

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 April 2016

Public Authority: City of Bradford Metropolitan District Council

Address: City Hall
Centenary Square
Bradford
BD1 1HY

Decision (including any steps ordered)

1. The complainant has requested recorded information from the City of Bradford Metropolitan District Council ("the Council"), which concerns the investments made by West Yorkshire Pension Fund ("WYPF"). The information which the complainant seeks has been withheld by the Council in reliance on section 43 of the FOIA, on the grounds that its disclosure would prejudice commercial interests.
2. The Commissioner's decision is that the Council has correctly applied section 43 to the withheld information.
3. The Commissioner requires the public authority to take no further action in this matter.

Request and response

4. On 12 May 2015, the complainant wrote to Bradford City Council and asked for a complete list of the Council's pension fund holdings, with recent valuations and identifying codes for each holding.
5. On 21 May the complainant sent the Council an email in which he made clear the type of information he wanted to be supplied with. The terms of the complainant's request are:

"Information which is the subject of the request

1. *The investments made by West Yorkshire Pension Fund ('The Pension Fund') in:*

- a. *Unit trusts or oeics or any open ended investment vehicle which is pooled.*
- b. *Private Equity Investments*
- c. *Property investments*
- d. *Hedge fund investment or fund of hedge fund investments.*
- e. *Infrastructure investments.*

Wherever appropriate this information should include codes, such as SEDOL codes.

In the case of item 1a above it should also state the number of units purchased and the current valuation of each and every investment as such investments are priced on a daily, weekly or monthly basis.

The information should be provided in the most up to date form held by you as at the date of this request."

We would like the requested information to be made available electronically in an unlocked condition and in a form which is reusable (i.e. readable and capable of being manipulated and edited), preferably in Microsoft Excel format or, if that is not practical, in an open source format such as a CSV file."

6. On 29 May, the Council responded to the complainant's request, advising him that, by virtue of section 21 of the FOIA, it is not required to provide the information he has requested. The Council informed the complainant that the information is published on the West Yorkshire Pension Fund ("the WYPF") website at:

http://www.wypf.org.uk/Member/Investments/WYPF/WYPF_Investments_Home.aspx

7. On 1 June the complainant wrote to the Council to ask it to review its response to his request. The complainant asserted that the information on the WYPF website is materially out of date and not the current version of the data the Council holds, nor does the information show unique identifiers such as share tickers, ISIN or SEDOL codes. Likewise, the information on-line is not in an electronically down-loadable format and therefore it is not usable and editable.
8. The Council reviewed its handling of the complainant's request and on 26 June it wrote to him to advise him of the Council's final decision. The Council's review confirmed its reliance on section 21 of the FOIA and, on the basis that the WYPF website will be up-dated for 31 March 2015 once the valuation had been audited, it advised the complainant that section 22 also applied to his request.

9. In an email dated 3 July, the Council informed the complainant that the WYPF audited investment information will be added to its website at the beginning of October 2015. It also advised the complainant that currently there is a period of inspection when anyone can view a copy of the unaudited Bradford Council accounts and he can access the unaudited valuation of the WYPF holdings. The Council provided the following website address to assist him:

<http://www.bradford.gov.uk/NR/rdonlyres/AE47F274-69E2-4926-954D-72E50DF82995/0/NoticeofAudit201415.pdf>

Scope of the case

10. The complainant contacted the Commissioner on 9 July 2015 to complain about the way his request for information had been handled. He was particularly concerned about the Council's reliance on sections 21 and 22 of the FOIA to withhold the information which he seeks.
11. During the course of the Commissioner's investigation, the Council changed its position and advised him that it now relies on section 43 of the FOIA to withhold the requested information.
12. The consequence of the Council's changed position is that the Commissioner is required consider its application of section 43 instead of section 21 and 22. This notice is the Commissioner's decision.

Reasons for decision

Background information

13. Bradford Metropolitan District Council is the administering authority for the West Yorkshire Pension Fund.
14. The Commissioner understands that WYPF is the third largest Local Government Pension Fund in the UK. The WYPF provides pension services to over 350 employers who collectively have approximately 250,000 members.
15. The Local Government Pension Fund is a statutory scheme which is governed by the Local Government Pension Scheme regulations.
16. WYPF's investment portfolio is managed on a day-to-day basis by an in-house investment team. This team are supported by the Fund's external advisers and an investment strategy and asset allocation is agreed at quarterly meetings on WYPF's Investment Panel. A long-term

investment approach is taken which is consistent with the nature of the long-term liabilities of the Fund and consequently there is very little change from year to year in the Fund's underlying portfolio holdings.

Section 43 – Commercial interests

17. During the course of the Commissioner's investigation, the Council liaised with the WYPF and determined that information relating to the private equity funds with which it invests should be withheld in reliance on section 43 of the FOIA.
18. Section 43(2) provides an exemption to the duty to disclose information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it). The application of section 43(2) is subject to consideration of the public interest test.

The Council's position

19. The Council acknowledges that it holds recorded information from which relevant to data could be extracted.
20. Commissioner asked the Council to identify the party or parties whose commercial interests would, or would be likely to be prejudiced if the information which the complainant seeks was to be disclosed. The Council answered this enquiry by asserting that its own commercial interests would be prejudiced as well as those of the fund managers and the funds/companies with which it invests.
21. The Council explained that it has spent a great deal, in time and effort, in researching the various investment managers with whom it invests and intends to invest. This research is used to determine what investments are best for the pension fund, and ultimately, for those individuals who receive a WYPF pension.
22. Disclosure of the requested information would allow other commercial organisations to use the work done by WYPF for their own purposes – commercial or otherwise, at a substantially reduced cost.
23. The Council fears that it may be prevented from making further investments with these funds/companies in the future, if the information it holds was to be disclosed by virtue of a request made under the FOIA. The Council suggests that the funds/companies could refuse investments from public sector bodies if the commercially sensitive information was to be placed into the public domain by virtue of a request made under the FOIA.

24. The Council explained that it has several general partners with whom it has limited partnership agreements. Typically, the Council is one of several co-investors who invest alongside commercial organisations, as opposed to a collection of other local authorities or members of the general public.
25. The Council considers that the limited partnerships are private rather than public investment vehicles. It points out that the detailed investment information is not disclosed by the general partners themselves and that the Council is subject to confidentiality clauses in respect of its investments with them.
26. The Council considers that disclosure of the requested information would place the Council in breach of the agreements it has entered into with the limited partnerships and disclosure would expose to the world the general partners' confidential and sensitive trading activities.
27. The risk to WYPF is that the general partners will be reluctant to enter into future business agreements with WYPF.
28. The Council points out that the complainant has asked for the daily, weekly and monthly cash flow statements for each fund. The Council holds the belief that this level of information would be of commercial use to the complainant, allowing him (and other commercial ventures) to analyse the trading activities of the funds in question.
29. Whilst accepting that it holds relevant information, the Council asserts that the information the complainant requires is far more detailed than that used by WYPF for its own purposes. The Council stresses that neither the Council nor WYPF produces reports to the level required by the complainant. Furthermore, the Council asserts its belief that publication of this level of information would serve no useful purpose for the general public. Rather, the Council considers that the public interest is sufficiently met through its routine publication of pension fund audited accounts.
57. The Commissioner has considered the representation made by the Council. He considers that the information required by the complainant can properly be described as commercially sensitive information and that its disclosure would be prejudicial to the commercial interests of both the Council and the private equity fund managers. The Commissioner has therefore decided that the exemption provided by section 43 is engaged and consequently he is obliged to consider the public interest factors associated with the withheld information.

Public interest factors which favour disclosure of the requested information

59. The Commissioner will always give necessary weight to the public interest where disclosure of information provides accountability and transparency for decisions taken by public authorities and where, as in this case, the decisions are likely to concern significant amounts of public money which are invested by the WYPF.
60. In this case, disclosure of the detailed investment information sought by the complainant would allow the public to judge whether the Council is investing wisely and ethically and whether it was achieving value for money.
61. The information, should it be disclosed, could promote public debate and allow the Council's council tax payers and Pension Fund stake holders to greater understand the decisions which affect them.

Public interest factors which favour the withholding of the requested information

62. In this case it is clear to the Commissioner that it was always the Council's and Investment Manager's intention that this type of investment information should be treated confidentially.
63. The Commissioner recognises the value of the requested information to the public and to other investment managers operating in this competitive market. He acknowledges that disclosure of the requested information would negatively impact the portfolio managers themselves and would impair the Council's ability to achieve, what it considers, the best investment outcomes for its pension stakeholders.
64. The commercially sensitive nature of the information cannot be ignored. The Commissioner accepts that the investments and investment strategies would be adversely affected should the requested information be disclosed. This would result with a potential detriment to the Council's Pension Fund stakeholders, which would likely flow from the Council's reduced ability to invest broadly in the future.
65. Making the investment information public by virtue this request would likely damage the strong relationship of trust which the Council has with the Private Equity managers. Disclosure of the investment information would potentially have significant and detrimental effects on the Council's ability to work with these managers in the future and this in turn could potentially reduce the Council's investment opportunities and thereby its future returns.
66. It should also be noted that the investment information in question here, is not of a type which is normally made public. If this information

was to be placed in the public domain, the Commissioner believes there would be a real potential for current and future Private Equity managers to be put off from contracting with the Council: Ultimately the Council would have to make up any shortfall in its investment revenue from elsewhere at a time when Councils are financially constrained.

The Commissioner conclusions

67. Weight must always be given to the Council being transparent and accountable for its decisions. This is especially so where significant amounts of money are concerned and where the revenue from its investments is important to the futures of significant numbers of people.
68. The Commissioner recognises the inherent public interest in the ability of the Pension Fund to make effective investments.
69. The Commissioner considers that accountability of investments is partially achieved through the publication of details of the Pension Fund's website and in its annual statements.
70. Where members of the public consider that the Pension Fund is failing to meet satisfactory standards, it is open to them to raise those issues with the Council or with their elected representatives.
71. In weighing the conflicting public interest factors inherent in this case, the Commissioner has decided that greatest weigh should be given to those factors which favour the continued withholding of the requested information.
72. He considers that the potential jeopardy to the Council's ability to invest in the private equity market in the future is greater than the increased level of accountability and transparency which disclosure of the requested information would allow.
73. It is for this reason that the Commissioner has decided that the Council is entitled to rely on section 43 of the FOIA to withhold the requested information.

Right of appeal

74. 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

75. 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.
76. 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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