

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 February 2018

Public Authority: West Sussex County Council
Address: County Hall
Chichester
West Sussex
PO19 1RQ

Decision (including any steps ordered)

1. The complainant has requested information with regards to the creation of specific posts and associated costs. West Sussex County Council (the council) provided the information it held. The complainant considered that the council held more than what it provided.
2. The Commissioner's decision is that no further information is held by the council. She also found that the council breached section 10(1) of the FOIA due to the time it took to respond to the request.
3. As the council has now provided its response, the Commissioner does not require it to take any steps.

Request and response

4. On 1 April 2017, the complainant made the following information request to the council:

"I will be grateful if you would provide a copy of the business case that supported the Chief Fire Officer role and the Executive Director for Communities & Public Protection role becoming a single post. This was about 3 or 4 years ago, and brought the fire & rescue service, community development and regulatory services under one directorate.

I would also be grateful for a copy of the current business case supporting the separation of the Chief Fire Officer and the Executive Director for Communities & Public Protection roles in to two separate posts.

Please also provide full cost details, including salary, benefits, provided vehicles, accommodation and support staff costs for the current single post, plus similar full cost details of the planned new separate posts."

5. The council acknowledged the request on 3 April 2017. On the 5 May 2017 the complainant contacted the council as no response had been received.
6. He then contacted the Commissioner on the 16 May 2017 as the council had still not responded to his request.
7. Following contact from the Commissioner, the council responded to the request on the 8 August 2017. For the first two parts of the request, the council advised that no information was held and for the third part, it provided the costings.
8. The complainant requested an internal review of the council's response. He considered that the council would hold some information with regards to the requested business cases – stating that he did not request a 'formal' business case; he asked for the business case which he clarified would be the justification and rationale for each change.
9. The complainant considered that whoever gave approval for the changes in 2014 and 2017 must have done so in response to documentation setting out the justification, rationale and costs.
10. The complainant also did not consider that he had received the full costings requested to part 3 of his request, specifically [name redacted] monthly pension payments and lump sum and the council's lack of costings to vehicles, accommodation and support staff.
11. The complainant is of the view that these would be available and should be provided.
12. The council carried out its internal review on the 31 August 2017. It determined that the complainant had amended his request regarding the business case to instead seek information about the justification, rationale and costs to support the creation of the posts. It concluded that this did not form part of the original request.
13. With regards to the pension payments – the council advised that the lump sum would have been from the Firefighter's pension scheme and so this would not have had any relevance to the rationale for the proposed post. This is because the lump sum payment is a benefit and entitlement from the scheme to the individual, not a cost to the council.

14. The council also advised that no monthly payments would have been made from the pension schemes as the rules on appointment would have meant a full abatement of such benefits during the currency of the post.
15. With regards to the vehicles, accommodation and support staff costings the council maintained that no information is held because there is no separate accommodation, support staff or vehicles associated with the post.

Scope of the case

16. The complainant contacted the Commissioner further as he is not satisfied with:
 - a) The time it has taken the council to respond to the request
 - b) That the council has not dealt with his clarification of parts 1 and 2 of the request where he explains what he meant by 'business case'.
 - c) He argues that accommodation costs have always been determined for office space, provision of IT etc, to allow internal recharging of departments. Therefore figures should be available.
 - d) He states that senior management posts also usually have personal assistants to support them and a cost would be associated with that.
 - e) He has also told the Commissioner that it is not true that vehicles are not provided. He says that one was provided to the person in the combined post and he is of the understanding that the new Chief Fire Officer has one provided. And even if the planned new Executive Director Post holder is not being given a vehicle, the complainant says his request was about the costs to all the related posts mentioned in the request.
 - f) Lastly, with regards to the pension information, the complainant says that with this particular pension scheme, payments are made direct from the council's funds.
 - g) The Commissioner considers the scope of the case is to determine whether the council holds the information the complainant considers he has not been provided with identified in parts c) to f) above, whether the council has dealt with the complainant's clarification outlined in b) above and also whether the council responded outside the required timeframes of the FOIA.

Reasons for decision

Section 1 of the FOIA – Information held/ not held

17. Section 1 of the FOIA states that any person making a request for information to a public authority is to be entitled to be informed in writing by the public authority whether it holds the information within the scope of the request, and if so, to have that information communicated to him.
18. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of first tier tribunal decisions must decide whether, on the civil standard of the balance of probabilities, the public authority holds any information within the scope of the request (or was held at the time of the request).
19. The Commissioner has therefore asked the council to explain how it has determined that the information identified in c) to f) of the 'scope of the case' above, is not held.
20. The council has told the Commissioner that it made enquiries with its Head of Law, Assurance and Strategy.

Accommodation, personal assistant and vehicle costs

21. With regards to 'Accommodation' the council has explained that the costs have not been allocated to Services for many years and are dealt with as a corporate costs. They therefore do not exist in a form for publication as the figures do not relate to any particular service or post.
22. With regards to 'Support Staff', the council has told the Commissioner that it has an outsourcing contract in place with Capita who provide PA support to the Corporate Leadership Team via a pooled arrangement. This cost of the PA team is not allocated to separate members of the Corporate Leadership Team and no additional support staff are required as a result for the Chief of Fire Officer role and the Executive Director for Communities & Public Protection role becoming a single post.
23. With regards to the 'Vehicles', the council has told the Commissioner that neither post qualifies for a vehicle. However with regards to the post of Chief Fire Officer, as this post has an emergency response function, it does have a car allocated from the corporate fleet.

24. The council explained to the Commissioner that this is for business use only and if any private mileage is undertaken there is a charge of 20p/mile plus any personal tax implications of this benefit.
25. The council further clarified to the Commissioner that the costs associated to the fleet car are not allocated to the specific post. The costs associated to the use of the vehicle are a corporate cost to the council in running a number of fleet cars. Whether a fleet car is used by only one individual or a number of different individuals, the cost attached to its use is not allocated to the individuals post within a service.

Pension scheme costs

26. The complainant says that with this particular pension scheme, payments are made direct from the council's funds – he has provided a link to the council's Statement of Accounts¹ (page 59) to support this view.
27. The council has told the Commissioner that the reference in its accounts simply explains that the Firefighters pension scheme is not a funded scheme and that payments are made when they are due.
28. The council has explained to the Commissioner that this was previously administered by the Department for Communities and Local Government (the DCLG), but now by the Home Office. So this is not relevant to the information request as the request was in relation to a cost to the council.
29. The council also points out to the Commissioner that the council's statement of accounts does not state that those payments are made from its resources. They are made from the fund that is made up of employer and employee contributions and this did not require any additional cost to the council.

Clarification of the term 'business case'

30. The council has responded to the Commissioner on this to advise that it is of the view that it responded to parts 1 and 2 of the complainant's

¹ https://www.westsussex.gov.uk/media/8638/2015-16_statement_of_accounts.pdf

original request properly in that no distinct document exists that falls within the description of 'business case'.

31. It acknowledges that the complainant's internal review amended the nature of the information in that he clarified that he was not necessarily looking for a formal business case document, but seeking documentation that would provide the justification, rationale and cost of the council's decision of the Chief Fire Officer role and the Executive Director for Communities & Public Protection role becoming a single post.
32. With regards to the response provided by the council to the complainant on this part of the request, the Commissioner does not consider that the council was sufficiently clear as to whether any information, following the complainant's explanation of what he meant by 'business case', was held or not. However, the Commissioner considers the most practical step to take from here is to investigate what is/ is not held in respect to this part of the request.
33. The council considers that it addressed this clarification in its internal review response without the need to log this clarification as a 'new request'.
34. The council has confirmed to the Commissioner that it does not hold any recorded information which would fall within the description of either a 'business case' or a 'justification and rationale'.
35. The Commissioner asked the council whether these types of decisions are usually made verbally with no record of how or why posts will be separated or joined together.
36. The council responded to the Commissioner on this stating that it is only possible to provide a response in respect to this particular decision as it was not driven by the overall senior management design planning but by the particular requirements at the time in relation to the individuals in these particular posts. It says that there may have been an exchange of correspondence between the senior officers making the decision but no such records have been identified.

Searches carried out

37. The council has advised the Commissioner that enquiries were made with the officers who would have been responsible for the proposal and implementation of the post/s. As no formal documentation amounting to a business case has been found, nor any indication that one exists, then email and meeting records between the relevant officers would be the only source for locating any relevant information. The council has told the Commissioner that once the decision was put into effect any HR

processes there would not be any requirement for previous communications to be retained.

38. The council has confirmed to the Commissioner that the number of individuals involved would have been very limited and searches were carried out on their laptops and Share Point sites.
39. The council has told the Commissioner that it is not aware of any relevant information being deleted or destroyed and has stated that it is hard to fully verify as some individuals have since ceased working for the council.
40. On review of this request, the Commissioner is satisfied with the council's explanations as to why costs of accommodation, personal assistants and vehicles are not attributed to a particular job role.
41. With regards to the pension scheme, there is a differing view between the complainant and council as to who bears this cost, but the council's explanations against the complainant's reasons appear valid as to why the cost is not associated to the council.
42. In relation to any information held in relation to a business case, the Commissioner considers that it is a reasonable assertion for the complainant to expect some information to exist in relation to justification and rationale of the posts. However, as the council has carried out relevant checks with the individuals who would have been involved and nothing has been found.
43. A possible reason for this may be due to the fact that some individuals no longer work for the council and whether they potentially held some information cannot be verified by the council.
44. After considering the council's responses, searches carried out and explanations about why it only holds the information that it has already provided, the Commissioner finds on the balance of probabilities that the council does not hold any further information falling within the scope of the request.

Section 10 of the FOIA – Time for compliance

45. Section 10 of the FOIA requires a public authority to respond to an information within 20 working days, in accordance with section 1(1) of the FOIA, following receipt of a request
46. In this case, the request was made on the 1 April 2017 and the response was not issued until 8 August 2017. This clearly being outside the required 20 working days and therefore the Commissioner finds the council breached section 10(1) of the FOIA.

47. As the council has now responded, the Commissioner does not require it to take any steps.

Right of appeal

48. 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

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

49. 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.
50. 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

Andrew White
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