

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

### **Decision notice**

**Date:** 11 April 2022

**Public Authority:** Lancashire County Council  
**Address:** PO Box 78  
County Hall  
Fishergate  
Preston  
Lancashire  
PR1 8XJ

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

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1. The complainant has requested information regarding teachers and furlough. Lancashire County Council ("the council") provided some information but stated that other information was not held.
2. The Commissioner's decision is that, on the balance of probabilities, the council has provided all of the information it held in scope of question 1 of the request.
3. However the Commissioner has decided that the council did not provide an adequate response to parts 2 or 3 of the request. The Commissioner's decision therefore is that the council breached sections 1 and 10 of the FOIA in its handling of parts 2 and 3 of the request.
4. The Commissioner requires the council to take the following steps to ensure compliance with the legislation:
  - Issue a fresh response to parts 2 and 3 of the request that complies with section 1 of the FOIA.
5. The council 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 the Act and may be dealt with as a contempt of court.

## Request and response

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6. On 4 November 2020 the complainant requested information from the council in the following terms:

"1) An anonymised spreadsheet similar to that request previously, but this time with all LTA supply teachers registered at any time between March 2020 or thereafter.

- Employee anonymised ID
- Ethnicity
- Sex
- Age bracket
- Targeted by phone and email for social care work? (i.e. phone, email, both)
- Pay scale
- Date furloughed by LCC (\* repeat rows per employee if furloughed on different occasions)
- Date LCC furlough ended \* Date first furloughed by REED (private sector) \* Date private sector REED furlough ended \*
- Assignment start date (\*\* repeat rows for different assignments)
- Supposed assignment end date \*\*
- Supposed assignment end date confirmed in writing at start of assignment? (yes/no)
- Actual assignment end date \*\*
- Assignment extended or end date changed to facilitate furlough? (yes/no)

2) Anonymised copies of claimed variations to contracts for those furloughed by LCC, along with original contracts.

3) Details of supply teachers/agencies hired by LCC during the lockdown period, i.e. starting after 20th March 2020 through to August.

- Anonymised ID
- Name and address of agency if agency paid, or LCC
- Start date
- End date
- Pay rate
- School"

7. The council responded on 11 December 2020 and provided a spreadsheet of information within the scope of request parts 1 and 3 but stated that some information was not held. It provided no response for part 2 of the request.

8. The complainant requested a review on 29 January 2021.
9. The council provided the outcome of an internal review on 4 March 2021 in which it upheld the original response, and stated that no further information was held.
10. On 21 March 2022, during the course of the investigation, the council provided the complainant with some information in scope of part 2. This was a sample of anonymised letters outlining amended terms of employment, some blank letter templates and one anonymised acceptance email.

### **Scope of the case**

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11. The complainant contacted the Commissioner on 10 March 2021 to complain about the way their request for information had been handled, specifically that the council holds further information in scope of the request. In terms of each of the request questions their position is:
  1. The council provided a spreadsheet of information in response to the request. The complainant considers that the information marked on the spreadsheet as either "Unknown" or "N/A" is held by the council. The complainant also considers that the spreadsheet should contain entries for more teachers.
  2. The information is held and has not been provided.
  3. The information is held and has not been provided.
12. The scope of the case is to determine whether, on the balance of probabilities, further information is held by the council which is in scope of part 1 of the request, and whether the council responded to parts 2 and 3 of the request adequately for the purposes of the FOIA.

### **The Lancashire Teaching Agency (LTA)**

13. The Lancashire Teaching Agency ("LTA") is a partnership between Lancashire County Council and Reed Education ("Reed") which delivers a long and short term staff supply service to schools across Lancashire.

### **Reasons for decision**

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#### **Section 1 – General right of access to information**

14. Section 1(1) of the FOIA states 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.
15. 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.
16. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the ICO, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
17. 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).

### **Background information**

18. This investigation is concerned with the information request of 4 November 2020, which was responded to on 11 December 2020 ("Response 11/12/20"). The complainant had requested another set of information previously, which was disclosed on 17 September 2020 ("Response 17/09/20"). Some issues raised by the complainant relate to the differences between the two responses.
19. The differences in the requests can be summarised as follows:
- Response 17/09/20: Requesting details relating to casual supply teachers that were on placement with a school on 18 March 2020 and so falling under the government guidelines for the provision of support for casual contingency workers.
  - Response 11/12/20: Added to the above to include those LTA supply teachers registered before 18 March 2020, but not necessarily on placement with a school; and details of supply teachers/agencies hired by the council during the lockdown period, starting after 20 March 2020 through to August 2020.

20. The key differences between the data response output sheets can be summarised as follows:

- Response 17/9/20: 39 entries, ethnicity specified for all, mixture of data or N/A for some entries.
- Response 11/12/20: 112 entries, two additional column headings Sex (M/F) and Age bracket. Otherwise the data in the cells up to line 39 is the same as in the 17/9/20 response. After line 39 data is shown as Unknown or N/A for column headings as follows:
  - Unknown: Ethnicity, Targeted by phone and email for social care work
  - N/A: Date first furloughed by LCC, Date LCC furlough ended, Assignment start date, Supposed assignment end date, Supposed assignment end date confirmed in writing at start of assignment, Actual assignment end date, Assignment extended or end date changed to facilitate furlough?
  - Mixed entries Unknown and N/A: Date first furloughed by Reed
  - Mixed entries some data and N/A: Date Reed furlough ended, Dates reemployed by LCC after 20 March and end of initial assignment.

### **The complainant's position**

21. Response 11/12/20 has information missing, marked as Unknown or N/A. It is the complainant's position that this information is held by the council because it was provided for the earlier entries in Response 17/9/20.
22. The complainant states that they do not accept that ethnicity, expenditure on supply teachers, and other information is not held.
23. The complainant states that the council should be able to provide the LTA supply teacher information in a clear and consistent format including the same data for all employers.
24. The complainant states that the council did not provide an answer to question 2 during the review. Furthermore, that the updated response provided during the course of the investigation gave a sample of information which does not meet the full scope of their request.
25. The complainant considers that question 3 has not been answered. The council has not provided the information on supply teachers hired

directly by schools while they were closed for lockdown neither has it provided the name of the school in the responses provided.

## **The council's position**

### **26. Question 1:**

- Response 11/12/20 includes the original 39 entries which were provided in Response 17/9/20. These are council supply teachers working through LTA when schools closed in March 2020. The staff shown as furloughed were those whose assignments came to a premature end due to the pandemic, as the schools were no longer willing to pay them. The ones that were not furloughed by the council are those that either continued to be paid by the school despite the school being closed or whose assignments ended for reasons not relating to the pandemic.
- Response 11/12/20 includes a further 69 teachers that were "on the books" but not on a contract with LTA in March 2020, therefore none of them were furloughed by the council. This is why the entries are N/A in columns G-H (start and end date for furlough) and K-N (assignment dates). It is common practice for supply teachers to be registered with a number of different agencies, so these staff could have been working elsewhere, just not for LTA.
- The requested information is held electronically and was obtained by running reports from two applicable databases: Oracle (the County Council's Human Resources system) and 'LTA Live', which is a database used by the LTA and Reed. These are the only two locations where the requested information, if held, would be located.
- There are differences in the data held by each database, therefore the information held by the council depends upon the source database in which it is recorded. Specifically:
  - The LTA Live database (which is fed by Reed's systems), contains the data for the staff who were on a contract.
  - The Oracle system contains the data is for staff who are on the books but not working for LTA at the time.
- The unknown entries relate to the set of information which was downloaded from Oracle, being teachers that were on the books but not on contract. The Oracle database does not record their ethnicity nor whether they were targeted by email for social care work. The LTA does not use the council's main recruitment system

which is where ethnicity data is initially captured by the council and automatically updated to Oracle. Oracle does not currently record ethnicity data as a matter of course for individuals that are manually added to the system, as LTA supply teachers are.

27. The council confirmed that information in scope of the request has not been deleted. However, the reports are run from live databases and therefore information can potentially change over time.
28. The council advised that it had thoroughly searched both databases, it confirmed that the databases are the only locations where information in scope of request 1 would be held.
29. **Question 2:**
  - The council provided anonymised examples of two original LTA contracts. Variations due to furlough did not require new contracts but instead amended terms and conditions. In this respect the council provided the complainant with example "blank template letters and also some examples (redacted) that were sent to one teacher, plus her subsequent acceptance via email."
  - The council stated that furlough correspondence was sent to anyone that was furloughed by the council as indicated in columns G and H within Response 11/12/20.
30. **Question 3:**
  - Response 11/12/20 includes three rows, which answer request question 3, being teachers that were appointed during lockdown, with their dates of work.
  - The schools that the teachers were assigned to has not been disclosed however the council confirmed that the information is held. The council advised that it considers that the information is commercially sensitive, however an exemption was not provided and the complainant was instead simply told that the schools concerned were primary schools.
  - The council only holds details of supply teachers hired by the LTA during the period requested. The council stated that it does not hold details of teachers provided through supply agencies directly to schools, for this information the complainant would need to make the request of individual schools, as the public authority.
31. The council advised that the whole request had been dealt with as a "business as usual" query rather than a formal information request, therefore the Information Governance Team were involved later on in

the process. It advised that many of the questions raised by the complainant were answered in correspondence with the Head of Human Resources.

### **The Commissioner's analysis**

32. In regard to question 1, the Commissioner accepts the council's explanation for the cells in the spreadsheet which are marked as N/A or unknown. In the absence of evidence to the contrary, the Commissioner accepts that the council has undertaken adequate searches for the information and that no information has been deleted which was in scope of the request. The Commissioner therefore finds that, on the balance of probabilities, no further information is held within the scope of 1.
33. In regard to question 2, the Commissioner considers that there remains a significant mismatch between the scope of the information requested by the complainant and the information provided by the council. The request is for the original contract details, and variation of contract for every teacher listed in the response to question 1. The council has provided a sample of information, with some explanation, however the complainant has not accepted this approach.
34. The responses that the Commissioner has received from the council indicate that further information is held in-scope of question 2, however there may be reasons for not disclosing it.
35. The Commissioner has found that "school" was not included in the response to question 3. The council advised the Commissioner that the information had been withheld, but no exemption was cited. The Commissioner found it hard to identify the information in scope of question 3 as it was included in the middle of the responses to question 1.
36. The Commissioner's overall view is that the council has failed to issue a response to questions 2 and 3 of the request that was adequate for the purposes of section 1 of the FOIA. His decision is that the council therefore breached section 1 of the FOIA and, in failing to issue a valid response within 20 working days of receipt of the request, section 10.
37. At paragraph four above the council is now required to issue a fresh response to questions 2 and 3 that complies with section 1 of the FOIA. When preparing this response the council must ensure that it is clear on the scope of those requests and that it carries out the necessary work to identify all the information it holds that falls within that scope. The response is issues should be clear as to what information falling within the scope of those requests it holds. That information should either be



disclosed, or a refusal notice valid for the purposes of section 17 of the FOIA issued.

### **Other matters**

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38. The council advises that the Information Governance Team were not involved in the information request because it was being dealt with by the service team who were trying to be helpful. It stated that it has reminded the service that "whilst dealing with some queries as business as usual is fine, if things escalate or become complicated they should refer the matter to the Information Governance Team."
39. The Commissioner considers it clear that it was necessary for the request in this case to have been referred to the appropriate procedure. The result of not doing so was that the request handling was poor. The council must ensure that all its staff recognise when a request for recorded information has been made and are aware of how such requests should be handled.

## Right of appeal

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40. 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](mailto:grc@justice.gov.uk)

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

41. 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.
42. 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 .....**

**Janet Wyles**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**