

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

### **Decision notice**

**Date:** 1 April 2022

**Public Authority:** Cumbria County Council  
**Address:** Cumbria House  
119 Botchergate  
Carlisle  
Cumbria  
CA1 1RD

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

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1. The complainant has requested from Cumbria County Council ("the Council") information relating to restructuring and its affect on specific posts. The Council eventually stated that it was withholding information but failed to issue a valid refusal notice.
2. The Commissioner's decision is that the Council has failed to comply with section 1 of the FOIA.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
  - Undertake searches for all information that would fall within the parameters of Part 1 of the request and issue a fresh response to the complainant. In doing so, the Commissioner advises the Council to have regard to the matters outlined in 'Other matters'.
4. The Council 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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5. On 25 March 2021, the complainant wrote to the Council and made a multi-part request, of which Part 1 sought the following:
  - 1) *I would like to see Assimilation documentation for grade 17+ restructure*
    - a) *Old post: Senior Manager Infrastructure recovery & major programmes*  
*New post: Highways Asset Manager*
    - b) *Old post: Senior Manager Infrastructure recovery & major programmes*  
*New post: Highways County Manager Network*
    - c) *Old post: Senior Manager Infrastructure recovery & major programmes*  
*New post: Highways County Manager Operations*
    - d) *Old post: Senior Manager Infrastructure recovery & major programmes*  
*New post: Senior Manager Highway Delivery*
    - e) *Old post: Senior Manager - Asset, Infrastructure and Transport*  
*New Post: Senior Manager Highways Assets & Strategy*
    - f) *Old post: Senior Manager - Asset, Infrastructure and Transport*  
*New Post: Senior Manager Highways Delivery*
6. The Council responded on 16 April 2021, under the reference of FOI-8705-2021. It disclosed information in response to the remainder of the request but failed to respond to Part 1 of the request.
7. On 20 April 2021, the complainant asked the Council to undertake an internal review, on the basis that it had not responded to Part 1 of the request.
8. Following an internal review, the Council wrote to the complainant on 26 May 2021. It stated that the information sought by Part 1 of the request was withheld on the basis that it related to identifiable individuals, although it did not cite any exemption.

## Scope of the case

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9. The complainant contacted the Commissioner on 21 June 2021 to complain about the way Part 1 of their request for information had been

handled, and specifically that the Council was not entitled to withhold the information.

10. Upon receipt of the complaint, the Commissioner interpreted that, whilst the Council had not cited any exemption, it sought to rely upon the exemption provided by section 40(2) (personal information) - due to the Council's reference to the information relating to identifiable individuals.
11. The Council subsequently informed the Commissioner that it sought to rely upon section 40(2) (personal data) and section 41 (information provided in confidence). The Council also indicated that some of the information sought by Part 1 may already be accessible to employees, although it is not clear to the Commissioner on what basis.
12. In the circumstances of this case, and specifically the Council's handling of the request, the Commissioner has considered it necessary to make a determination under section 1 of the FOIA.
13. The scope of this case and of the following analysis is whether the Council has complied with section 1 of the FOIA.

## **Reasons for decision**

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### **Section 1 – General right of access to information**

14. Section 1(1) of the FOIA states that:

*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.*

15. Section 1(1) requires that any person making a request for information to a public authority must be informed in writing by the public authority whether it holds information relevant to the request, and if so, to have that information communicated to them. This is subject to any exclusions or exemptions that may apply – which must be cited in a refusal notice issued under section 17 of the FOIA.
16. Having considered the Council's submissions, and its unclear handling of the request, the Commissioner is concerned that it has failed to properly consider the extent of the information sought by Part 1 of the request.

17. In particular, the Council refers to there being a range of documents that would fall within the scope of Part 1, including "*existing, proposed, and new job profiles*" that are available to employees (although it is unclear on what basis), as well as personnel records relating to discussions between employees and their managers (which the Commissioner acknowledges, for the benefit of the complainant, are highly likely to represent personal data and therefore be exempt from disclosure under section 40 of the FOIA).
18. Furthermore, the Council has indicated in its submissions to the Commissioner that it also considers some of the information may be exempt under section 41 of the FOIA, although it is unclear as to what information the Council seeks to apply this exemption.
19. The evidence available to the Commissioner strongly suggests that the Council has failed to search for, collate, and give appropriate consideration to, the full extent of the information sought by Part 1 of the request. As such, the Commissioner must conclude that the Council has failed to comply with the duty imposed by section 1 of the FOIA.
20. As the Council has seemingly failed to comply with section 1 of the FOIA, it is not appropriate, or possible, for the Commissioner to consider the Council's (seemingly blind) application of exemptions. Instead his finding is that the council has failed to comply with the requirement of section 1(1) of the FOIA in that it appears to have failed to properly identify all the information it held falling within the scope of part 1 of the complainant's information request.

## Other matters

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21. The Commissioner reminds the Council it of its duty under section 1<sup>1</sup> of the FOIA, which requires a public authority to identify that information which would fall within the parameters of a request.
22. The Commissioner also reminds the Council of its duties under section 16<sup>2</sup> of the FOIA, which allows a public authority to provide advice and assistance if it wishes to clarify (under section 1(3) of the FOIA) what information is being requested.
23. Finally, the Commissioner reminds the Council of the requirement of section 17<sup>3</sup> of the FOIA, which requires a public authority to issue a valid refusal notice, explaining the basis on which it is withholding any information.
24. The Commissioner emphasises that the provision of a valid refusal notice under section 17 allows a requestor to understand why information has been withheld. Ensuring this may prevent a request from being escalated to internal review, or a complaint to the Commissioner.

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<sup>1</sup> <https://ico.org.uk/media/for-organisations/documents/1169/determining-whether-information-is-held-foi-eir.pdf>

<sup>2</sup> <https://ico.org.uk/media/1624140/duty-to-provide-advice-and-assistance-foia-section-16.pdf>

<sup>3</sup> <https://ico.org.uk/media/for-organisations/documents/1628/refusing-a-request-writing-a-refusal-notice-foi.pdf>

## Right of appeal

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25. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

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

26. 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.
27. 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 .....**

**Daniel Perry**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**