

Freedom of Information Act 2000 (Section 50)**Decision Notice****Date: 22 October 2009**

Public Authority: Bridgend County Borough Council
Address: Civic Offices
Angel Street
Bridgend
CF31 4WB

Summary

The complainant requested information relating to various payments made to Council staff, as well as information relating to inequality and back pay issues. The Council provided some information, and refused the remainder of the request in reliance on sections 12, 22 and 40 of the Act. Following the Commissioner's intervention the Council did provide some of the withheld information to the complainant. In relation to the remaining withheld information the Commissioner is satisfied that the Council correctly applied section 12 to refuse part of the request. However the Commissioner is not satisfied that the Council correctly applied the exemption under section 22. Therefore the Commissioner requires the Council to release this information to the complainant. The Commissioner also recorded a number of procedural breaches in relation to the Council's handling of the request.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the Act). This Notice sets out his decision.

The Request

2. The complainant has advised the Commissioner that they made a request for information to the Council on 12 February 2007. The request contained 35 separate questions, and is summarised below. The request is set out in full at Annex 2 to this Notice.

Question	Details
1-2	List of all posts and number of men and women employed in each post
3-9	Steps taken by the Council in relation to equal pay, equal opportunities

	and the Single Status Agreement
10-14	Information relating to bonuses paid between 1997 and 2007: <ul style="list-style-type: none"> • Which posts attracted bonuses • How much was paid to each post • Conditions of Service and entitlements to each bonus • How long each bonus has been paid • Steps taken to consider the gender impact of each bonus
15-19	Information relating to additional increments paid between 1997 and 2007: <ul style="list-style-type: none"> • Which posts attracted additional increments • How much was paid to each post • Conditions of Service and entitlements to each additional increment • How long each additional increment has been paid • Steps taken to consider the gender impact of each additional increment
20-22 26, 29	Steps taken by the Council in relation to the Red and Green Books
23-24	Details of all unsocial hour payments paid to each post in the Council, and Conditions of Service entitlements to these payments.
27-28	Information relating to any job evaluation scheme undertaken by the Council since 1997
30	Council proposals on back pay if completed
31	Funds allocated to: <ul style="list-style-type: none"> • Inequality/back pay compensation • Back pay and protections arising from job evaluations • The impact on the pay bill Factors used to calculate these figures, and minutes of meetings where this was discussed
32	Reserves held by the Council in relation to potential back pay in equal pay cases and other financial information
33	Details of payments made in relation to on call and stand by payments, and Conditions of Service for these payments
34	Details of payments made in relation to professional fee payments, and Conditions of Service for these payments
35	Details of payments made in relation to use of personal vehicles, mileage payment and other payments, and Conditions of Service for these payments

3. The Council responded on 2 April 2007, providing some of the requested information. The Council advised that some of the requested information was not held, and that some was exempt by virtue of sections 22(1)(a) and 40 of the Act. The Council also refused to comply with part of the request on the grounds that to do so would exceed the cost limit as set out at section 12 of the Act.

1-2	The Council provided this information to the complainant
3-9	The Council provided all the information it held in relation to these questions
10-14	The Council claimed that this information was exempt under section 40 of the Act.

15-19	The Council claimed that this information was exempt under section 40 of the Act.
20-22	The Council advised that policies were under development, but did not provide any other information
23-24	The Council claimed that this information was exempt under section 40 of the Act.
25-26	The Council advised that a revised pay structure would be developed following the evaluation of posts
27	The Council advised that 80 jobs were evaluated in 2001/2002 but only as part of a pilot project
28	The Council advised that it hoped to complete the pay and grading review by the end of 2007
29	The Council advised that no proposals had been made
30	The Council advised that these proposals had not been completed, although if they had they would have been exempt under section 40
31-32	The Council advised that this information was exempt under section 22 of the Act as it would be made public at a later date
33-35	The Council advised that to comply with these questions would exceed the cost limit set out at section 12 of the Act. The Council also advised that the information was exempt under section 40 of the Act.

4. The complainant was dissatisfied with this response, and requested an internal review on 30 April 2007 in relation to the following parts of his request:
- Questions 10-24
 - Question 28
 - Questions 31-35
5. The complainant did not receive a response to his request for a review.

The Investigation

Scope of the case

6. On 5 June 2007 the complainant contacted the Commissioner to complain about the way his request for information had been handled as he had not yet received a response to his request for an internal review. The complainant asked the Commissioner to consider whether the Council had complied with his request in accordance with the Act.
7. The Commissioner therefore determined that the scope of the case included only the issues raised by the complainant in his request for internal review (ie, the questions detailed at paragraph 4 above).

Chronology

8. The Commissioner wrote to the Council on 29 October 2007 to request an explanation as to how it had dealt with the complainant's request. The

Commissioner noted that the Council had failed to conduct an internal review as requested by the complainant, and provided some guidance on this issue. However this is not a requirement of the Act, so it does not form part of this Notice and is dealt with in Other Matters at paragraph 60 below.

9. The Commissioner also sought further information relating to the Council's handling of the request. In particular the Commissioner requested an explanation of the Council's estimate in relation to the section 12 cost limit, and of the Council's application of the exemption under section 22 of the Act.
10. The Council responded to the Commissioner on 12 November 2007. The Council acknowledged that it had not undertaken an internal review, and advised that it would conduct one now. The Council advised the Commissioner on 7 December 2007 that it was still in the process of completing the review. On 20 December 2007 the Council advised the Commissioner that it was preparing to provide him with copies of the withheld information.
11. On 3 January 2008 the Council responded to the Commissioner's letter of 29 October 2007, and on 28 January 2008 the Commissioner inspected some of the withheld information. The Commissioner wrote to the Council on 22 February 2008 with further enquiries. In this letter the Commissioner also asked the Council to consider releasing some of the information to the complainant, as it did not appear to him to be exempt under the Act. The Council responded to the Commissioner on 1 April 2008. The Council agreed to provide some information to the complainant, but maintained that the remainder was exempt under sections 12 and 22 of the Act.
12. The Commissioner asked the Council whether it had ever operated a bonus scheme, bearing in mind that the complainant's request referred to a ten year period between 1997 and 2007. On 1 April 2008 the Council advised the Commissioner that it may have paid bonuses to some posts until April 2000, and that bonuses were most likely to have been paid to manual workers in the then Direct Labour Organisation. The Council also confirmed that it did not hold any information relating to gender impact, as no such considerations had taken place.
13. Following a change in the Commissioner's staff, a case review was undertaken. The Commissioner wrote to the Council on 21 November 2008 to ask whether it had disclosed the additional information as it had agreed in April 2008. The Council responded to the Commissioner on 5 December 2008, to advise that it had now disclosed the following information to the complainant:
 1. A written agreement relating to call out / stand by payments.
 2. The Council's corporate policy on allowances and expenses, which contained a brief reference to professional fees.
14. On 17 March 2009 the complainant confirmed to the Commissioner that he had now received the additional information, but advised that he remained

dissatisfied with the Council's response, with the exception of question 28. The Commissioner contacted the Council again on 31 March 2009 to request clarification of a number of issues. The Council responded to the Commissioner on 23 April 2009. In this letter the Council indicated that it had in fact paid bonuses to a number of posts, and provided the Commissioner with this information. The Council later advised the Commissioner of its view that the information relating to bonuses would now be considered exempt under section 40 of the Act as it was personal information.

15. The Commissioner requested further clarification on the issue of bonus information, and the Council responded on 14 August 2009. At this stage the Council advised the Commissioner that the information relating to bonuses, which it had provided on 23 April 2009, related only to the period 2004-2007. The Council confirmed that it did not hold any information relating to the period 1997-2004. Further, the Council advised the Commissioner that it was only able to provide this information in 2009 because of a change in records management systems. The Council remained of the view that the information could not have been provided to the complainant in response to the original request, as it was not held on its electronic records system.
16. As the Council has now provided further information to the complainant, the Commissioner's decision relates to the remaining withheld information, which comprises the following parts of the complainant's request:

- Questions 10-14
- Questions 15-19
- Questions 20-22
- Questions 23-24
- Questions 31-32
- Questions 33-35

17. The Commissioner notes that the Council has now provided him with some information relating to bonuses (questions 10-14). However, the Commissioner's decision in this case relates to the information held by the Council at the time of the request, and the Council maintains that it was correct to rely on section 12 at this time. Therefore the Commissioner is required to decide whether the Council correctly relied on section 12 at the time of the request, not whether the information could now be provided to the complainant.

Findings of fact

18. In 1997, the National Joint Council for Local Government Services agreed a national framework with potential for local modification to suit local service requirements. Known as The Single Status Agreement, these pay and conditions of service agreements are published in the "Green Book"¹.

¹ Further information can be found at <http://www.lge.gov.uk/lge/core/page.do?pagelId=122021>

19. The “Red Book” is the agreement of the Joint Negotiating Committee for Local Authority Craft and Associated Employees.

Analysis

Procedural matters

Section 1: information not held and section 10: time for response

20. The Council originally claimed that it did not hold any recorded information in relation to questions 10-14, 19, 20, 21 and 22 of the complainant's request (see Annex 2 for full details of the request).
21. In relation to questions 10-14 the Council originally argued that it did not operate a bonus scheme, and therefore did not hold any relevant information. The Council also argued that it did not hold any recorded information in relation to the other questions in this part of the request because it had not taken any steps to consider the gender impact of the payments specified.
22. In relation to the bonus scheme, the complainant indicated to the Commissioner that he was aware of “certain grades of staff primarily within the Trade and Manual groups are in receipt of a separate bonus payment in addition to the nationally agreed rate”. Therefore the complainant remained of the view that the council did hold the requested information.
23. In response to the Commissioner's enquiries the Council advised that bonuses may have been paid to some staff before 2000, but that it no longer paid bonuses. The Council initially advised the Commissioner that it did not know whether it held information dating back to 1997, but on further questioning the Council did provide the Commissioner with details of bonuses paid to staff during 2004-2007. As explained in paragraph 15 above, the Council maintained that it could not have collated this information at the time of the complainant's request.
24. The Commissioner is mindful of the fact that the Act only provides for access to recorded information which is held by the public authority at the time of the request. Nevertheless, public authorities are obliged (except in certain cases) to confirm or deny whether they hold information of the description specified. In this case the Commissioner is of the view that the Council failed to ascertain what information it held in relation to the bonus scheme, and provided relevant information to the Commissioner at a very late stage of the investigation.
25. On the basis of the information provided by the Council the Commissioner is minded to accept, on the balance of probabilities, that the Council did not hold bonus information relating to the period 1997-2004. However, the Council did hold bonus information relating to the period 2004-2007. Therefore the

Council breached section 1(1)(a) of the Act in failing to confirm what information it held, and section 10(1) in failing to do this within the statutory time limit. The question as to whether or not the Council could have provided this information to the complainant is considered at paragraphs 35-39 below.

26. In relation to gender impact assessments (questions 14, 19 and 20), the complainant also advised the Commissioner of his understanding that the Council had undertaken an Equal Pay Review in April 2005, and he wished to know the outcome of the review, which was why he asked the questions about consideration of the gender impact of payments. The Council maintained that it had not considered the gender impact in relation to any of the payments specified by the complainant, therefore it did not hold the requested information. Similarly the Council maintained that it did not yet hold any information in relation to questions 21 and 22 because it had not yet taken any such steps.
27. The Commissioner is mindful of the fact that authorities are not obliged to respond to requests for comment and opinion, although of course they may choose to do so as part of their normal business. In this particular case the complainant asked specific questions, and the Council advised that it did not hold the particular information requested. The Commissioner has not been provided with any arguments to suggest that the requested information is in fact held, and the Commissioner is satisfied that the Council did respond to these parts of the request in accordance with the Act.

Section 17: refusal notice

28. Where a public authority refuses a request for information in reliance on any exemption it is required under section 17(1) of the Act to provide the applicant with a 'refusal notice' explaining the exemption or exemptions relied upon. This notice should be provided to the applicant within twenty working days.
29. In this case the Council did not respond to the complainant's request of 12 February 2007 until 1 April 2007. Therefore the Commissioner finds that the Council breached the requirements of section 17(1) in that it failed to provide a refusal notice within the statutory time limit which stated the relevant exemptions. In addition the Council breached section 17(1)(b) in that it failed to provide sufficient detail in relation to the exemptions claimed.
30. In addition, where a public authority refuses a request for information in reliance on section 12 of the Act it is required under section 17(5) to provide the applicant with a 'refusal notice' stating this. Again, this notice must be served within the statutory time for compliance, which is twenty working days following the date the request is received. Therefore the Commissioner finds that the Council also failed to comply with section 17(5) of the Act.

Section 12: cost limit

31. The Council originally claimed that to comply with questions 33-35 of the request would exceed the cost limit as set out at section 12 of the Act. During

the course of the investigation the Council sought to extend its section 12 arguments in relation to questions 10-14,15-18 and 24. These questions asked for details of posts which had attracted the following payments (see Annex 2 for full details of the request):

- Bonus payments (questions 10-14)
- Additional increments (questions 15-18)
- Unsocial hour payments (questions 23,24)
- On call and standby payments (question 33)
- Professional fee payments (question 34)
- Use of personal vehicles, mileage payments and other payments (question 35)

32. Section 12 provides that an authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit (£600 for central government, £450 for all other authorities). Section 12 of the Act should be considered with the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. If an authority estimates that complying with a request may cost more than the cost limit, it can consider the time taken in:

- (a) determining whether it holds the information,
- (b) locating the information, or a document which may contain the information,
- (c) retrieving the information, or a document which may contain the information, and
- (d) extracting the information from a document containing it.

33. Paragraph 4(4) of the Regulations states that the authority should calculate the cost of complying with a request by multiplying the time estimated by £25 per hour. If the authority considers that complying with the request would therefore cost more than the appropriate limit, it is not obliged to comply with the request. In the case of the Council, the £450 limit applies, which, at £25 per hour, equates to 18 hours.

34. Furthermore section 12(4) of the Act provides that where a public authority receives two or more requests on a similar nature from the same individual or different persons acting in concert, then the estimated cost of complying with any of the requests is taken to be the estimated costs of complying with all of them. Regulation 5 confirms that requests which a public authority chooses to aggregate must 'relate, to any extent, to the same or similar information' and be received by the public authority within any sixty consecutive working day period.

35. The Commissioner is conscious of the comments made by the Information Tribunal in its decision in *Fitzsimmons v Information Commissioner and DCMS* (EA/2007/0124). In this decision the Tribunal confirmed that the test for aggregating requests as set in Regulation 5 of the Regulations is very wide; requests only need to relate to any extent to the same or similar information in order to be aggregated. The Commissioner takes the view that requests will

be 'similar' where there is an overarching theme or common thread running between them in terms of the nature of the information that has been requested.

36. Furthermore, and again to follow the approach taken by the Tribunal in *Fitzsimmons*, in cases such as this where the complainant has submitted one piece of correspondence which includes a number of requests, in the Commissioner's opinion technically speaking, multiple requests within a single item of correspondence are separate requests for the purpose of section 12.

Section 16: duty to provide advice and assistance

37. Section 16 of the Act places a duty on public authorities to provide advice and assistance to requesters. The Commissioner is also mindful of the Code of Practice issued by the Secretary of State under section 45 of the Act (the 'Code'). Paragraph 14 of the Code recommends that, where a public authority estimates that compliance with a request would exceed the cost limit, the authority should also consider whether it could provide the complainant with advice and assistance in order to bring his request within the cost limit.

Bonus payments (questions 10-14) and additional increments (15-18)

38. The Council advised the Commissioner that it was unable to provide the details of the posts which received bonus payments and additional increments because it had no way of reporting this information, given its current records management systems. The Council explained that, in order to obtain details of bonus payments or additional increments for each post, it would need to trawl through personnel records of approximately 7500-8000 current and former employees. The Council argued that its electronic records did not generally differentiate between different types of payments, therefore it would need to check manual records. The Council described to the Commissioner the process that it would need to undertake in order to locate and obtain each file. In addition, the Council estimated that it would take on average 10 minutes to examine each file (although some files would be larger than others). Overall the Council estimated that the exercise would take over 1250 hours to complete. Therefore the Council claimed that to comply fully with this part of the request would exceed the cost limit.
39. Having considered the Council's arguments the Commissioner is minded to accept that the Council could not obtain the requested information electronically, and that to check each manual file would well exceed the cost limit. Therefore the Commissioner is satisfied that the Council correctly relied on section 12 of the Act in order to refuse this part of the complainant's request. The Commissioner notes that the Council is now in a position to obtain some of the requested information (see paragraph 15 above). However the Commissioner can only make a decision in relation to the circumstances at the time the request was originally handled by the Council.
40. Having considered the correspondence in this case, the Commissioner has not seen any evidence that the Council engaged with the complainant to

provide advice and assistance. Therefore the Commissioner asked the Council whether it held any information which might explain how additional payments were administered. The Council provided the Commissioner with a copy of its protocol for awarding honoraria (payments made to employees covering the absence of other employees in certain circumstances). The Commissioner is of the view that this is unlikely to answer the complainant's request fully, but that the Council could have provided this to the complainant by way of assistance.

41. In relation to section 16 of the Act the Commissioner believes that public authorities should focus on the information which has been requested, if necessary seeking clarification from the applicant as to what information is wanted. He strongly recommends that early contact is made with the applicant and that any advice and assistance is delivered in a clear and intelligible manner. Where a request has been refused on grounds of excessive cost it may well be appropriate for the public authority to assist the applicant in making a subsequent request, for example by establishing a dialogue with the applicant so that the available options can be clearly spelt out and explored.
42. The Commissioner is of the view that the Council did not attempt to identify how much, if any, of the information requested it could provide within the appropriate cost limit. Nor did the Council provide any kind of assistance or guidance to the complainant as to how he might refine his request. On that basis the Commissioner finds that the Council breached its duty under section 16 of the Act to provide the complainant with advice and assistance in relation to this part of his request.

Unsocial hour payments (questions 23-24)

43. The Council presented similar arguments to those at paragraph 35 above in relation to checking manual records for information relating to unsocial hour payments.
44. Having inspected the information provided by the Council, the Commissioner is minded to accept that to comply with this part of the request would exceed the cost limit, as he is satisfied that it would take the Council more than 18 hours to check manual personnel files.

On call and standby payments (question 33)

45. The Council presented similar arguments to those at paragraph 35 above in relation to its cost estimate for the time taken to check manual records for Conditions of Service.
46. During the investigation the Council produced a document entitled "Joint Agreement in relation to standby, call-out and duty officer payment arrangements in environmental and planning services". The Council advised the Commissioner that it had only just become aware of this document, and although it did not fully answer question 33 of the request the Council would be content to provide this information to the complainant. The Council

maintained that it would exceed the cost limit to trawl through personnel records to obtain Conditions of Service for each post.

47. Although the Commissioner accepts that the Council correctly relied on section 12 in relation to question 33, the Commissioner is of the view that the Council failed to provide advice and assistance to the complainant until it was required to do so by the Commissioner. Therefore the Commissioner is of the view that the Council breached section 16 of the Act in relation to this part of the request.

Professional fee payments (question 34)

48. The Council advised the Commissioner that it did not routinely collect information relating to professional fee payments. Therefore the Council argued that it would need to look at each manual personnel file to ascertain what information was held, and again the time required to undertake this exercise would exceed the cost limit. In addition, the Council explained that some employees paid their own fees and had them reimbursed, in other cases the Council paid the fee directly, so personnel records may not reflect all the professional fees paid.
49. Bearing in mind the duty to provide advice and assistance, the Commissioner asked the Council to consider providing details of the different types of professional fees that are paid by the Council. The Council agreed to disclose to the complainant its policy on expenses and allowances, which contained a reference to professional fees. The policy was provided to the complainant on 5 December 2008.

Use of personal vehicles, mileage payments and other payments (question 35)

50. The Council advised the Commissioner that it paid varying mileage rates to different members and groups of staff, therefore it would need to check each personnel file to ascertain which posts attracted particular levels of payment, which would exceed the cost limit.
51. The Council provided the Commissioner with a copy of its corporate policy on allowances and expenses, which included information about travelling and mileage allowances. This policy was provided to the complainant on 5 December 2008.
52. For the reasons set out at paragraph 36 above the Commissioner is satisfied that the process of checking all the personnel files would exceed the cost limit.

Section 22: information intended for future publication

53. The Council withheld information in relation to questions 31 and 32 of the request in reliance on the exemption under section 22. These questions related to financial planning undertaken by the Council to meet potential claims for back pay in equal pay cases and job evaluation, following the Single Status agreement in 1997.

54. For this exemption to be engaged, the Commissioner first needs to be satisfied that the information is held with the intention of being published, whether by the public authority or by any other person. Secondly, section 22 requires that this intention must have existed at the time of the request, and thirdly, that it is reasonable in all the circumstances that the information should be withheld from disclosure until the intended date of publication. Section 22 is a qualified exemption, so if the exemption itself is engaged, the public authority then needs to apply the public interest test to decide whether the public interest in disclosing the information is outweighed by the public interest in withholding the information until the intended date of publication.
55. In its refusal notice of 2 April 2007, the Council advised the complainant that the information was being withheld “for reasons of confidentiality” but that it would be made public at a future (as yet undetermined) date. The Council stated that it considered the public interest in maintaining the exemption to outweigh that in disclosing the information, since it was at that time engaged in negotiations.
56. The Commissioner advised the Council on 22 February 2008 that he was not satisfied that the exemption was engaged. In response the Council repeated its previous arguments, but did not provide any further evidence to the Commissioner. On 23 April 2009 the Council indicated to the Commissioner that “the information is in essence already available in various forms” although it did not elaborate on this statement.
57. The Commissioner notes that he has given the Council a number of opportunities to provide detailed arguments in relation to this complaint. In the absence of such an explanation the Commissioner cannot be satisfied that the exemption under section 22 is engaged in relation to the withheld information. Therefore the Commissioner finds that the Council incorrectly withheld the information in reliance on the exemption under section 22 of the Act.

The Decision

58. The Commissioner's decision is that the Council dealt with the following elements of the request in accordance with the requirements of the Act:
 - The Council complied with section 1(1)(a) in that it advised the complainant that it did not hold some of the requested information.
 - The Council correctly relied upon the cost limit at section 12 to refuse part of the request
59. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
 - The Council failed to confirm that it held some of the requested information, thereby breaching section 1(1)(a).

- The Council wrongly withheld some information in reliance on the exemption under section 22(1) of the Act, thereby breaching section 1(1)(b).
- The Council failed to communicate this to the applicant within the time limit set out at section 10(1).
- The Council did not provide advice and assistance to the complainant as required by section 16(1).
- The Council breached section 17(1) in failing to provide a timely refusal notice to the complainant
- The Council breached section 17(5)

Steps Required

60. The Commissioner requires the Council to take the following steps to ensure compliance with the Act:
- Disclose to the complainant the information previously withheld under section 22(1) of the Act
 - Contact the complainant and discuss what it can provide within the costs limit, in order for the Council to comply with its obligations under section 16(1) of the Act
61. The public authority must take the steps required within 35 calendar days of the date of this notice.

Other Matters

62. Although it does not form part of this Decision Notice the Commissioner has considered the Council's failure to conduct an internal review as requested by the complainant on 30 April 2007.
63. The Commissioner is mindful of the fact that that the Act does not require that public authorities offer an internal review of its handling of a request (although the authority must advise the complainant if it does not have a procedure for such reviews). However, the Code of Practice issued by the Secretary of State under section 45 of the Act (the Code) contains recommendations in relation to internal reviews. In particular, paragraph 41 of the Code provides that:
- "In all cases, complaints should be acknowledged promptly and the complainant should be informed of the authority's target date for determining the complaint."*
64. The Commissioner notes that the Council did advise the Commissioner on 12 November 2007 that it would now conduct an internal review. However the

Commissioner remains of the view that the Council failed to meet the provisions of the Code in relation to reviews. The Commissioner appreciates that this request was made in 2007, and expects that the Council will have taken steps to prevent a recurrence of this situation in relation to future requests.

Right of Appeal

65. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

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.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 22 day of October 2009

Signed

**Anne Jones
Assistant Commissioner**

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

Annex 1: Relevant statutory obligations

Freedom of Information Act 2000

1. **Section 1(1)** provides that:

(1) 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.

2. **Section 10** provides that:

(1) ... a public authority must comply with section (1)(1) promptly and in any event not later than the twentieth working day following the date of receipt.

3. **Section 12(1)** provides that:

Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.

4. **Section 16(1)** provides that:

It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.

5. **Section 17(1)** provides that:

A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request, or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which –

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.

Section 17(5) provides that:

A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.

6. **Section 22(1)** provides that –

Information is exempt information if-

- (a) the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not),
- (b) the information was already held with a view to such publication at the time when the request for information was made, and
- (c) it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph (a).

7. **Regulation 4 of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004** provides that -

(1) This regulation has effect in any case in which a public authority proposes to estimate whether the cost of complying with a relevant request would exceed the appropriate limit.

(2) A relevant request is any request to the extent that it is a request-

- (a) for unstructured personal data within the meaning of section 9A(1) of the 1998 Act, and to which section 7(1) of that Act would, apart from the appropriate limit, to any extent apply, or
- (b) information to which section 1(1) of the 2000 Act would, apart from the appropriate limit, to any extent apply.

(3) In a case in which this regulation has effect, a public authority may, for the purpose of its estimate, take account only of the costs it reasonably expects to incur in relation to the request in-

- (a) determining whether it holds the information,
- (b) locating the information, or a document which may contain the information,
- (c) retrieving the information, or a document which may contain the information, and
- (d) extracting the information from a document containing it.

(4) To the extent to which any of the costs which a public authority takes into account are attributable to the time which persons undertaking any of the activities mentioned in paragraph (3) on behalf of the authority are expected to spend on those activities, those costs are to be estimated at a rate of £25 per person per hour.

Annex 2: the complainant's request

1. Please let me have a list of all the current posts for which people are employed by the Council.
2. In respect of each post please provide the number of people employed and the number of men and women in each post.
3. Please supply copy of the Authority's Equal Pay Policy pursuant to the EOC Code of Practice on Equal Pay.
4. Please provide the results and dates of any equal pay audits of Terms and Conditions carried out since 1997.
5. Did the Council receive an EOC Equal Pay Review Kit? If so, when?
6. What steps has the Council taken to implement the EOC Equal Pay Review Kit?
7. Which Council Officers were responsible for taking the lead on Equal Opportunities in respect of gender and pay issues for the years 1997 to date?
8. Which Officer of the Council was responsible for taking the lead on Equal Opportunities in respect of gender and pay issues for the years 1997 to date?
9. Which Council Officers were responsible for taking the lead on the implementation of the Single Status Agreement for the years from 1997 to date for each Council Department?
10. To which posts identified in answer to Question 1 above were bonuses paid in addition to basic pay for the years 1997 to the end of 2007?
11. In respect of the bonuses identified in answer to Question 10 how much is the bonus/increment as a percentage of basic pay?
12. In respect of each bonus identified in Question 10 what are the Conditions of Service for the Employee to be entitled to the bonus?
13. In respect of each bonus identified in Question 10 since when has this bonus scheme been operational in its current form?
14. What steps has the Council taken to consider the gender impact of each bonus scheme since it was introduced in its current format?
15. To which posts identified in answer to Question 1 above were additional increments paid in addition to basic pay for the years 1997 to the end of 2007?
16. In respect of the additional increments identified in answer to Question 15 how much is the additional increment as a percentage of basic pay?

17. In respect of each additional increment identified in Question 15 what are the Conditions of Service for the Employee to be entitled to the additional increments?
18. In respect of each additional increment identified in Question 15 since when has this additional increment been operational in its current form?
19. What steps has the Council taken to consider the gender impact of each additional increment since it was introduced in its current format?
20. What consideration has been given to the gender impact of the current gender profile of employees employed on Red Book Terms and Conditions since 1997?
21. Paragraph 1.2 of Part 2 of the Green Book requires Employers to identify any discriminatory practice. What steps has the Council taken to comply with this Act?
22. Paragraph 1.2 also requires positive action initiatives to be taken. What steps has the Council taken?
23. In relation to posts identified in 1 above please detail all unsocial hour payments paid to each post.
24. In relation to each unsocial payment please detail for each post the Condition of Service for the entitlement for the payment.
25. Paragraph 5.2 of Part 2 the Green Book requires a common system of pay for all employees. Why has this not been implemented?
26. Part 4.2 of the Pay and Grading and Conditions of Service require the consideration of the 1984 Regulations on equal value and a review of the access to the payment of performance pay and bonuses. What steps have been taken to consider these provisions of the green Book and with what conclusion?
27. Have any posts been evaluated pursuant under a Job Evaluation Scheme since 1997? If so, for each post evaluated please provide the total of the factor score for that post in rank order.
28. Where are the Council in the Job Evaluation process ie completed Benchmarking, completed Evaluations and completed Constituency Checks?
29. Have proposals been made for a single pay structure under the Green Book? If so, please provide a copy of the proposals.
30. Have the Council completed proposals on back pay and protection? Please supply a copy.

31. What funds have the Council allocated to:

- a) Past inequality back pay/compensation
- b) Back pay arising from Job Evaluation
- c) Protections arising from Job Evaluation
- d) Permanent impact on pay bill

In relation to a, b, c and d above please identify the sum to each part separately and the factors used to calculate each total and please provide Minutes of meeting of Council and/or Officers where this was discussed.

32.

- a) The Single Status agreement was signed in 1997. In 2003 Employment Tribunals increased awards for back pay in equal pay cases from 2 years to 6 years. What steps has the Council taken in its forward financial planning to establish funds that may be necessary to meet potential claims?
- b) In particular, has the Council established any reserves that are earmarked for this purpose?
- c) If a reserve has been established when was it established? How much has been paid into each year financial year since its establishment? Is it in the base budget and has it been accruing interest?
- d) What level of reserves was held in the Council as at 31 March 2002, 2003, 2004, 2005 and 2006?
- e) Please provide a breakdown of all reserves currently held by Council
- f) Please provide a breakdown of the reserves held by each school as at 31 March 2006
- g) What was the budgeted expenditure and actual out turn in the financial year 2004/05, 2005/06 and 2006/07?
- h) What is the current level of useable capital receipts held by the Council?
- i) What is the collection rate in 2006/07 and what surpluses have been generated on the collection fund in each of the last 3 years?
- j) What is the level of collection fund surpluses that have been received by the Authority in each of the last 3 years?
- k) Please supply the following:
 - i) A copy of the most recent budget and actual out turn
 - ii) A copy of the most recent accounts
- l) What discussions have the Council and/or its Officers had in relation to capitalisation of the cost as identified in answer to Question 31 above. Please provide copy of Minutes of meetings.

33. In relation to on call and stand by payments please identify to which posts these are made. Where different payments are made to posts, please identify the Condition of Service for each post to be eligible for payment.

34. In relation to professional fee payments please identify to which posts these are made and the Condition of Service to be eligible for payment.

35. In relation to use of personal vehicles, mileage payment and other payments please detail to which posts these are made. Where there are different payments please give an explanation for the difference and reference to the Condition of Service this payment is made.