

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

### **Decision notice**

**Date:** 4 November 2014

**Public Authority:** Cardiff Council

**Address:** County Hall  
Atlantic Wharf  
Cardiff Bay  
Cardiff  
CF10 4UW

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

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1. The complainant requested information about the Enterprise Architect department within Cardiff Council ('the Council'). The Council provided some information and stated other information was not held. At the time of its internal review, the Council acknowledged that there had been a minor error in the original information provided in relation to one part of the request and confirmed the accurate figures. The complainant considered that the information provided was inaccurate or incomplete. The Commissioner's decision is that the Council has complied with its obligations under section 1 in relation to some parts of the request but that the Council holds further information relevant to part E of the request. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Provide the complainant with a fresh response to part E of the request.
2. 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

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3. On 24 October 2013, the complainant wrote to the Council and requested information in the following terms:  
  
"Please could you provide me the following details relating to your Enterprise Architect department:  
  
A) The date the department was created  
  
B) The total salary cost to the team, both temporary and permanent staff for each year since their creation (inc Year to date)  
  
C) the number of posts in the team currently  
  
D) the total number of days all posts in the team have attended for paid training in the last 12 months (from today) – with total number of days training attended by these staff as a whole and total cost of this training  
  
E) the total number of days these posts have attended unpaid training, seminars, workshops, conferences or other internal and external events of this type in the last 12 months (from today) – to be clear this is the total number of days for everyone as a group  
  
F) total spend by EA department from their budget excluding salary costs in each year since creation (inc spend this year to date)  
  
G) a list of the new systems of services funded by EA budget that are live and full operational as of today's date".
4. The Council responded on 12 November 2013 and provided information relating to parts A-D, F and G and stated it did not hold information relating to part E of the request.
5. On 2 December 2013, the complainant requested an internal review of the Council's handling of the request. In particular, he queried the Council's responses to part D and F as he did not think the figures were accurate. He also disputed the Council's response that information relating to part E of the request was not held.
6. The Council provided the outcome of its internal review on 17 December 2013. It confirmed that there was a miscoded entry in its response to part D of the request and clarified the correct figures. It also confirmed that the information provided in its response of 12 November 2013 represented all the recorded information held in relation to the request.

## **Scope of the case**

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7. The complainant contacted the Commissioner on 26 March 2014 to complain about the way his request for information had been handled.
8. In his complaint to the Commissioner, the complainant submitted a number of representations to support his view that the Council had provided incomplete or inaccurate information relating to parts D and F of the request. He also expressed concern that the Council did not hold any information relating to part E of the request.
9. The Commissioner considers this complaint to relate to whether the Council has complied with its obligations under section 1 of the FOIA in relation to parts D, E and F of the request.

## **Reasons for decision**

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### **Section 1 – general right of access**

10. Section 1 of the FOIA states that any person making a request for information is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request and, if that is the case, to have that information communicated to him.
11. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the authority to check that the information is not held and he will consider any other reasons offered by the public authority to explain why the information is not held. He will also consider any reason why it is inherently likely or unlikely that information is not held. For clarity, the Commissioner is not expected to prove categorically whether the information was held; he is only required to make a judgement on whether the information was held on the civil standard of the balance of probabilities.
12. In this case the complainant considers that the information which has been provided to him is inaccurate or incomplete and provided representations to support his view.

### **Parts D and F of the request**

13. Part D of the request was for the total number of days staff had attended paid for training in the last 12 months and the total cost of the training. The Council initially provided figures relating to this, but in its

internal review, it confirmed that there had been an error in the original figures provided, and clarified the amended figures. Part F of the request was for the total spend by the Enterprise Architect (EA) department excluding salary costs in each year since it was created. The Council disclosed the figures for total spend from the EA department budget for the relevant period.

14. The Council confirmed to the Commissioner that its financial records are held on a centralised costing system, which is linked to all procurement and spend activities. The Council confirmed that in relation to these parts of the request searches were performed on the centralised accounting system under the cost centre code for the EA department. Searching this system provides the full accounting information on the budget allocated to the EA department.
15. In terms of the searches conducted specifically in relation to part D of the request, the Council confirmed that the live financial records for the EA department were searched in order to identify expenditure on training providers. The system holds a cost code in respect of training. This information was then cross referenced manually against information within officer's calendars and diaries to identify the number of days training any expenditure related to.
16. The Council confirmed that the figures provided in relation to part F of the request were taken directly from the live financial accounting system for the EA cost centre code. As the request covered a period of 2 financial years, searches were conducted of the financial records for both years. The Council confirmed that the information provided in response to this part of the request included both internal and external expenditure from the EA department budget, excluding salary costs. The Council also confirmed that the figures provided for salary costs (part B of the request) and other spend (part F of the request) represented the totality of the EA budget for the years requested and this is reflected in the Council's budget book.
17. In his complaint to the Commissioner, the complainant said that he believed the EA department had spent "significant sums" on software and hardware and purchased a number of corporate licences for a number of specific IT systems. The complainant raised concerns that the figures provided by the Council in relation to part F of the request did not appear to take into account any such expenditure by the EA department on projects, software, hardware and other services, for example consultancy. The Commissioner raised this point with the Council who confirmed that all expenditure on projects, consultancy, software and hardware, with the exception of one item (the MEGA architecture tool) was done through its corporation transformation programme. Any expenditure on such items/activities is therefore held

within the Council's project accounting records and does not form part of the EA budget. The Council provided the Commissioner with an extract from the live financial accounting system in respect of its transformation programme budget to demonstrate this. The Council also confirmed that this budget is not under the control of the EA department.

18. The complainant also raised concerns that the number of paid for training days provided by the Council (part D of the request) was low as he believed a number of staff within the EA department had attended several training courses lasting a week in duration. The Commissioner asked the Council whether it was possible that members of staff had either attending paid for training and the cost of the training was met by another Council department, or whether staff may have attended paid for training and not entered any details into their calendars or diaries.
19. The Council agreed that it was possible that staff had attended paid for training and did not enter details in their calendar. However, the Council considers the possibility unlikely as all staff are required to keep their diaries up to date as part of the operational process of resource management and planning. The Council also acknowledged that it was possible that staff within the EA department had attended training which was budgeted by a different area within the Council. However, the Council advised that, in order to identify whether this happened it would require a complete search of all of the Councils cost centre codes, totalling over 9000 different codes, the detailed invoices searched and then individual items manually matched to establish information relevant to any training attended by staff within the EA department but paid for out of a different Council budget.
20. Based on the evidence and explanations provided, the Commissioner is satisfied that the Council has conducted adequate and proportionate searches in respect of parts D and F of the request. In light of this and the additional representations made by the Council the Commissioner is satisfied that it has disclosed the information held relevant to the requests and therefore complied with its obligations under section 1 of the FOIA.

## **Part E of the request**

21. Part E of the request is for the total number of days staff within the EA department have attended unpaid training, seminars, workshops, conferences or other internal and external events in the last 12 months. In its initial response to the request, the Council stated that "This information is not recorded. The Freedom of Information Act states we cannot release information we do not hold".

22. In response to the Commissioner's queries about the searches undertaken to determine whether information was held relevant to this part of the request the Council advised that:

"the definition for each of the requested categories is very broad and covers every business activity, which is not desk based, that the team performs. Given the potential breadth of the subject it is difficult to identify specific records, electronic or otherwise that cover the totality of the request".

23. In light of the Council's response the Commissioner made further enquiries to help him determine whether, on the balance of probabilities, the Council held any recorded information relating to this request. The Council confirmed it had undertaken searches which confirmed that:

"no information is recorded in the format requested in order to answer this request. Previously we commented on the definition of the request as being very broad. What was meant by this is that on the balance of probability that data could potentially be held, all be in [sic] not in the format requested, which may/may not answer some of the request. The Act allows requestors access to recorded information held by the authority and does not require the public authority to produce information to answer a request.....If data is held within outlook calendars as outlined within this response it would require the local authority to produce a new set of data which does not already exist in order to answer the request".

24. The Council confirmed that the searches it had conducted did not identify any entries relating to unpaid for training, however it advised that "individuals are likely to have attended events which could be classed as unpaid training, seminars". However, the Council advised that information is not recorded in a way to outline hours, days etc attending events and would be based on calendar entries (if entered by individuals) advising what activities, meetings or events they were participating in each day. The Council explained that the only way of extracting any such data would be to "mark each entry on an individual's calendar and to go through each one to identify if any of these items fall within the definition of the request, all be it even this would not provide an answer to the request in terms of days spent attending unpaid training, seminars, workshops etc".

25. The Council explained that it had reviewed the outlook calendar of one employee (not an officer within its EA department) and for the past 12 months there were over 10,000 entries. The Council said that it expected a similar number of entries would be present within the outlook calendars of staff within its EA department. The Council stated that, even if it took only 1 minute to review each calendar entry the

process would "take well in excess of 18 hours of officer time, and in all probability it would take much more than 1 minute for an officer to carry out this task as they may need to refer back to notes of meetings, calendar invites of agendas to ascertain what the entry within the calendar was in relation to and whether it would fall within the definition of the request".

26. The Commissioner's position is that a public authority will hold information if it holds the building blocks required to generate it and no complex judgement is required to produce it. If, for example, an applicant requested a schedule of correspondence between a public authority and a particular third party, identifying the sender, recipient and date of correspondence. If the public authority had already produced a list for its own business needs, the information is clearly held. However, usually such a list is unlikely to be held. However, the authority would hold copies of the correspondence referred to in the request and the information required to produce the schedule will be contained within the correspondence. Responding to the request would simply be a case of extracting the relevant information (the individual building blocks) from the correspondence and organising them into a schedule.
27. The Commissioner considers that the extraction of existing information and presenting it as a schedule is not the creation of new information. However, the level of skill and judgment required to answer a request will determine whether the information is held. The Commissioner considers that what is important when determining whether information is held is the level of judgment required to be exercised. If answering a request involves sophisticated judgement, the information will not be held. However, if only a reasonable level of judgment is required to identify the relevant building blocks or manipulate those blocks, the information will be held for the purpose of the FOIA.
28. In this particular case, the Council's position is that if data is held within the outlook calendars of relevant officers, it would require it to produce a new set of data which does not exist. Based on the representations provided by the Council and his guidance on "Determining whether information is held"<sup>1</sup>, the Commissioner does not consider that responding to the request would involve the creation of new information. This is because the Council has confirmed that information relevant to

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[http://ico.org.uk/for\\_organisations/guidance\\_index/~media/documents/library/Freedom\\_of\\_Information/Practical\\_application/determining\\_whether\\_information\\_is\\_held\\_foi\\_eir.ashx](http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Practical_application/determining_whether_information_is_held_foi_eir.ashx)



the request would be held in outlook calendars, and the Council has explained the processes required in order to extract such data. The process described by the Council does not appear to the Commissioner to require sophisticated judgement.

29. The Commissioner accepts that any information held by the Council may be inaccurate or incomplete in as much as calendar entries may not record all attendance at the relevant events. He also accepts that, in some cases, calendar entries may not record the actual time spent on such activities, and merely record attendance at an event without the actual timings. However, the Commissioner's position is that if the information forming the building blocks is incomplete or inaccurate, the information is still deemed to be held. In situations where the information recorded is likely to be of variable quality and only provide a partial picture of events, the Commissioner considers it advisable for a public authority to explain to the applicant that the information held may not represent a full and accurate picture of the information requested.
30. The Commissioner notes that the Council has alluded to the fact that extracting any information held relevant to the request would be an onerous process which would take in excess of 18 hours. However, the Commissioner's view is that if it would take over 18 hours to identify whether relevant information was held then the request should have been refused under section 12 of the FOIA, as this is in excess of the appropriate limit, rather than stating the information is not held when this had not been verified by appropriate searches.
31. Based on the information available to him, the Commissioner has been unable to draw any conclusion in relation to the Council's handling of part E of the request in this case. As such, he requires the Council to revisit this part of the request from scratch in relation to any information held. While the Commissioner acknowledges that it is feasible the Council may be entitled to refuse to comply with the request for information it does hold (by way of other provisions under the FOIA) – and indeed the information held may not be accurate or complete – it should issue a fresh response to the complainant which complies with the provisions of the FOIA.



## Right of appeal

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32. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

33. 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.
34. 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 .....**

**Anne Jones**  
**Assistant Commissioner**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**