

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 August 2012

Public Authority: Wirral Metropolitan Borough Council

Address: Municipal Buildings
Cleveland Street
Birkenhead
Merseyside
CH41 6BU

Decision (including any steps ordered)

1. The complainant requested information on senior council officers' registered interests. The council disclosed some information for high ranking officers but did not disclose information for any officers below that.
2. The council's response did not however state whether any further information was held, nor claim any exemptions under the Act for any further information it does hold. Information it provided indicated that it was very possible that further information is held, however this was not addressed further in the council's final response. The council did not therefore fully respond to the request. The complainant therefore asked the council to review its decision.
3. In spite of stating to the complainant that it would review the decision and providing details of the officer within the council who was assigned to review the decision the council did not do so.
4. The Commissioner's decision is that the Council has breached section 1(1)(a) of the Act. It did not specify to the complainant exactly what information it holds.
5. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - To specify to the complainant whether it holds further information which falls within the scope of his request as required by Section 1(1)(a) of the Act.

- To consider any further information it holds for disclosure to the complainant as required by section 1(1)(b) of the Act.
 - To consider any information which it does hold for disclosure bearing in mind the First Tier Tribunal's decision in the case of Greenwood v ICO (EA/2011/0131 & 0137).
6. 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 the Act and may be dealt with as a contempt of court.

Request and response

7. On 20 June 2011 the complainant wrote to Wirral Metropolitan Borough Council and requested information in the following terms:

"Upon checking the wirral.gov.uk website I was pleased to find a page detailing the registered interests of our serving Councillors. Thank you for addressing transparency requirements in this area.

However, I cannot locate a webpage, or find information anywhere else, detailing the registered interests of senior council officers. These senior officers make important decisions on the public's behalf on a daily basis. I feel it is very much in the public interest to know precisely the extent of undeclared associations these officers possess. These may be ties to people, businesses, charities, organisations, et al. who may stand to gain from favourable council decisions. This may have been in the past, is happening now or may occur in the future.

Please forward a full and comprehensive list of the names and interests of council officers as follows:

The Chief Executive, his direct reports and the direct reports of these senior officers. Please include the heads of department and those such as senior planning officer. Anyone who has delegated authority from members should also be declared.

Please provide any and all personal interests they have, such as ownership of property, family associations, business interests, shareholdings and membership of organisations that may conflict with their decision-making role. Such a list would run along similar lines to the one you currently display for Wirral's councillors, and would I suggest be available for inspection on the

website, and personally at the Town Hall in the near future.

Please make the list retrospective for the last 5 years, in order that the public can examine the decisions made, the officers involved and check against the list of interests at that particular time. Any conflict can then be highlighted and acted upon as required, in the public interest..."

8. On 16 August 2011 the councils disclosed information to the complainant which related to the interests of the Chief Executive, the Ex-Chief Executive and the Deputy Director of Finance. The council did not however state whether that was all of the information which it held, nor did it disclose any further information to the complainant. On the same date the complainant asked the council to review its decision.
9. The complainant subsequently asked for, and received details of the council officer who had been asked to carry out the review. The council provided that information on 3 October 2011.
10. In spite of the above the council did not provide a review of its decision to the complainant.

Scope of the case

11. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
12. The Commissioner considers that the complainant wishes a copy of all information falling within the scope of the request which has not already been disclosed to him.
13. The Commissioner must also consider whether the council has in fact fully responded to the request as required by the Act.

Reasons for decision

14. Section 1(1) of the Act 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 2 allows public authorities to withhold information from the requirements of section 1(1) where that information is subject to one of the exemptions provided in the Act.
16. During the course of correspondence over the issue the council explained how it records conflicts of interest from its officers. The councils description was as follows:

"At the beginning of each Committee meeting the people on the Committee are asked to consider whether they have personal or prejudicial interests in connection with any item(s) on the agenda in front of them and, if so, to declare them and state what they are. In addition to this, Officers of the Council are asked to complete a yearly conflicts of interest form, these are reviewed by their senior manager. Consideration is then given, if there is any action which needs to be taken with regard to any declarations made.

Application for employment forms for the Council also ask the applicant to declare if they have any relationship to any existing employee or elected member of the Council, and state what that relationship is."

17. As outlined above, the council disclosed a small amount of information relating to 3 individuals and did not state whether any further information was held.
18. The council's description of its method of identifying and recording conflicts of interest leads the Commissioner to believe that further information may be held by the council which falls within the scope of the complainant's request. Clearly if council officers are asked to complete a conflict of interests form annually, new starters are asked to declare their relationships on their application form and committee members are asked to declare any conflicts of interest before each meeting then in a council of Wirral Council's size there would be a strong expectation that further information would be held. In response to a freedom of information request in January 2009 it indicated that it employed the following number of staff in total Full Time = 4339, Part Time = 6849, Casual = 869. (available at http://www.whatdotheyknow.com/request/list_of_staff_employed_by_wirral)
19. In *Greenwood v ICO* (EA/2011/0131 & 0137) the First-tier Tribunal indicated that it was reasonable for Chief Officers and above to have some information from their declaration of interests disclosed as a result of a similar request. It indicated that the term 'senior officers'

encompassed employees earning £58,200 and above following categories defined by central government.

20. The council's annual report for the financial year 2011/12 indicates that there were 334 staff, (of which 113 were non-teaching staff) employed by the council earning in excess of £50 000 per annum. Following the Tribunal's decision above, officers earning £58.200 would be considered senior for the purposes of the request. Whilst a number of the individuals concerned would earn between £50 000 and £58 200 and so fall outside of this definition, it seems very possible that some of these individuals would fall within it and may have provided information indicating conflicts of interest during the on-going collection process described above.
21. The Commissioner therefore considers that the council's response was unclear in that it did not specify to the complainant whether further information was held, or whether the information it had provided was the entirety of the information it holds.
22. The Commissioner notes that the council had an additional opportunity to do this and to comply with section 1(1)(a) when it was asked to review its disclosure by the complainant. It did not however do so.
23. The Commissioner's decision is therefore that the council breached section 1(1)(a) of the Act.
24. The Commissioner also notes that should the council hold further information then it is under an additional duty under section 1(1)(b) to disclose that information to the complainant unless it is able to apply a valid exemption. For the purposes of establishing whether a valid exemption applies he would draw the attention of the council to the advice outlined in the 'other matters' section below.

Other matters

25. The Commissioner recognises that if any additional information is held, some of that information may be exempt from disclosure under section 40(2). It will be the personal data of third parties where a disclosure of that information would breach one of the data protection principles of the Data Protection Act 1998. This is because information of this sort has previously been considered by the First-tier Tribunal in *Greenwood v ICO* (EA/2011/0131 & 0137).
26. In that case the Tribunal analysed and dissected which information would be subject to the exemption in section 40(2) of the Act. The Tribunal's decision provides a considered overview of where it would be

appropriate to disclose information which the council holds on the registered interests of employees of the council and where a disclosure of that information would breach the first principle of the Data Protection Act 1998 (the DPA). The decision therefore provides valuable guidance on the way local councils should approach such requests.

27. As he is also the regulator of the DPA, the Commissioner considers that he must use his discretion to recognise, and make his decisions under freedom of information cases so that they do not conflict with an authority's obligations under the DPA. In this case, although the council has not claimed any exemptions in relation to the information it holds, the Commissioner recognises that some of that information may be subject to section 40(2).
28. The Commissioner's decision above is that as the council has not properly addressed the complainant's request there is a need for it to reconsider its response. When doing so he would expect the council to consider any additional information it holds for disclosure following the guidance provided within the Tribunal's decision in the Greenwood case.

The failure of the council to review its position

29. Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. As he has made clear in his *'Good Practice Guidance No 5'*, published in February 2007, the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the Act, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days.
30. The Commissioner is concerned that in this case, the council failed to carry out a review of its position, in spite having told the complainant that it would do so. Had it done so it is possible that the complainant would not have found it necessary to make a complaint to the Commissioner over this matter.

Right of appeal

31. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

32. 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.
33. 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

Andrew White
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