

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 November 2022

Public Authority: Epping Forest District Council
Address: Civic Offices
323 High Street
Epping
CM16 4BZ

Decision (including any steps ordered)

1. The complainant has requested information regarding out of hours payments.
2. The Commissioner's decision is that, on the balance of probabilities, Epping Forest District Council ("the Council") has failed to comply with its duty under section 1(1) of FOIA because it has failed to identify all the information it holds within the scope of the request.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
 - Provide the data it holds within the scope of the request relating to the [missing] department.
 - Assure itself that no further relevant information is held outside of the Itrent system and, if it is, either provide it or issue a refusal notice that complies with section 17 of FOIA.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of FOIA and may be dealt with as a contempt of court.

Request and response

5. On 6 September 2021, the complainant wrote to the Council and requested information in the following terms:
 - “1. What departments receive a standby payment/on call in Epping Forest District Council?
 2. Of the identified department receiving standby/on call payment in Epping Forest District Council, please supply how many men and how many women work in each separate department.
 3. Of the identified department receiving standby/on call payment in Epping Forest District Council, please say what allowance each department could claim and the parameters/ rules for making the claims.
 4. If there has been a change to standby/on call allowances in the last two year (sic) in Epping Forest District Council, please state when the changes happened and what the old system was compared to the new system.”
6. The Council responded on 27 September 2021, addressing each point of the request by providing a spreadsheet breaking down which departments submit standby claims and how many men and women are in each department. It also provided a web link for a collective agreement to the complainant and explained changes made in recent years. For example, in 2019 it removed the necessity to be within a 25 mile radius of the Civic Offices whilst on standby/call out duty.
7. On 27 September 2021 the complainant requested an internal review claiming that not all departments were listed, there are more payments than defined in the Collective Agreement¹ and that there were more changes than were listed by the Council.
8. Following an internal review the Council wrote to the complainant on 6 November 2021. The Council stated that it had reviewed the original request and made additional queries, however the Council confirmed that it had already provided all the information that it held.

Scope of the case

¹ A Collective Agreement is an agreement for employees with set terms agreed with trade unions or staff associations. The Collective Agreement allows for negotiations of important terms and conditions of employment.

9. The complainant contacted the Commissioner 12 October 2021 to complain about the way their request for information had been handled.
10. The Commissioner considers the scope of the investigation is to determine whether the Council is likely, on the balance of probabilities, to hold the requested information and has disclosed the relevant information to the complainant.

Reasons for decision

Section 1 – general right of access 1

11. Section 1(1) of FOIA says that an individual who asks for information from a public authority is entitled to
 - a. be informed whether the authority holds the information and
 - b. if the information is held, and is not exempt from disclosure, to have that information communicated to them.
12. Section 1(1) requires that any person making a request for information to a public authority must be informed in writing by the public authority whether it holds information relevant to the request, and if so, to have that information communicated to them. This is subject to any exclusions or exemptions that may apply.
13. Where there is a dispute between the amount of information the public authority states it holds, and the amount of information the complainant believes might be held, the Commissioner, in accordance with a number of First-Tier Tribunal decisions, applies the civil standard of the “balance of probabilities”.
14. In other words, in order to determine such complaints, the ICO 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)

The complainant’s position

15. The complainant advised that the Council provided the 2019 Collective agreement to answer part of their request, however the 2019 Collective agreement specifically excludes standby/on call payments and therefore did not answer this part of the request.
16. The complainant stated that the Council also failed to provide them with the 2004 Collective Agreement as the attachment provided would not

open. Meaning that information within the scope of the request was not provided.

17. The complainant argued that not all changes to the standby/on call allowance in the last two years were disclosed to them, the complainant provided a grievance report to evidence this.
18. The grievance report referenced an incident in July 2019 regarding a part-time member of staff's on call/standby payment. The 2004 collective agreement advised that part-time staff were said to "receive a pro rata entitlement in accordance with their hours".
19. However, the evidence displayed an exchange between an employee and the shared payroll manager. The staff member stated the following "... I can change it but it means that any part-timer who does standby will get a full week rather than a pro-rated amount for their hours." The response provided by the shared payroll manager advised "any member of staff working part time is expected to do the whole week on call and should be paid for a whole week".
20. The complainant advised that this decision did not align with the 2004 collective agreement, which stated part time staff would receive a pro rata entitlement. As the 2019 Collective agreement excluded all standby/on call payments, the complainant had no other evidence to rely upon. For this reason, the complainant believes the Council holds additional information and had failed to disclose changes to the standby/on call allowance.
21. The complainant also argued that a new payment calculation was introduced in August 2019, a higher rate calculation was referenced for September 2019 and January 2020. This again was noted in the grievance report provided by the complainant, but was not disclosed by the Council.
22. Finally the complainant advised; the grievance report detailed how the Council had determined to revise the approach of calculating standby payments, due to concerns raised by employees. The complainant stated that this should have been disclosed during their request for information, but was not.

The Council's position

23. The Council advised that appropriate searches were conducted by the HR department to find information within the scope of the request. The Council informed the Commissioner that the HR department is the only service with the information regarding standby and on call arrangements.

24. They stated that the HR department also manages payroll meaning standby/on call payments and therefore would also hold the records related to the request.
25. The Council informed the Commissioner that searches were conducted using the 'Itrent' computer system. The Itrent system holds all information regarding salary, expenses and other payments which are made. The HR department searched the system for all individuals employed by the Council who had made standby/on call claims between 1 April 2019 to the 31 March 2021 to capture the most relevant information for the request.
26. The Council confirmed that all departments submitting claims for Standby and Call-out payments were captured in the data they provided. They continued stating no other departments would be identified as the provision of a standby and call out service is only required by a limited number of departments and is not operated on an 'ad hoc' basis.
27. The Council explained that information within the scope of the request would not be found on any other computer system or within paper files because all salary expenses, standby and on call payments for all the Council staff are paid through the Itrent computer system. They also advised that employees required to be on 'Standby/Call out' have an express clause in their contracts, which states they are required to submit claims via the Itrent, HR and Payroll system.
28. The Council stated that they provided the 2004 and 2019 Collective Agreements when answering the parameter and rules surrounding making claims.
29. In response to the 2019 agreement excluding the standby/on call payments, the Council advised that "there have been no further discussions with either Unison or GMB unions regarding the standby and call out and therefore there is nothing further to add – there have been no update to the 2019 Collective Agreement."

The Commissioner's Position

30. The Commissioner has considered the Council's position in conjunction with the request.

31. The Commissioner recognises that the Council believes it has conducted all searches relevant to the request and has provided all the information it holds within the scope of the request.
32. The Commissioner has reviewed correspondence which demonstrates that a link to the 2004 Collective Agreement was sent to the complainant, although the Complainant advised the link did not work. The Complainant did not raise the issue with the Council and therefore the Commissioner will not be taking any further action regarding this part of the complaint.
33. The complainants request states "What departments receive a standby/on call payment", the Council did provide a break down of departments, however the complainant suggested at least one department(to their knowledge), 'the noise' department had been missed.
34. In response to this the Council advised that the missing department does not submit a Standby or call-out claim via Itrent system, it instead receives an all inclusive payment for being on a Standby rota. The Commissioner notes that the request does not ask which department receives payment after submission on the Itrent system, but rather requests which departments receive standby/on call payments.
35. The Commissioner understands that the missing department does receive a payment for standby/on call work and therefore should also have been included in the response regardless of the fact it is paid in an all inclusive form rather than claimed using the Itrent system.
36. The Commissioner also notes that the Council advise all searches were conducted by the HR team using the Itrent System, however the Council later advises that the payroll team also holds information regarding service areas that receive standby payments.
37. The Commissioner therefore considers that the Council does hold more information that original disclosed and has failed to act in accordance to their obligations under Section 1(1) of the FOIA.
38. The Commissioner orders that the Council conduct new searches within the scope of the request, the Council should prepare a fresh response to the complainant, disclosing information relevant to the request.

Right of appeal

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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: 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

Catherine Fletcher
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Wycliffe House
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