

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

**Date:** 5 May 2023

**Public Authority:** London Borough of Hackney  
**Address:** Town Hall  
Mare Street  
London  
E8 1EA

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

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1. The complainant has requested information relating to adult social worker recruitment by London Borough of Hackney ("the Council").
2. The Commissioner's decision is that the Council is entitled to rely on section 14 (vexatious) to refuse to provide the requested information.
3. The Commissioner does not require the public authority to take any steps as a result of this decision notice.

### **Request and response**

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4. This decision notice deals with two complaints from the same individual. The information requested is related to the same matter, and the Council has cited the same exemption in its response.
5. Full details of the request made on 23 November 2022 can be found in an annex at the end of this notice.

### **Request 2**

6. On 5 December 2022, the complainant wrote to the public authority and requested information in the following terms:

"I submitted an employment tribunal claim because of being discriminated against my race, supplemented by my disability and age during the application process for an Adult Social Worker's role [redacted] at Hackney Council, which took place in [redacted]. To present my case to the Employment Tribunal I require the following information:

1. Notes made by the panel on the interview of all successful applicants who applied for the same role as I, as far as this information is available. In case these notes are no longer available, please explain the reason behind of it in each case.
2. Notes made by the panel on the interview of all unsuccessful applicants who applied or the same role as I, as far as this information is available.
3. Model answers and scoring plan specifically developed to carry out interviews for the role I applied for. In case these were not developed specifically for the role I applied for, please state it clearly in your response. Please do not send me the requested information for a different role)."
7. The Council refused to provide the requested information citing section 14(1) FOIA as its basis for doing so. It maintained its position at internal review.

## Reasons for decision

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8. Section 12 of FOIA concerns the cost of complying with a request. However, a public authority cannot claim section 12 for the cost and effort associated with considering exemptions or redacting exempt information. However, under section 14(1) of FOIA a public authority is not obliged to comply with a request for information if the request is vexatious. A public authority may apply section 14(1) where it can make a case that the amount of time required to review and prepare the information for disclosure would impose a grossly oppressive burden on the organisation which outweighs any value or serious purpose the request may have. There is no public interest test.
9. The Commissioner's guidance suggests that if a request is not patently vexatious the key question the public authority must ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. In doing this the Commissioner considers that a public authority should weigh the impact of the request on it and balance this against the purpose and value of the request.

10. Where relevant, public authorities need to take into account wider factors such as the background and history of the request.
11. In its internal review the Council referred to the Commissioner's guidance and stated that it considered that the following criteria were applicable:
  - Burden on the authority
  - Disproportionate effort
  - Frequent or overlapping requests
  - Scattergun approach
12. The Council further stated it was not alleging that the complainant had deliberately made the request burdensome or formulated it with the intention of making it otherwise overwhelming or oppressive. However, having considered their previous requests and the Council's responses, it could not respond to the request without incurring significant encumbrance and impact on its day-to-day activities.

### **The Council's position**

13. The Council acknowledges that requests submitted under FOIA are deemed to be applicant and purpose blind. It also recognises that responses to requests under FOI are considered to be disclosed to the world at large and not just the applicant. In engaging Section 14 of FOI regarding the applicant's request, the Council has looked at the requests submitted by the applicant holistically and considered the cumulative effect and burden that responding has placed on it.
14. The Council has taken into account that a number of departments are already dealing with the applicant in respect of the subject matter upon which their requests for information are based; (i.e their Claim for discrimination in the Employment Tribunal). The Council has also referred to the ICO's guidance and published decision notices.
15. Using the FOI regime in the manner that the applicant has been opens it up to abuse and disrepute, the Council argues. It also takes limited Council resources away from those who are in genuine need of obtaining information under the Act. This runs counter to the Council's duty to act judiciously in the apportionment of its limited resources.
16. The Council has considered the ICO's guidance as to whether a conciliatory approach would be an appropriate way of dealing with the applicant's requests. Given the circumstances of the applicant's requests, this does not appear to be an approach that can be taken by

the Council. For instance, the applicant advises the Council that the Employment Tribunal has asked for the requests to be submitted in respect of their Claim. This infers an obligation on the part of the Council to provide the information without considering whether any exemption(s) could be applicable.

17. It also implies that the response should be provided directly to the applicant, not the world at large as is the case for responses disclosed under the Act.
18. Furthermore, it does not take account of the Tribunal's extensive powers to seek and obtain information directly from the Council apart from of the Act. The Council already publishes information about its workforce, it does not consider that there is an overriding public interest or value in favour of making the information requested available in the public domain.
19. The applicant's requests for information in the manner that they are being presented place considerable burden on a small number of personnel across different departments in the Council. The requests also amount to a duplication of effort and Council resources, as officers who are already dealing with the applicant's Employment Tribunal Claim via the appropriate legal process are also being tasked with considering their requests for information under the Act on the same subject matter. By its very nature, this is creating considerable overlap for everyone involved.
20. From the pattern of the applicant's previous requests and dealings with the Council on this topic, the Council is of the view that any response to the applicant will only serve as fuel for further requests. Whilst the Council takes its obligations under FOIA very seriously, it must also be careful to ensure that public resources are used prudently and that no one seeking information from the Council is treated more favourably than another or indeed placed at an undue disadvantage due to the actions of another.
21. Dealing with the protracted correspondence in respect of the applicant's requests means that other requests are being deprioritised, causing delays and impacting on the Council's ability to comply with legislation. As mentioned previously, the applicant is seeking information in furtherance of a Claim in the Employment Tribunal. There is an established legal pathway at the applicant's disposal for these issues to be raised and considered. Requesting the same (or similar) information by using the FOI regime in tandem with the litigation process has the effect of denying access to other members of the public whose only gateway to information is through the Act.

22. The Council would like to expressly state that in providing responses to the applicant's requests, it is not considering the applicant to be vexatious. It has also advised the applicant that they have the right to submit freedom of information requests on other topics in the future.

**The Commissioner's decision**

23. The Commissioner has considered all the circumstances of this case and acknowledges the reason behind the request. However, it should be remembered that disclosure under FOIA is not just to the complainant, but to the public at large, in effect the 'whole world'.
24. The complainant has already begun employment tribunal proceedings, and as noted above, such a tribunal has its own powers to compel disclosure of relevant information.
25. Furthermore, the Commissioner also considers that there is a clear and separate route available to the complainant via the tribunal and the Council is dealing with the tribunal matters in other parts of the organisation. Consequently, there is likely to be a duplication of work taking staff in the FOI team away from their core duties unnecessarily.
26. The Commissioner therefore finds the requests vexatious by reason of the burden imposed on the Council and it is entitled to rely on section 14 to refuse the requests.

## Right of appeal

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27. 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)

28. 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.
29. 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 .....**

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

## **Annex – request 1**

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I submitted an employment tribunal claim because of being discriminated against my race, supplemented by my disability and age during the application process for an Adult Social Worker's role [redacted] at Hackney Council, which took place in [redacted].

The tribunal asked me to identify a (hypothetical) comparator to present my discrimination claims. Therefore, please provide me with following information about Social Worker's recruitment at Hackney with the focus on their disability and age:

Please provide me with information around Social Workers recruitment at Hackney Council between 01/01/2019 and 31/05/2021 with the focus on their disability and age.

Please include the below information and reference numbers of all Social Workers vacancies and do not limit the information to a specific field, such as Adult Social Work.

Please provide separate information requested below to each vacancy.

A Questions around candidates in their 20s

1. How many candidates in their 20s applied for each vacancy?
2. How many of those candidates in their 20s who applied for each vacancy identified themselves as disabled?
3. What was the ethnic origin of the candidates in their 20s who applied for each role and identified themselves as disabled?
4. How many candidates in their 20s were invited for an interview?
5. How many of the candidates in their 20s who were invited for an interview identified themselves as disabled?
6. What was the ethnic origin of the candidates in their 20s who was invited for an interview and identified themselves as disabled?
7. How many candidates in their 20s were offered a job?
8. How many of the candidates in their 20s who were offered a job identified themselves as disabled?
9. What was the ethnic origin of the candidates in their 20s who was offered a job identified themselves as disabled?

## B Questions around candidates in their 30s

1. How many candidates in their 30s applied for each vacancy?
2. How many of those candidates in their 30s who applied for each vacancy identified themselves as disabled?
3. What was the ethnic origin of the candidates in their 30s who applied for each role and identified themselves as disabled?
4. How many candidates in their 30s were invited for an interview?
5. How many of the candidates in their 30s who were invited for an interview identified themselves as disabled?
6. What was the ethnic origin of the candidates in their 30s who was invited for an interview and identified themselves as disabled?
7. How many candidates in their 30s were offered a job?
8. How many of the candidates in their 30s who were offered a job identified themselves as disabled?
9. What was the ethnic origin of the candidates in their 30s who was offered a job identified themselves as disabled?

## C Questions around candidates in their 40s

1. How many candidates in their 40s applied for each vacancy?
2. How many of those candidates in their 40s who applied for each vacancy identified themselves as disabled?
3. What was the ethnic origin of the candidates in their 40s who applied for each role and identified themselves as disabled?
4. How many candidates in their 40s were invited for an interview?
5. How many of the candidates in their 40s who were invited for an interview identified themselves as disabled?
6. What was the ethnic origin of the candidates in their 40s who was invited for an interview and identified themselves as disabled?
7. How many candidates in their 40s were offered a job?
8. How many of the candidates in their 40s who were offered a job identified themselves as disabled?



9. What was the ethnic origin of the candidates in their 40s who was offered a job identified themselves as disabled?

#### D Questions around candidates in their 50s

1. How many candidates in their 50s applied for each vacancy?

2. How many of those candidates in their 50s who applied for each vacancy identified themselves as disabled?

3. What was the ethnic origin of the candidates in their 50s who applied for each role and identified themselves as disabled?

4. How many candidates in their 50s were invited for an interview?

5. How many of the candidates in their 50s who were invited for an interview identified themselves as disabled?

6. What was the ethnic origin of the candidates in their 50s who was invited for an interview and identified themselves as disabled?

7. How many candidates in their 50s were offered a job?

8. How many of the candidates in their 50s who were offered a job identified themselves as disabled?

9. What was the ethnic origin of the candidates in their 50s who was offered a job identified themselves as disabled?

#### E Questions around candidates in their 60s

1. How many candidates in their 60s applied for each vacancy?

2. How many of those candidates in their 60s who applied for each vacancy identified themselves as disabled?

3. What was the ethnic origin of the candidates in their 60s who applied for each role and identified themselves as disabled?

4. How many candidates in their 60s were invited for an interview?

5. How many of the candidates in their 60s who were invited for an interview identified themselves as disabled?

6. What was the ethnic origin of the candidates in their 60s who was invited for an interview and identified themselves as disabled?

7. How many candidates in their 60s were offered a job?

8. How many of the candidates in their 60s who were offered a job identified themselves as disabled?

9. What was the ethnic origin of the candidates in their 60s who was offered a job identified themselves as disabled?