

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

### **Decision notice**

**Date:** 7 February 2023

**Public Authority:** London Borough of Hackney  
**Address:** 1 Casterton Street  
Hackney  
E8 1DY

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

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1. The complainant has requested information from London Borough of Hackney (the council) in relation to the advertising of job vacancies in The Guardian from 1 January 2018. The council disclosed some information but withheld the remainder citing section 43 of FOIA.
2. The Commissioner's decision is that the council is entitled to rely on section 43 of FOIA. He therefore does not require any further action to be taken.

#### **Request and response**

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3. On 19 April 2022, the complainant wrote to the council and requested information in the following terms:  
  
"1. Since 01/01/2018 how much have you spent advertising job vacancies in The Guardian?  
  
2. Who decides to advertise the post in The Guardian? for example the hiring manager or HR.  
  
3. Has the council since 01/01/2018 produced any documents into whether this is value for money? If so can you provide those documents.

4. Does the money come out of a central budget or the council service that is hiring for the post?"
4. The council responded on 26 April 2022. It provided a response to all four questions.
  5. The complainant submitted an internal review on 28 April 2022. They stated that the council had not provided any information on how much was spent.
  6. The council carried out an internal review on 19 August 2022. In respect of question one, it advised the complaint that it was difficult to breakdown and isolate the figures. It provided a further response to questions two and four. In relation to question three, it refused to provide this information, as it considered it is commercially sensitive. Although no exemption was cited, the Commissioner understands that the council was applying section 43 of FOIA.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 19 August 2022 to complain about the way their request for information had been handled.
8. The Commissioner has obtained a copy of the recorded information the council holds falling within the scope of this request and obtained additional submissions from the council in relation to its application of section 43 of FOIA.
9. The Commissioner is satisfied that section 43 of FOIA applies and the following section will explain why.

### **Reasons for decision**

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10. Section 43 of FOIA states that information is exempt from disclosure if its disclosure would or would be likely to prejudice the commercial interests of the council and/or a third party. It is subject to the public interest test.
11. With regards to question one the council confirmed that the contract with The Guardian was entered into on an 'unlimited and all inclusive' basis. This meant that adverts were not paid for individually but all council vacancies no matter the number or nature were put through The Guardian newspaper. It advised that the contract was unique and it was put together to meet the council's specific recruitment needs. It was

also based on an arrangement that all council vacancies would be put through The Guardian.

12. The amount spent on advertising from 2018 onwards is therefore equal to the value of the contract. The council considers this information is commercially sensitive, as it was negotiated by and for the council on a preferential arrangement with The Guardian.
13. Although the contract came to an end in 2021, it remains of the opinion that the information is still commercially sensitive. It stated that disclosure would be likely to compromise its ability to negotiate contracts of this nature fairly and competitively through a single tender or any other process in the future.
14. With regards to question three, the council confirmed that an analysis was conducted in advance of agreeing to contracts. However, in October 2020 the council was the victim of a cyber-attack. As a result the bulk of the comparisons were rendered inaccessible. It stated that the officer responsible recalls that a similar comparison with the Independent newspaper was also undertaken in either 2016/17 or 2017/18. Both comparisons showed that the council was receiving 'value for money' and that The Guardian was the leader in the marketplace at that time.
15. It cannot access the bulk of information it would otherwise hold as a result of the cyber-attack. However, it has been able to retrieve one email, which it has shared with the Commissioner for the purposes of his investigation. This relates to the exchange that took place between Human Resources and Procurement Teams and is about looking at what was offered by the Telegraph.
16. The council advised that it considers this information to be subject to section 43 of FOIA too. It stated that it reviews and puts out tenders for advertising contracts on a regular basis. Contracts are for considerable amounts and the council needs to be able to consider each submission fairly and in the face of the information provided to it. To place the value for money information in the public domain would be likely to be detrimental to the council's ability to obtain competitive quotes for services from potential suppliers. It would be likely to undermine the purpose that the value for money process sets out to achieve (competition, fair price and quality) if information of this nature was made public.
17. It advised further that value for money is not purely about achieving the lowest price. It is also about achieving the optimum combination of whole life costs and quality. It said that it is based on a principle that goods and services should be acquired by competition, unless valid and convincing reasons exist to the contrary. To place the comparative

pricing options of potential suppliers who were not successful in gaining the contract, at the disposal of the public, does not lend itself to the competitive process that value for money seeks to achieve for the council. This is because potential suppliers would have an indication of not only of each other costs, but also the exact nature of the services they are seeking to offer.

18. The Commissioner considers the council has explain sufficiently why it considers the withheld information is commercially sensitive. The Commissioner agrees.
19. Disclosure would be likely to prejudice the council's ability to secure competitive deals for the advertising of its job vacancies externally. Staff turnover is constant. The council therefore continues to need to use external suppliers in order to market the vacancies it has. The withheld information is still relevant today and would be useful to competitors if it were disclosed. It would allow them to see what The Guardian offered and what the Telegraph offered and tailor their bids accordingly. It would be likely to prevent the council from negotiating the terms and conditions it required and achieve the best possible deal it can. Those putting offers forward would know what it accepted from The Guardian and what the Telegraph offered and that would influence any bid they were willing to make.
20. For these reasons the Commissioner is satisfied that section 43 of FOIA is engaged.
21. In terms of the public interest, the Commissioner accepts there is a public interest in openness and transparency and in allowing access to information which enables the public to see how a public authority is spending public money and whether value for money is being achieved.
22. However, this should not be at the expense of true and fair competition. The money spent on advertising cannot be disclosed in this case without revealing the value of the contract, due to the way the contract was set up. The council will use external suppliers for advertising job vacancies on a regular basis and will continue to do so. Disclosure would be likely to hinder the council's ability to negotiate freely and fairly with The Guardian and other suppliers and newspapers. They would know what the council was happy to accept and structure bids accordingly, resulting in the council being unable to negotiate the best terms it can for the public purse. This is not in the wider interests of the public. Instead it is in the public interest to protect the council's ability to negotiate competitively and secure the best possible deal it can.
23. For these reasons the Commissioner is satisfied that the public interest rests in maintaining the exemption.

## **Other matters**

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24. The Section 45 Code of Practice advises public authorities to carry out internal reviews within 20 working days of receipt and certainly no later than 40 working days. The additional 20 working days should only be required in the most complex or voluminous of cases.
25. It is noted that the council took over four months to complete the internal review. This is not acceptable. The Commissioner would therefore like to remind the council of the importance of adhering to the code and carrying out internal reviews in a timely manner.

## Right of appeal

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26. 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)

27. 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.
28. 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

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