

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 September 2024

Public Authority: Dorset Council
Address: County Hall
Colliton Park
Dorchester
Dorset
DT1 1XJ

Decision (including any steps ordered)

1. The complainant has requested information relating to a recruitment process undertaken by Dorset Council ("the council") for a senior leadership position. The council provided some information and withheld other information under section 40(2) of FOIA (personal data of third parties). It also said that some information was not held by it. The complainant argues that the council has not provided all of the information they have requested, but has not questioned the application of section 40(2) where this exemption has been applied.
2. The Commissioner's decision is that the council has provided all of the information falling within the scope of the complainant's request for information, other than that withheld under section 40(2).
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 27 November 2023, the complainant wrote to the council and requested information relating to the employment of the 'interim Lead for Place', Jan Britton in the following terms:

"1 Please disclose all documentation of whatsoever nature (to include that created via WhatsApp and/or other encrypted apps) relating to the recruitment process for this post to include details of where this post was advertised and the open competition to fill it;

2 Without prejudice to the generality of Request 1 how many candidates applied for this position and how many were interviewed?;

3 Please name the employees and councillors who interviewed Jan Britton;

4 This post must be a reportable one whereby pay details are disclosable by the Council. What is the pay package? Insofar as any other terms are not private and confidential please disclose them and confirm the contractual length of the "interim" appointment;

5 Please disclose all documentation of whatsoever nature (to include that created by WhatsApp and/or other encrypted apps) passing between Dorset Council/Mr Prosser (the first party) and Solace (the second party) and also, if applicable, between the first party and the Local Government Association."

5. The council responded on 24 January 2024. It provided a large amount of information, but it redacted some sections under section 40(2) of FOIA.

6. On 13 February 2024, the complainant requested that the council carry out a review of its decision. As part of this, they also requested additional information and clarification in relation to the employment frameworks used by the council; Comensura and Solace. The Chief Executive of the council, Matt Prosser, is also the President of Solace:

i) "The date the advertisement was published;

ii) The relevant sections of the Council's constitution, standing orders or delegated authorities and forms relating to procurement procedure exemptions;

iii) Any other records of discussions between Messrs Prosser and Flower relating to (a) the creation of the interim post generally, and (b) the recruitment of Jan Britton specifically;

- iv) Documentation telling Comensura and/or any other company on the framework that Mr Prosser had decided to make other contractual arrangements outside the framework deal on this occasion.”
7. Following a further internal review council wrote to the complainant on 30 April 2024. It provided further information; however, it retained its reliance upon section 40(2) to withhold personal data.
8. On 28 July 2024 the complainant wrote to the council highlighting a number of concerns which they had with the council’s response to the request. The concerns were as follows:

“1 This relates to the Commensura Framework. Whilst I think you have tried to “blind me with science” here it now seems clear from other responses that Solace in Business were not part of the Framework but Prosser and [name redacted by the ICO] “knew”, as you put it, that they were going to join (which they later did) and so decided to deal with them anyway. Thus, subject to the below, this aspect of the matter has been dealt with;

2 You say that Prosser had the authority to deal with Solace. You have not disclosed his Employees Register of Interest declaring his position at Solace. Further, you have released correspondence elsewhere wherein he states that during his Presidency of Solace he was also a Director of Solace in Business Limited - the very Company receiving handsome commission following Britton’s appointment. (Incidentally, he is NOT shown as a Director at Companies House and I have queried this with Solace in Business.) Where did he declare to the Council and to fellow Councillors that he was also a Director of Solace in Business and why has the declaration not been disclosed. In particular, where is his written declaration of interest prior to the interviews recorded?

3 It is noted that although Prosser says that he spoke to the (then) Leader of the Council, Cllr Flower, about the interim nature of the appointment he failed to make a record of the conversation. Whilst this is obviously very poor practice it effectively deals with the conversation with the Cllr. However, one of the interview panel, Cllr Bryan, did object to the appointment being an interim one although I cannot see where his views were overruled. Accordingly, there must be some more documentation about this aspect of the matter.

4 This has effectively been dealt with as you have informed me that Solace joined the Comensura framework so as to benefit financially from this appointment.

5 This is the most important area of dispute between us. Britton is employed as a contractor and, therefore, you are obliged by law to declare the payments to him. (As you are with employees earning over £100k per annum.) You simply say that Britton is being paid £900 a day but you are not saying how many days he is contracted to work for, and so this is meaningless. You will have records of the actual days he has worked since you are paying him on a daily rate and that is what I need to know. (Once you tell me the days worked/contracted to be worked I can also calculate the payments to Solace in Business as you have now supplied their day rate.)

6 This is another area of contention. You seem to be saying that the ONLY due diligence was two references (presumably one from his mate [name of individual redacted by the ICO]) and conversations with Britton himself particularly about "his" decision as you put it to leave Sandwell - [complainant's allegations redacted by the ICO]. Was she alone aware of the allegations and, if so, how did she become aware of them? Where are the emails? And did others, including, in particular Prosser, [name redacted by the ICO], Cllr Bryan and Cllr Andrews aware? Where is the documentation regarding all this? Further, various employees including Prosser and [name redacted by the ICO] falsely stated that the allegations as published by me were untrue. Where did they obtain the information leading them to this incorrect allegation? Where is the documentary evidence?"

9. The complainant therefore argued that further information is held by the council which has not been disclosed in response to the request for information.

Scope of the case

10. The complainant initially contacted the Commissioner on 10 April 2024 to complain about the way the request for information had been handled. The complainant later confirmed to the Commissioner that their remaining concerns are those expressed in their follow up letter of 28 July 2024. The Commissioner recognises, however, that this email sought to expand upon the information which the initial request for information asked for;
 - The council noted that point two of the request, dated 28 July 2028, relates to the CEO's public register of interests, which the complainant had not previously requested in any of their earlier correspondence.

- It also pointed out that part six of the complainant's concerns relates to information which does not fall within the scope of the initial request.
11. The Commissioner agrees with the council's position that these are not clarifications of the initial request, and amount to new requests for information. He has not, therefore, considered these parts of the request further within this decision notice.
 12. The Commissioner therefore considers that the scope of his investigation is to determine whether the council holds further information falling within the scope of their request for information.
 13. As the complainant has not made a specific complaint about the council's application of section 40(2) to withhold some information, the Commissioner has not considered this further within this decision notice.

Reasons for decision

Section 1(1) – is further information held by the council

14. Section 1(1) of FOIA requires that a public authority must inform a requestor, in writing, whether it holds information falling within the scope of the request. If it does hold relevant information, it also requires that it communicates the information to the requestor, subject to any exclusions or exemptions applying.
15. In scenarios where there is some dispute between the amount of information held which a public authority says it holds, and the amount of information that a complainant believes is held, the Commissioner, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
16. In other words, in order to determine such complaints, the Commissioner must decide whether, on the balance of probabilities, a public authority holds any - or additional - information which falls within the scope of the request (or was held at the time of the request). For clarity, the Commissioner is not expected to prove categorically whether the information/further information is held.
17. In such cases, the Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the authority to search for relevant information, and will take into account any other reasons offered by the public authority to explain why the information is not held. Finally, he will consider any reason why it is inherently likely or unlikely that information is not held.

The complainant's position

18. The complainant argues that the council will hold additional information falling within the scope of the request for information.

The council's position

19. The council argues that it has provided the complainant with all of the information which it holds falling within the scope of the request. It argues that it has already responded to the majority of the concerns which the complainant expressed in their email dated 28 July 2024.
20. In response to the Commissioner's questions, it went through each of the parts of the requests, detailing the searches which it had carried out, explaining where information had been located, and what was disclosed. Many of the searches were carried out personally by senior members of its staff, including the CEO.
21. It said that the Monitoring Officer had specifically considered whether an exemption form was required for the actions which took place to hire the Interim Lead for Place, but after considering this point, they had decided that proper procedure had been followed and that an exemption form was not required, and therefore this is not held by it.
22. It also clarified that explanations have been provided to the complainant in response to their request. It therefore argued that all of the information which it has located has been disclosed to the complainant, other than due diligence information, which it has withheld under section 40(2).
23. It recognised that the complainant may believe that further information is held by it, but it considered that this may be because the complainant had misunderstood the system under which the Interim Lead for Place was employed and the framework system it has in place to employ staff in such circumstances.
24. The complainant argued that the council had disclosed the daily rate but argued that the request had not been fully responded to because: "You will have records of the actual days he has worked since you are paying him on a daily rate and that is what I need to know." The council confirmed it had already provided the interim director's day rate, and also confirmed the amount paid to Solace. It therefore argued that it had responded to the complainant's request in this respect. The Commissioner notes that the initial request in this instance was for a copy of the 'pay package'. The Commissioner considers therefore that a disclosure of the daily rate meets the complainant's initial request. The request for hours worked is a new request for information.

25. As regards the searches which it carried out, the council said that information is not stored locally on council devices. It would be held on its networked systems.
26. It said that it had therefore carried out searches of its networked resources (emails) and the search terms used included the relevant director's name.
27. It also described how the Chief Executive Officer and the Monitoring Officer had checked for any further information justifying the council's position, and the information which they located had been disclosed.

The Commissioner's conclusion

28. The Commissioner has considered the council's position, in conjunction with the request.
29. The council has described how it has carried out proportionate and appropriate searches of the relevant records, including searches of senior staff email accounts. It confirmed that it has disclosed all of the information which it located to the complainant other than that which it exempted under section 40(2).
30. There is no contradictory evidence available to the Commissioner that indicates the council's position is wrong.
31. On this basis the Commissioner has concluded that, on the balance of probabilities, the no further information is held by the council.

Other matters

32. The complainant's request of 28 July 2024 occurred after the complainant had made their complaint to the Commissioner, but prior to the Commissioner beginning his investigation.
33. The Commissioner notes that the complainant's later correspondence sought to greatly expand upon the initial scope of the request. Some of the newer requests were not seeking clarification on points relating to the request initially made. They were new requests for information.
34. The Commissioner would like to highlight that he has published guidance on how to make FOI requests, and that this may provide useful information to the complainant when making any requests in the future. The guidance can be found at <https://ico.org.uk/for-the-public/official-information/>.

Right of appeal

35. 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

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

36. 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.
37. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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