

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 28 April 2014

**Public Authority:** Cumbria County Council  
**Address:** The Lonsdale Building  
The Courts  
Carlisle  
Cumbria  
CA3 8NA

#### Decision (including any steps ordered)

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1. The complainant has requested information from Cumbria County Council (the "Council") about the cost of any strain payment included in the retirement package of a named former Chief Executive (CE).
2. The Council withheld the information under section 22(1) of the FOIA.
3. The Commissioner's decision is that the Council has correctly applied section 22(1) of the FOIA to the withheld information.

#### Request and response

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4. On 29 April 2013, the complainant wrote to the Council and made the following request. The summary of the Council's response (in bold) follows each request.

*"1. On the voluntary early retirement of the Chief Executive of Cumbria this year, how much of the cost of exit package will be strain payment?"*

**The Pension Strain cost for the retirement of the officer who held the post of Chief Executive (until 16 May) will not be available until pension options are finalised.**

*2. In 2011/2012 what monies were paid to employees to cover (a) Strain payments (b) Compulsory redundancy payments (c) Voluntary redundancy (d) Voluntary early retirement*

**Nil – pensions strain costs are not paid to employees but to the relevant pension scheme.**

*3. Would you also divulge the figures so far for 2013/2014?"*

**(a) NIL – see above**

**(b) (c) and (d) No payments have been made in respect of compulsory or voluntary redundancy or early retirement so far in 2013/2014.**

5. The Council responded on 22 May 2013 – as set out in bold above.
6. The complainant made a further request to the Council and the Council responded on 29 July 2013. It is a similar request to the original which I have included below. The summary of the Council's response (in bold) follows each request.

*"Please supply me with all details regarding the settlement reached in concern to the recently retired X CEO J Stannard. Please ensure "all details are disclosed", including strain payments and other expenses etc. etc., plus who specifically was present at the meeting when this was decided."*

**The total exit package associated with the departure of the Chief Executive will be published as part of the Senior Officers' Remuneration Note in the Annual Accounts of the year in which the payment is made, consistent with statutory requirements set out in the Accounts and Audit Regulations (updated in 2010). The Senior Officers' Remuneration Note sets out the costs of employment for the Corporate Management Team both for the current and the previous year for comparative purposes.**

**The Chief Officer Panel (COP) which consists of elected Members (Councillors) took the decision to approve the early retirement of former CEO Jill Stannard. The council's Statutory Officers including legal were present to answer any questions the panel may have. This is consistent with Council practice in relation to Member meetings. Membership of COP is available on our website at:**

**<http://councilportal.cumbria.gov.uk/mgCommitteeDetails.aspx?ID=142>**

*"Please also detail to me precisely why CCC has so far failed, despite numerous requests for this information (via the normal channels) to disclose details of the expenditure here of public monies, and which is*

*decidedly and obviously strictly within the scope of said "public interest"!*

**As stated previously the details of the exit package associated with the departure of the Chief Executive will be published as part of the Senior Officers' Remuneration Note in the Annual Accounts of the year in which the payment is made.**

**In the Council's view this information is exempt from disclosure under s22(a) of the Freedom of Information Act 2000 (FOIA). The reason for this is that it is the intention of the Council to process the information by 30 June 2014, at the latest.**

7. Following an internal review the Council wrote to the complainant on 22 August 2013. It confirmed that its position remained unchanged. The Council informed the complainant that it would publish the costs relating to the former the CE's exit package as part of its Annual Accounts for 2013-2014. Therefore, the information was exempt from disclosure under section 22(1)(a) of the FOIA.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 11 October 2013 to complain about the way his request for information had been handled.
9. The Commissioner will determine whether the Council handled the request in accordance with the FOIA. Specifically, he will look at whether the Council was correct to withhold the information under section 22(1)(a) of the FOIA.

### **Reasons for decision**

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#### **Section 22 – information intended for future publication**

10. Section 22 of FOIA states that information is exempt if, at the time a public authority receives a request for it:
  - the public authority holds it with a view to its publication;
  - the public authority or another person intends to publish the information at some future date, whether determined or not; and
  - in all the circumstances it is reasonable to withhold the information prior to publication.

### **Information held at the time of the request**

11. The Council confirmed to the complainant that on the date of the request it did hold information within the scope of his request. The Commissioner is therefore satisfied that the information was held at the time of the request.

### **Intention to publish the information at some future date**

12. The Council stated that it had informed the complainant that the costs relating to the CE's exit package will be published as part of its Annual Accounts for 2013-2014, which will be published online by 30 June 2014.
13. During the investigation of the case the Council provided the Commissioner with the withheld information which included the costs relating to CE's exit package 2013/14.

### **Reasonable in all the circumstances to withhold the information prior to publication**

14. The Council explained how in considering the reasonableness of withholding the information it highlights the fact that it does publish the draft annual accounts every June following the end of the financial year in April. It added that this is prior to the commencement of the independent external audit of the accounts, in line with accounting regulations.
15. The Council described how the planning of this work into a regular schedule means that other essential operational work can take place alongside it. It made clear that this approach is consistent with statutory requirements set out in its Accounts and Audit Regulations.
16. The Council stated that its financial services department manages the preparation of this information in a scheduled manner and within a reasonable timeframe. Therefore, details of the CE's exit package, the Council confirmed, will be released in the 2013-2014 annual accounts, which will be published online by 30 June 2014.
17. The complainant argued that this is "*entirely unacceptable.*" He expressed his view that "*the constituents of this County have absolutely every right to know the cost to them regarding this payoff.*"

### **Public Interest arguments in favour of disclosing the information**

18. The Council acknowledges that there is a general public interest in disclosure because of the need for there to be an open and transparent

government and that the sharing of information with the public should be free and open.

19. The complainant has argued that it is dissatisfactory "*to wait over a year*" for this request.
20. The complainant argued his concern about "*disclosure of these monies at the relevant time when the issue is still live.*" He acknowledged when publication is due. However, he believes that it is totally inappropriate and irregular as his request is about "*public money*" and that the Council "*is duty bound to disclose the cost*" of the CE's exit package at his request.

### **Public Interest arguments in favour of maintaining the exemption**

21. In favour of maintaining the exemption, the Council explained that the public interest lies in permitting it to publish information in a manner and at a time that adheres to its Accounts and Audit Regulations. It stated that it is part of the effective conduct of council business that the publication of the specified information is a planned and managed activity.
22. The Council maintained that it is not reasonable to release information in advance of its planned timetable, and there is a strong argument in favour of allowing everyone to view this information at the same time. The Council added that if it were to release this information as requested on varying occasions this could result in partial information being released over a protracted period leading to confusion and inaccuracy.
23. The Council explained that at the time of the request it had an embedded plan to routinely publish the information as part of its annual accounts. In dealing with the complainant's arguments the Council considers that the public interest will be addressed by this future publication. It added that once this information is published the public will be able to view the Council's financial expenditure.
24. The Council argued that the public interest in disclosure is outweighed by the public interest in maintaining the exemption. Therefore, the Council considers the information exempt from disclosure under section 22(1) of the FOIA.

### **Balance of the public interest**

25. Having considered the public interest arguments in favour of both withholding and disclosing the information, the Commissioner considers

that the arguments in favour of maintaining the exemption outweigh the arguments in favour of disclosing it.

26. In this case, the Commissioner recognises that it is not reasonable for the Council to release information in advance of its planned timetable and intended publication of the costs relating to the CE's exit package. The Commissioner has accepted that there is a strong argument in favour of allowing everyone to view this information at the same time.
27. The Commissioner acknowledges that if the Council were to release this information as requested on varying occasions, this would result in unfinished information being released over an extended period which would lead to confusion and inaccuracy.
28. The Commissioner accepts that the Council held the information at the time of the complainant's request and that details of the CE's exit package will be released in the Council's 2013-2014 Annual Accounts, which the Council have confirmed will be published online by 30 June 2014.
29. The Commissioner considers it is reasonable in all the circumstances for the Council to withhold the information until the future date. Therefore, the Commissioner is satisfied that the Council correctly applied the exemption under section 22(1) of the FOIA to the information.
30. The Commissioner considers that on balance, the public interest is best served by the Council publishing the information in a planned and accurate way.

## Right of appeal

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31. 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: 0116 249 4253

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)

32. 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.
33. 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 .....**

**Rachael Cragg**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**