

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

### **Decision notice**

**Date:** 10 August 2015

**Public Authority:** London Borough of Redbridge  
**Address:** 128-142 High Road  
Town Hall  
Ilford  
Essex  
IG1 1DD

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

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1. The complainant has requested from London Borough of Redbridge (the "Council") information broadly concerning the costs of 49 employment tribunal claims in progress.
2. The Council provided information to parts 4 and 5 of the request and confirmed it does not hold information falling within the scope of the request to parts 1 - 3.
3. The Commissioner's decision is that the Council does not hold any further information falling within the scope of the request. Therefore, the Commissioner does not require the Council to take any steps.

#### **Request and response**

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4. On 30 November 2014, the complainant wrote to the Council and requested information in the following terms:

*"A recent Employment Tribunal claim provided a Schedule of Costs by Redbridge for £344,000.*

*In your FOIA response of August 2013 to my "ET Claims in Progress" request you responded that the costs of 49 Employment Tribunal claims in progress was £145,000.*

*Questions;*

*1, Why did you omit the costs of the claim from your August 2013 FOIA response?*

*2, Did you at any time consider the cost benefit of pragmatically settling the claim, as opposed to incurring £344,000 losses with no prospect of recovery?*

*3, Have your costs of £344,000 for this single Employment Tribunal claim been advised to your internal audit team, and to your external auditors?*

*4, Have your internal and external auditors raised any concerns regarding this significant loss of £344, 000 of public funds?*

*5, On which page of the councils accounts, and under which heading, are these wasted Employment Tribunal costs identified?"*

5. On 24 December 2014 the Council responded. It stated that it does not hold the information in any recorded form to points 1 to 3 and answered questions 4 and 5 of the request.
6. On 27 December 2014 the complainant requested an internal review.
7. On 29 January 2015 the Council wrote to the complainant and stated that it does not find any reason to review its response. However, the Council confirmed that it does not hold information in any recorded form to questions 1, 2 and 3 of the request. The Council answered questions 4 and 5 and included explanations in its response.

## **Scope of the case**

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8. The complainant contacted the Commissioner on 19 February 2015 to complain about the way his request for information had been handled.
9. It was clarified with the complainant that the Commissioner will only be investigating whether further information is held falling within the scope of the request of 30 November 2014.
10. The complainant had expressed his dissatisfaction with issues that are outside the ICO's remit. The Commissioner has advised the complainant that he cannot address these matters although he can investigate whether there is further information held relating to this FOIA request of 30 November 2014.

## Reasons for decision

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### Section 1(1) information not held

11. Section 1(1)(a) of the FOIA requires a public authority to inform the complainant in writing whether or not recorded information is held that is relevant to the request. Section 1(1)(b) requires that if the requested information is held by the public authority it must be disclosed to the complainant unless a valid refusal notice has been issued.
12. In scenarios where there is a dispute as to whether a public authority holds any recorded information falling within the scope of a request the Commissioner, following the lead of a number of Information Tribunal 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 recorded information falling within the scope of a request (or was held at the time of such a request). Without evidence to suggest that the University holds further information, this argument cannot carry weight.

### The complainant's position

14. The complainant has disputed the Council's argument that it does not hold further information falling within the scope of his request.
15. The complainant is of the view that the Council had provided false responses to his FOI requests and false statements to the ICO in reply to his "*assessments*" concerning the Council's responses. He also believes that information is held by the Council in relation to questions 1, 2 and 3 of his request.
16. During the investigation the complainant stated that he is seeking clarification from the Council about the discrepancy between the figures it had provided for employment tribunal (ET) costs. He also requested recorded information concerning his request that he considers should have been disclosed.
17. The complainant disputed the Council's position that it did not have the requested information in a relevant filing system. He said that he thinks that the Council are "*making excuses*" for not providing answers to his requests about the £344,000 employment tribunal costs.
18. The complainant is of the view that the Council have established a separate entity for the 'Legal Services Department' (LSD) at the Council. He said that the LSD manage all litigation on behalf of the Council with

an agreed contract with Redbridge. The complainant later reiterated his belief that the Council have separated its Legal Services function from the Council and he thinks the Council believes this means that Legal Services are not subject to FOIA requests.

19. The Commissioner notes that the complainant is sceptical in his view on the costs figure and the Commissioner has observed the complainant's explanation.
20. The complainant made clear that although he is outraged by the costs to LSD employees and consultants his interests are in the Council's response to his questions about the £344,000 ET costs.

### **The Council's position**

21. The Council confirmed that there is no further information in an FOIA context or otherwise that it could help the complainant with.
22. Question 1 of the request. The Council said it observed that the costs statement in question was compiled ("*as in the usual practice in ET cases*") at the point in the Council's litigation with the complainant when it fell due.
23. Question 2 of the request. The Council stated it further observed that this is a request not for information held, "*but for a statement of opinion on the merits of the Council settling a claim that from the outset was perceived as, and turned out to be, meritless.*" The Council added that it cannot and does not settle claims that are without merit to avoid the inconvenience of litigating them.
24. Question 3 of the request. The Council argued that it could add nothing to its response in FOIA handling terms. However, it reported that the Council is duty bound to its Council tax payers, "*to seek full costs recovery order in appropriate cases.*"
25. In reaching a decision as to whether the requested information is held, the Commissioner asked the Council to explain what searches were carried out for information falling within the scope of this request and why these searches would have been likely to retrieve any relevant information.
26. The Council explained that searches were made against Legal Services records for figures for final, crystallised, costs in ET cases at the date of the complainant's original FOI request of August 2013. The Council added that it was later that the forming of the total costs in his proceedings derived and that was why no information relating to the costs of the claim was included in the Council's response to the complainant's request.

27. The Council was asked to explain its process in compiling the costs statement in question, it provided the Commissioner with a copy of its schedule of costs. The Council said that this was prepared in accordance with its usual ET practice.
28. The Commissioner asked when the complainant's costs were incorporated after audit and the Council clarified that there are two matters of record: (a) the costs schedule and the ET; (b) the costs judgement in favour of the Council. The Council provided a copy of the ET claim to the Commissioner and said that neither of these records are specific items of formal audit reporting.
29. The Council provided the same response at point 26 to the question of how and when were the initial figures reported.
30. The Commissioner asked the Council if there is a policy regarding settling claims. The Council answered no and that each case is considered between the relevant Service Area and Legal Services on its merits. It explained that settlements of cases which may have some merit are sometimes made on a commercial basis and that the complainants' claims were not in this category as it was without merit.
31. The Council was asked if its legal team discussed any or all of the raised concerns regarding the costs of the ET. It stated that the Legal Services took regular instructions from its relevant clients in respect of the defence of the complainant's various claims. The Council added that the clients were kept informed of the escalating cost of the defence.
32. The Commissioner asked if so, were the discussions recorded in any minutes or were informal discussions held and the Council stated that any records held are subject to legal privilege (section 42 of the FOIA).
33. The Council was asked how the ET costs are identified in its accounts. It explained that generally, formal audit notes of legal cases are restricted to actual or pending litigation cases of a higher value than any individual ET case would reach.

### **The Commissioner's position**

34. The Commissioner considered whether the Council had any reason or motive to conceal the requested information but he has not seen any evidence of this. In the circumstances, the Commissioner does not consider that there is any evidence that would justify refusing to accept the Council's position that it does not hold any further information relevant to this request.

35. The Commissioner has observed the complainant's concern regarding the £344,000 ET costs and that he believes there has been dishonesty within the Council relating to this figure. He notes the complainant's belief that the Council had wasted money on his ET dispute and also notes his question as to why the Council had spent "*so much*".
36. The Commissioner acknowledges that the complainant considers the Council's response to his information request is inaccurate. However, the Commissioner reiterates the point which had previously been made to the complainant. This is that he can only consider whether the Council holds any recorded information that falls within the scope of his request and not look at accuracy.
37. The Commissioner appreciates the complainant's argument that the Council's position stating it did not hold the requested information (of 30 November 2014). However, the Commissioner acknowledges that there can be a difference between what a complainant believes should be held and what is actually held.
38. The Commissioner has accepted the Council's submissions regarding its searches for the information requested and the evidence submitted relating to its position. He is therefore satisfied that on the balance of probabilities, the Council does not hold any further recorded information which is relevant to the request (or was held at the time of the request). Accordingly, the Commissioner does not consider that there was any evidence of a breach of section 1 of the FOIA.

## Right of appeal

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39. 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@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

40. 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.
41. 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** .....

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