section 14(2).
5. The council did not carry out an internal review of this decision given that it had previously responded to the requests of the complainant for substantially similar information. However the Commissioner offered the opportunity to the council to carry out a review of its decision when the case was first allocated for investigation. The council did so and upheld its decision to apply section 14(2).

Scope of the case

6. The complainant contacted the Commissioner on 13 June 2013 to complain about the way his request for information had been handled. He considers that the council is under a duty to consider and disclose the information he has asked for
7. The Commissioner considers that the complaint is whether the exemption in section 14(2) applies to the request or whether the council is under a duty to respond to the request.

Reasons for decision

8. Section 14(2) of the Act states that

"Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with a previous request and the making of the current request."
9. The council reminded the Commissioner of previous complaints to him about requests of a similar nature which had previously been withdrawn by the complainant. None of these previous complaints had reached the point where a decision notice had been issued, however on each

previous occasion the Commissioner had contacted the council and asked for its explanation for the refusal notices it had issued.

10. The council noted that Since 2011 the complainant had submitted three separate requests in respect of senior officers' leaving settlements as follows:

Request Ref 3534 on 16.09.2011 – partial release of information, other information refused under section 40(2) (personal data), ICO Case Reference Number FS50396771

Request Ref 4139 on 27.04.12 – refused under section 12(1) (appropriate limit), ICO Case Reference Number FS50452892

Request Ref 5062 on 5.04.13 – refused section 14(2), ICO Case Reference Number FS50503532

11. It argued that all of these requests had been fully considered previously, and the information requested in all three requests were substantially similar in that:

1. All three requests asked for remuneration of senior officers, specifically senior officers who left the Council
2. All three requests asked for details of their remuneration packages, including any severance payments made to them
3. All 3 asked for details of confidentiality / compromise agreements
4. All requests asked for information to be dated back for significant period of time.

12. The Council dealt with the complainant's previous requests and partially provided the information in respect of request 3534 in 2011. In 2012 the Council refused the complainant's request stating that responding would exceed the appropriate limit. It added that a substantial amount of time and effort had been put into providing the complainant and the ICO with justification as to why it believed section 12(1) applied in that case. The Commissioner has noted the council's responses in that case and agrees that it provided substantial and persuasive arguments, however the complainant withdrew the request before any final decision was issued.

13. The council further argued that one of the criteria for a request to be repeated is whether a reasonable interval has elapsed between compliance with the previous request and the making of the new request. It argued that the information is historical and would not

therefore change over the interval of time between the requests being received.

14. The Council considered therefore that all conditions in section 14(2) have been met and that the exemption therefore applied.

Was the request substantially similar or identical to a previous requests

15. The first question is whether the requests were identical or substantially similar in nature. The Commissioner accepts the council's arguments that they did all relate to the same type of information, relating to the same individuals. The complainant was clearly seeking to obtain details of severance payments made to 'senior officers' dating back to 1974.
16. Whilst there had been differences in the wording of the requests, and whilst the complainant had sought to clarify the term 'senior officers' in this request by stating the levels of officers concerned, the fact was that the information he was seeking was effectively the same information as he had asked for previously.
17. The council also argues that the terminology used in this request was still relatively unclear and did not adequately specify what information the complainant was seeking. The Commissioner has made no decision on this however as it forms no part of his current decision which relates only to the application of section 14(2).
18. Having considered the above the Commissioner is satisfied that this request was seeking to obtain substantially the same information.

Did a reasonable interval occur between requests

19. The Commissioner has issued guidance on what is a reasonable interval. This is largely based on how likely the information is to change and the frequency in which the records are updated. The council said that the information requested is historic information which would not change significantly with the passage of time. Where newer information on this issue is obtained the council highlighted that in accordance with financial and audit requirements information in respect of exit packages is now published as part of the Council's Statement of Accounts. Information is available for past two financial years (2012/13 and 2011/12) at <http://www.wakefield.gov.uk/NR/rdonlyres/F9F0E83E-33A5-4955-8409-9BAA3E238F72/0/PreAudit.pdf>
20. The Commissioner agrees with the councils arguments in paragraph 13 above. The information in this case was unlikely to change substantially given that it was historical information which was being requested.

Has the council complied with previous requests

21. The next question which the Commissioner must consider is whether the council had previously complied with previous substantially similar or identical requests. On each of the previous requests the council had failed to provide all of the information requested by the complainant and this had resulted in complaints being made to the Commissioner. The question is whether a refusal or a part refusal to a request can be considered to be the council having 'complied' with a previous request.
22. The Commissioner considers that the term 'previously complied with a request for information' refers to whether an authority has responded to the previous requests by either providing information or by issuing a refusal notice. In this case the council had responded to previous requests albeit that the complainant did not necessarily agree that the responses complied with his rights under the legislation.
23. The Commissioner therefore considers that in this case the council had previously complied with the previous requests, albeit that in reality the council provided limited amounts, or no information in response to those requests.
24. The Commissioner's decision is therefore that the council was correct to apply section 14(2) in this instance.

Other matters

25. The Commissioner notes that in response to the complainant's request at dated 27 April 2012 the council refused the request on the grounds that the cost of responding would exceed the appropriate limit.
26. The request in this instance was for substantially the same information he had requested previously. The complainant did not significantly reduce the amount of work which the council would have needed to respond to the request.
27. In the previous complaint the Commissioner did not make a final determination of the application of section 12(1) because the complainant withdrew his complaint prior to a decision notice being issued. However the Commissioner was in the final stages of making his decision when the complainant withdrew his complaint and he had considered substantial arguments from the council as regards the application of the exemption.
28. The Commissioner has discussed the situation with the complainant and he is aware that the Commissioner was minded to find that the cost of

complying with the previous request was likely to have exceeded the appropriate limit. The complainant should also note that the Commissioner is minded to agree that some of the information he requested is no longer held by the council. Some records have either been deleted in accordance with the council's records management policies or, in some instances, some older records have been damaged or destroyed through age. Some records are also no longer accessible as the software on which they were held has become obsolete. The council would not be able to provide any details of the records which have been destroyed which would otherwise fall within the scope of the complainants request as this in itself would require a search of those records. Clearly that would be impossible for the council to do if the records are no longer held or accessible.

29. The Commissioner therefore advises the complainant that much of the information he is seeking is unlikely to be able to be provided to him where the information relates employees from too far back in time.
30. The issues highlighted by the complainant in his request are nevertheless important and there is strong public interest in as much information as possible being provided to the complainant where that is possible. Recent statutory changes on the reporting of such severance payments have addressed the importance of this issue to taxpayers and the council has complied with this by providing the link to its publication of newer information in this respect as noted above.
31. The Commissioner is aware that the complainant may well make a further request for information in spite of the findings of this decision notice. The Commissioner has therefore advised the complainant of the need to substantially narrow any further requests in order to ensure that responding would fall within the appropriate limit.
32. The Commissioner notes that if the complainant were to make a further request which substantially reduces the information he is requesting to a point wherein section 12(1) would not be applicable then the application of section 14(2) would also clearly not be applicable.
33. Under section 16 of the Act it is incumbent upon the council to help a requestor to formulate his request. The Commissioner therefore urges both parties to discuss the issues surrounding any new requests for information with a view to clarifying and narrowing the requests for information to ensure that they are both understood by both parties and that responding would fall within the appropriate limit. The council can also explain what information it holds and does not hold as a means of limiting the request. This will ensure that at least part of the information requested by the complainant can be provided without further recourse

to the Commissioner and without the further delays which such a complaint and subsequent appeals might bring.

Right of appeal

34. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

35. 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.
36. 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

Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF