

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 May 2019

Public Authority: Cardiff Council

Address: foi@cardiff.gov.uk

Decision (including any steps ordered)

1. The complainant requested information about pregnancy related medical suspensions. Cardiff Council ('the Council') stated that it did not hold any recorded information. The Commissioner's decision is that, on the balance of probabilities the Council does not hold any recorded information falling within the scope of the request. The Commissioner does not require any steps to be taken.

Request and response

2. On 13 August 2018, the complainant wrote to the Council and requested information in the following terms:

"I. Between 1.1.2007 and 31.12.17

II. Between 1.1.2017 and the latest available information or the last whole year's data.

1. *How many employees of Cardiff City Council were placed on Medical Suspension because of safety concerns while they were pregnant?*
2. *How many employees of Cardiff City Council were not placed on Medical Suspension while there were safety concerns while there were pregnant?*

3. *How many carers funded via Cardiff City Council Direct Payments were placed on Medical Suspension because of safety concerns while they were pregnant?*
 4. *How many carers funded via Cardiff City Council Direct Payments were not placed on Medical Suspension while there were of safety concerns while they were pregnant?*
 5. *How many employees of Cardiff City Council who were placed on medical suspension because of safety concerns while they were pregnant were paid at full pay for 26 weeks?*
 6. *How many employs of Cardiff City Council who were placed on medical suspension because of safety concerns while they were pregnant were not paid at full pay for 26 weeks?*
 7. *How many carers funded via Cardiff City Council Direct Payments who were placed on medical suspension because of safety concerns while they were pregnant were paid at full pay for 26 weeks?*
 8. *How many carers funded via Cardiff City Council Direct Payments who were placed on medical suspension because of safety concerns while they were pregnant were not paid at full pay for 26 weeks?*
 9. *How many employees of Cardiff City Council resigned or otherwise left their post while on Medical Suspension?*
 10. *How many carers funded via Cardiff City Council Direct Payments resigned or otherwise left their post while on Medical Suspension?*
 11. *How many employees of Cardiff City Council expressed informally and/or formally their concerns or grievance about the way in which their Medical Suspension was managed?*
 12. *How many carers funded via Cardiff City Council Direct Payments expressed informally and/or formally their concerns or grievance about the way in which their Medical Suspension was managed?"*
3. The Council responded on 3 September 2018 and stated that it did not hold the information requested. The Council advised that the Direct Payments service user is the employer and not the Council. As such, it indicated that the information may be held by its support provider, Dewis.
4. On 28 September 2018 the complainant wrote back to the Council and requested an internal review of its handling of the request. He pointed out that *"half the questions were about Cardiff City Council employees and it is not believable that Cardiff City Council would not have such information"*. He also suggested that for those employed via Direct Payments that it was *"not believable that Cardiff City Council would be unaware, and not have records for such decisions"* in light of the fact

that the decision to fund any maternity leave is one that the Council had to make.

5. The Council provided the outcome of its internal review on 28 September 2018 and upheld its decision that it did not hold any of the information requested. It reiterated that *"the Direct Payments service user is the employer and not Cardiff Council, therefore Dewis may record this information as Dewis deliver the payroll service for the Direct Payment employers"*.

Scope of the case

6. The complainant contacted the Commissioner on 28 September 2018 to complain about the way his request for information had been handled.
7. The scope of the Commissioner's investigation into this complaint is to establish whether the Council holds any recorded information relevant to the request of 13 August 2018.

Reasons for decision

Section 1 – general right of access

8. Section 1 of the FOIA states that any person making a request for information is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request and, if that is the case, to have that information communicated to him.
9. In his complaint to the Commissioner the complainant put forward a number of representations to support his belief that the Council holds information falling within the scope of the request, which are summarised below.

Cardiff Council employees – questions 1, 2, 5 and 6, 9 and 11

- The Council will hold a record of staff that have notified it they are pregnant.
- The Council will hold a record of the legally required risk assessments undertaken for pregnant staff, and the outcome of those assessments.

- The Council will have a record of staff pay and all relevant decisions taken about staff pay including decisions to pay at 50% of entitlement.
- Whilst information may not be held in a collated format the Council will hold records relating to staff grievances and resignations.

Carers funded via Cardiff Council Direct Payment - questions 3, 4, 7, 8, 10 and 12

- The Council has significant 'control' over matters relating to pay/employment of these carers. Dewis have acknowledged that it takes instruction on an individual's pay from the Council. The complainant considers the Council is therefore fully aware of all pay matters, monitor pay matters and make decisions about pay matters associated with Direct Payment funded carers.
 - The Council set the budget for each individual service user. In order for an individual to fund any maternity suspension payments the Council would have to authorise additional amounts within the budget.
 - Whilst information may not be held in a collated format the Council will hold records relating to staff grievances and resignations as *"they closely supervise each service user"*.
10. In cases where a dispute arises over the extent of recorded information that is held by a public authority the Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the authority to check that the information is not held and she will consider any other reasons offered by the public authority to explain why the information is not held. She will also consider any reason why it is inherently likely or unlikely that information is not held. For clarity, the Commissioner is not expected to prove categorically whether the information was held; she is only required to make a judgement on whether the information was held on the civil standard of the balance of probabilities.
11. The Council's initial response and internal review suggested that it did not hold any recorded information relevant to the request but it may be held by its support provider, Dewis. During the course of the Commissioner's investigation and following reconsideration of the matter the Council issued a revised response to the complainant. It confirmed that it did not hold any recorded information about its own employees as there had been no medical suspensions in relation to safety concerns during pregnancy. In respect of the parts of the request relating to carers funded by Direct Payments scheme, the Council maintained that it did not hold any information as these carers are not employed by the

Council and are instead employed by directly by service users themselves. The Council suggested that its support provider Dewis may hold relevant information.

12. The request in this case is split into two different categories - individuals employed directly by the Council, and carers employed via the Direct Payments scheme. In light of this the Council confirmed that searches were carried out within its HR department for Council employees and Social Service for Direct Payment funded carers.
13. The Council advised that it has a maternity specialist within its HR department and searches were undertaken via its case management system, which comprises of an excel spreadsheet, and no details of any medical suspensions in relation to safety concerns were found.
14. In terms of carers funded by the Direct Payments scheme, searches were conducted within the Social Services payments records for the period 1 January 2007 to 31 March 2018. No record was identified of additional payments being made to users on the grounds of medical suspension. As payroll for these individuals is processed by the support organisation Dewis, the Council suggested that the complainant may wish to approach Dewis to see if they held any relevant information.
15. The Council identified that in November 2018 (which falls outside the period covered by the request) it funded a medical suspension for one Direct Payments scheme carer. The funding decision was made following legal advice which the Council obtained.

Information relating to Cardiff Council employees

16. Parts 5 and 6 of the request refer to maternity payments to individuals on medical suspension because of pregnancy safety concerns. As no individual has been medically suspended for maternity reasons during the period covered by the request, the Council does not hold any information relevant. However, the Council provided background information about payments made to staff on maternity leave, which is summarised below.
17. The Council advised that it retains a record of all staff who have notified it they are pregnant and risk assessments are undertaken, via the service within which the employee works. All employees, irrespective of their length of service have an entitlement of up to 26 weeks occupational maternity leave (OMP leave). They are also able to access additional maternity leave (AML) for a further 26 weeks which must immediately follow the 26 week period of OMP (ie a total of up to 52 weeks). How much of this leave is paid and the corresponding levels of pay will depend on salary and their length of service with the Council.

18. When an individual is on maternity leave the Council records information on its data systems in respect of the individual's entitlement. This information is forwarded to its payroll team who note the specific timings of when to make appropriate amendments in relation to someone's pay. Information about the maternity pay and specific timings is also provided to the individual concerned.
19. Part 9 of the request refers to individuals who had resigned whilst medically suspended due to pregnancy. Again, as no individual has been medically suspended for pregnancy reasons during the period covered by the request, the Council does not hold any relevant information. However, the Council advised that when an individual resigns, the HR department are informed by the service area of the date of resignation. This then allows payroll to calculate the final salary.
20. Part 11 of the request refers to individuals who expressed formal or informal concerns or grievances about the way their medical suspension was managed. Again, as no individual has been medically suspended for maternity reasons during the period covered by the request, the Council does not hold any relevant information. However, the Council provided the Commissioner with background information on the relevant process and confirmed that such information would be held within its HR department.

Information relating to carers funded via Cardiff City Council Direct Payments

21. As mentioned above, the Council does not hold any information relevant to questions 3, 4, 7, 8, 10 and 12 of the request. However, as mentioned in paragraph 15 of this notice the Council holds information about one case which meets the criteria outlined in the request. However, it falls outside the scope of the request as it did not occur within the period referred to in the request.
22. In terms of background information, the Council provided the Commissioner with a copy of its service specifications in relation to the Direct Payments Support Service. The Council confirmed that the Direct Payments service user is the employer of any carer under this scheme. The service user makes arrangements directly with any carers, including agreeing a timetable for their care. Anyone involved in their care reports directly to the service user.
23. The Council works with an assigned support provider, Dewis Centre for Independent Living, to ensure that Direct Payment recipients are supported through the process of managing their Direct Payment. The service provided by Dewis consists of five key elements (not all of which may be required). These are listed below.

- Core Support – help and advice on managing Direct Payments.
 - Payroll – administrative assistance with managing payroll for employees.
 - Managed Banking – a comprehensive support function to manage Direct Payment funds on behalf of the recipient.
 - Employer setup – assisting recipients with becoming employers of their own Personal Assistants.
 - Recruitment – help and advice with recruiting to cover Care and Support needs.
24. The Council provided the Commissioner with explanatory information in respect of medical suspensions and how they are agreed/implemented for carers employed via the Direct Payments scheme. The Council confirmed that when a service user has been made aware of a member of their staff's pregnancy they do not notify the Council. This is because the service user is the employer of the carer rather the Council.
25. The Council advised that service users should inform Dewis when they are made aware that one of their carers is pregnant. It is the responsibility of the service user (ie the employer), with support from Dewis, to arrange and undertake any necessary risk assessments associated with the pregnancy. Should this result in the need for medical suspension of their carer and a requirement for further funding to arrange a replacement carer, the service user would then need to notify their case manager. The case manager then completes a funding request in order for it to be agreed and signed off by a manager. As the service user is the employer they can determine pay within the available budget. However, any increase in the budget given to the service user must be agreed with the Council.
26. As mentioned earlier, the Council advised the Commissioner that it has funded one medical suspension for a direct service user in November 2018 following legal advice it took which informed the funding decision. The Council explained that the reason why it holds a record of this one case is because this was the first occasion when a service user requested additional funding to cover a medical suspension. The Council explained that it agrees additional funding for direct service users for many different reasons/situations but it does not record the reasons why additional funding is required. This information is held by the support provider, Dewis. This is because the carer in these situations is employed by the service user direct and not by the Council. Dewis will continue to hold this information as they assist/support the service users (as employer). The Council confirmed that it only holds a record of the one case in November 2018 because it sought legal advice about the matter.

27. Based on the representations and evidence provided by the Council the Commissioner is satisfied that it has carried out adequate searches of where relevant information would be held. The Commissioner has not seen any evidence of any inadequate search or grounds for believing there is any motive to withhold information relevant to the request. Based on the searches undertaken and the other explanations provided including an explanation about the relationship between carers funded under the Direct Payments scheme and Dewis, the Commissioner is satisfied that on the balance of probabilities, the Council does not hold any recorded information relating to the request.

Right of appeal

28. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

29. 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.
30. 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

Joanne Edwards
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