

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 September 2019

Public Authority: Peterborough City Council
Address: Town Hall
Bridge St
Peterborough
PE1 1HF

Decision (including any steps ordered)

1. The complainant has requested information about job descriptions and salary bands for procurement roles from Peterborough City Council ("the Council"). The Council stated that, as the information was held by Serco Group Plc, it did not hold it for the purposes of the FOIA.
2. The Commissioner's decision is that the Council does not hold the requested information, and that Serco does not hold it on the Council's behalf. She does not require the Council to take any steps.

Request and response

3. On 14 December 2018, the complainant wrote to the Council via the website What Do They Know to request information of the following description:

"Please can you tell me how your procurement service is structured. Can I have the:

1) procurement job descriptions for existing and vacant procurement roles. I understand these are part of Serco but the roles themselves relate to PCC delivery and should be available to the public domain and therefore not commercially sensitive.

- 2) *The salary bands for the above roles. Again these are recruited and not specific so not commercially sensitive.*
- 3) *Number of procurement staff delivering solely or in part to the PCC authority. Again this is part of the PCC budget so is not commercially sensitive”.*
4. On 8 January 2019, the Council responded. It stated that the information he had requested was not held by the Council since *“the Procurement Service is delivered via an outsourced managed contract with our partners Serco and as such the Council does not have access to this level of detail. The Managed service contract commenced on 1st October 2009 and will end on 30th September 2020”.*
5. The complainant requested an internal review on 8 January 2019. He commented:
- “I do not accept that Peterborough Council have no information of its own concerning roles of their procurement team and that they just pay Serco for the service at whatever value. Peterborough must have an idea about how their procurement team is delivered and this is not commercially sensitive detail. I will escalate this further if no information is provided. I would like to know why Peterborough have no idea what Serco are being paid for given the expense to the taxpayer”.*
6. The Council sent him the outcome of its internal review on 4 February 2019. It provided some detail of the managed service contract. However, the Council explained that it was a matter for Serco to deliver the contract and allocate staff accordingly. It stated:
- “No details relating to Job descriptions and salary bands of Serco employees may be disclosed, as this is not information which is held by Peterborough City Council - it is information held by Serco”.*

Scope of the case

7. The complainant contacted the Commissioner on 6 February 2019 to complain about the way his request for information had been handled. He considered that the Council would hold information falling within the scope of his request of 14 December 2018.
8. The following analysis considers whether the Council held the requested information, and whether, if it was not held by the Council itself, it was held on its behalf by Serco.

Reasons for decision

Section 1 and Section 3 – access to information held by a public authority

9. 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.
10. In addition, section 3(2)(b) of the FOIA states that information is held by a public authority if it is held by another person on behalf of the authority.
11. The Commissioner has been required to consider whether the information requested is “held” by the Council for the purposes of the FOIA. In the circumstances of the case, the information may be held for these purposes either by the Council itself, and/or held on the Council’s behalf by Serco.
12. The complainant has requested information relating to job descriptions, salary bands and the number of staff carrying out procurement work for the Council. He has not disputed that responsibility for hiring procurement staff lies with Serco. However, he considers that the information, for the purposes of the FOIA, would be held by the Council.
13. Regarding what is held by the Council itself, the Council explained that, while it was able to provide some general explanations relevant to the request, it has never held the specific information that was requested, nor has it deleted or destroyed such information. It stated: *“There is also no business purpose or statutory requirement placed upon the Council to retain the requested information. The Council do not hold Serco Ltd job descriptions or salary bands - this information is pertinent to a private company and not the Council”*.
14. In cases where there is a dispute over the amount of information which is held, the Commissioner applies the civil test of the balance of probabilities in making her determination. This test is in line with the approach taken by the Information Rights Tribunal when it has considered whether information is held in cases which it has considered in the past.
15. In this case, the Commissioner considers that the Council’s assertion that it does not, itself, hold the information is reasonable. The request

related to specific information about procurement posts, for which Serco had responsibility. She is, therefore, satisfied on the balance of probabilities that the information is not held by the Council itself.

16. The Commissioner has also investigated whether the information is held by Serco on behalf of the Council; that is, whether it may be held under the provisions of section 3(2)(b) of the FOIA.
17. She is aware that Serco is a large private company which has been providing services to the Council for many years, under a contract which was renewed in 2011. The services which it provides to the Council include Customer Services, Business Support Services, Shared Transactional Services (including Revenues and Benefits), Transactional HR and Payroll, Procurement and Business Transformation.
18. She is satisfied that Serco operates independently from the Council and is neither a subsidiary nor a linked company such as an arms-length management organisation.
19. In her consideration of whether the information is held on behalf of the Council, the Commissioner has consulted the ICO's guidance entitled "*Information held by a public authority for the purposes of the Freedom of Information Act*"¹.
20. The guidance outlines a number of factors that indicate that information is not held on behalf of a public authority:
 - *"the authority has no access to, use for, or interest in the information; access to the information is controlled by the other person;*
 - *the authority does not provide any direct assistance at its own discretion in creating, recording, filing or removing the information; or*
 - *the authority is merely providing storage facilities, whether physical or electronic."*
21. As countervailing factors, the guidance also states:

1

https://ico.org.uk/media/fororganisations/documents/1148/information_held_by_a_public_authority_for_purposes_of_foia.pdf

"Factors that would indicate that the information is also held by the public authority include:

- the authority provides clerical and administrative support for the other person, whether legally required to or not;*
- the authority controls access to the information;*
- the authority itself decides what information is retained, altered or deleted;*
- the authority deals with enquiries about the information; or*
- costs arising from holding the information are included in the authority's overall budget."*

22. The Council explained that, since the request was for information relating to a service delivered under a contract, it followed its standard approach and passed the request to the *"dedicated Serco Ltd mailbox"* to determine what information Serco held on the Council's behalf.

23. Having investigated, the Council concluded that the information was entirely held by Serco for their own purposes. It stated to the Commissioner:

"Serco Ltd are a private third party company who provide various managed services, including procurement, to the Council. An annual payment is made to Serco Ltd for the whole managed contract; however the decision as to how the contract requirements are met is a decision for Serco Ltd – this will include the number of roles required in each managed service area, appropriate job descriptions, recruitment and pay scales.

... Serco Ltd do not discuss or disclose any job descriptions for any of the roles within the managed service, nor do the Council make recommendations as to the number of employees that Serco Ltd should recruit, or advise at which pay scale the role should be paid. PCC are not invited to any interview process that may be held".

24. The Commissioner's guidance on *Outsourcing and Freedom of Information*² considers when information may be said to be held on behalf of a public authority where there is a contractual relationship with a third party which provides a service. The guidance acknowledges that

² <https://ico.org.uk/media/1043530/outsourcing-and-freedom-of-information.pdf>

"a contractor will inevitably generate a large amount of information in the course of running an outsourced service", some of which will be required to be presented to the public authority during the contractual term; for example, commonly, when reporting against key performance indicators.

25. The guidance explains that the primary source which the ICO requires to be considered, in determining whether information is held by a contractor on behalf of the public authority, is the contract between the authority and the contractor. It states: *"as this defines the relationship between, and the responsibilities of, the two parties, it provides an objective, evidence-based approach to resolving the issue. We recommend that public authorities should refer to the contract if they need to resolve an issue as to what information is held on their behalf"*.
26. The Council confirmed that it considered the contract and discussed the request with Serco. It stated that the Procurement Manager for the Peterborough Serco Strategic Partnership confirmed that, under the terms of the contract between the parties, there is no requirement to provide the Council with access to the level of detail being requested.
27. The Council has specified, however, that under the terms of the relevant contract, information stipulating the number of core resource days is provided to the Council, together with details of how those hours should be apportioned within the procurement function itself. For this reason, the Council was able to provide some general explanations to the complainant.
28. From the assertions made by the Council, the Commissioner is satisfied that Serco controls access to the information, and that the Council does not have a role in creating, recording, filing or removing the information. While she considers that the Council would have an interest in who is employed in the relevant posts, it is not the Commissioner's role to determine whether the Council *should* have access to the job descriptions and salary bands.
29. Taking all the above into account, the Commissioner's decision is that Serco does not hold the requested information on behalf of the Council, as defined by section 3(2)(b) of the FOIA, and that the Council was correct to assert that it does not hold this information for the purposes of the FOIA.

Right of appeal

30. 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@justice.gov.uk

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

31. 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.
32. 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

**Ben Tomes
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**