Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 8 November 2010

Public Authority: Lancashire County Council
Address: Chief Executive's Office
Christchurch Precinct
County Hall
Preston
Lancashire
PR1 8XJ

Summary

The complainant asked Lancashire County Council ("the Council") to provide all the correspondence it held between the Council's Pensions Service and the Department for Work and Pensions ("the DWP") regarding a particular issue. The Council responded that it did not hold the information requested. The Commissioner investigated and decided that the Council had not interpreted the request correctly because it should have disregarded some subjective language used in the request. The Commissioner found that some relevant correspondence was held and this was provided to the complainant. The complainant alleged that further information was held. However, the Commissioner was satisfied that, on the balance of probabilities, no further relevant information was held. The Commissioner found that the Council breached section 1(1) and section 10(1) of the Freedom of Information Act 2000 ("the FOIA"). He requires no steps to be taken.

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 FOIA. This Notice sets out his decision.

Background

2. Under the terms of a contract with Lancashire Fire and Rescue Service ("the LFRS"), the Council's Pensions Service administers a pensions scheme.

3. Towards the end of 2007, the LFRS decided to undertake a review of all fire injury pensions being paid following discovery of an overpayment. The regulations governing fire injury pensions require that the actual injury allowance payable must be offset by benefits paid by the state in respect of the same injury. This is designed to ensure that individuals are not compensated twice for the same injury. While the terms of the Pensions Scheme require LFRS to obtain details of the additional benefits received by those pensioners eligible for injury pensions, the Scheme does not expressly provide for the obtaining of this information from the DWP. In view of this, individuals were asked to give their consent for this information to be obtained from the DWP. However, a number of those individuals refused to consent because they felt that this would be a breach of their rights under the Data Protection Act 1998 ("the DPA"). Where consent was not given, LFRS considered that they were justified in suspending injury pension payments until the necessary information was provided and wrote to inform those affected of its position.

4. In an attempt to address the above issue, the Council began an exchange of correspondence with the DWP. The Council sought disclosure of the information without consent because it believed there was a legal basis for doing so under the DPA. However, the DWP refused to provide the information in the circumstances without consent.

5. As part of the above exchange of correspondence, the DWP raised issues with the Council regarding what it called the "Authority to Disclose" letter and it suggested some amendments.

6. The complainant has been in correspondence with the Council over a period of time expressing grievances with the above situation, and the particular request that is the subject of this complaint concerns issues with the consent form.

The Request

7. On 6 December 2009, the complainant wrote to the Council and requested information in the following terms:

"…all correspondence between the LCC PS and the DWP in the matter of the illegality of the 'consent' forms…"

8. On 15 January 2010, the Council responded and confirmed that it held no information regarding correspondence with the DWP in the matter of "the illegality of the consent forms".

9. On 27 January 2010, the complainant replied and expressed dissatisfaction with the response. He stated that he believed that the Council had not conducted proper searches for the information. He also attached documents and stated that the documents referred to correspondence that he felt was relevant to this request.

10. On 2 March 2010, the Council replied and confirmed that the correspondence referred to did not fall within the scope of the request because it was "generic" in nature.

The Investigation

Scope of the case

11. On 1 May 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider whether the Council held the information he had requested.

12. For clarity, the request in question went on to state "and specifically correspondence reference to myself and my DWP subject data, particularly in respect of imputed fraud by the LCC PS and the LFRS". This part of the request was deemed to represent a subject access request by the Commissioner and will therefore be considered separately under the terms of the DPA. It forms no part of this Decision Notice.

13. During the Commissioner's investigation, the complainant also referred to other requests that he wished to complain about. These issues have also been dealt with separately.

Chronology

14. On 16 June 2010, the Commissioner wrote to the complainant setting out his understanding of the complaint.

15. On the same day, the Commissioner telephoned the Council to discuss its position that the information requested was not held. He also sent a letter to the Council asking some questions to help him to consider this issue further.

16. On 1 July 2010, the complainant telephoned the Commissioner. He spoke in detail about the background to the request and stated that he was aware that the Council had discussed the consent forms with the DWP and the issue of compliance with the DPA.

17. On 5 July 2010, the Commissioner telephoned the Council. He advised the Council that it appeared that the complainant wanted correspondence that the Council had had with the DWP about problems with the consent forms. He asked the Council to disclose this information to the complainant if it was willing to do so, as the Council confirmed that some information of this nature was held.

18. The next day, the Council telephoned the Commissioner confirming that it would release the information to the complainant. However, it stated that it wished to maintain its position that it did not hold the information based on the wording of the request.

19. On 7 July 2010, the Council responded to the Commissioner's letter. It confirmed that it was willing to provide copies of the exchange of correspondence that had taken place between the relevant department, the Council's solicitor and the DWP. It explained that it had posted this correspondence to the Commissioner.

20. On 12 July 2010, the Commissioner contacted the Council having received confirmation that the Council would supply the exchange of correspondence to the complainant. He asked the complainant to confirm whether he was able to withdraw his complaint following receipt of this correspondence.

21. On 19 July 2010, the complainant wrote to the Commissioner explaining that he was not satisfied with the information that had been provided. He alleged that further information was held and he made a number of points regarding this.

22. On 28 July 2010, the Commissioner contacted the Council explaining that he believed that the Council should not have interpreted the

request as narrowly as it did. He explained that in his view, the Council should have disregarded the subjective language in the request and put the request into the context of its exchanges with the complainant. He explained that if it had done this, it would have been reasonable to understand from the request that the complainant was seeking correspondence between the Pensions Service, the solicitor acting on behalf of the Pensions Service and the DWP relating to problems with the consent forms. The Commissioner asked the Council for further details about the searches it had undertaken.

23. On 29 July 2010, the Commissioner also sent a follow-up letter asking the Council to clarify whether the bundle of correspondence it provided to the complainant represented all of the correspondence it held between itself and the DWP concerning the pensions review.

24. The Council replied on 18 August 2010 and explained the searches it had undertaken. It did not clearly address the point raised about whether the information provided to the complainant represented all the correspondence it held between itself and the DWP regarding the pensions review.

25. On 19 August 2010, the Commissioner telephoned the Council with the particular aim of clarifying the details provided in the Council's letter dated 18 August 2010.

26. The Council replied on the same day confirming that the Head of Pensions and the Deputy County Secretary and Solicitor had been consulted again and had confirmed that the only other correspondence between itself and the DWP held relating to the pensions review concerned specific individuals who had consented to the disclosure of their information. Therefore, this correspondence would not be relevant to the request.

27. On 23 August 2010, the complainant telephoned the Commissioner to discuss the progress made in investigating his complaint. The Commissioner explained to the complainant that he would consider whether any more information was held "on the balance of probabilities". He also explained that he had noted that, when asked to explain why he was not satisfied with the information that had been provided to him, the complainant had raised a number of points regarding information that the Commissioner believed would fall outside the scope of his request.

28. On 31 August 2010, the Commissioner wrote further to the Council raising some of the complainant's concerns which appeared most

relevant to the Commissioner's considerations of whether any more information was held falling within the scope of the request.

29. The Council replied on 8 September 2010 responding to these concerns. It maintained its position that no further relevant information was held.

Analysis

Substantive Procedural Matters

Did the Council hold information relating to the request?

30. The Council's position was that it did not hold information relevant to the request because it had not discussed with the DWP whether the consent forms were "illegal".

31. The Commissioner has taken a different view. Although the Commissioner considers that it is obviously important to have regard to the specific wording of a request, he also considers that a public authority should avoid claiming that it does not hold information because of subjective wording used by the complainant (for example, a suggestion that something was illegal), when it would otherwise be clear from the context what information was required. The Commissioner considers that this approach is supported by the Information Tribunal's findings in the case of *Barber v the Information Commissioner* (EA/2005/0004). In line with *Barber*, The Commissioner felt that in this case, the Council should have disregarded the subjective viewpoint of the complainant and interpreted his request as being for relevant correspondence between the Pensions Service and the DWP about problems with the consent forms. The Commissioner also felt that the request covered any such correspondence between the Council's solicitor and the DWP because the solicitor would have been acting on behalf of the Pensions Service.

32. In view of the Commissioner's interpretation, the Commissioner considers that some relevant information was held, which the Council provided to the complainant in an effort to achieve informal resolution of this matter.

Was any more information held that was relevant to the request?

33. Despite the provision of information showing the exchange of correspondence between the Pensions Service, the Council's solicitor

and the DWP, the complainant alleged that further information was held.

34. In cases where a dispute arises over the extent of recorded information that was held by a public authority, the Commissioner will consider whether any more relevant information was held "on the balance of probabilities". This involves consideration of the scope, quality, thoroughness and results of the searches undertaken by the public authority and, where relevant any other explanations offered as to why information was not held.

35. The Council explained to the Commissioner that it holds three paper files regarding the pensions review. These are held by the Head of the Pensions Service, the Council's Secretary and Solicitor and the Director of Finance. Correspondence with the DWP regarding individual claims is also held on an electronic system relating to pensions. The correspondence with the DWP regarding the individual claims is also held on the paper files as part of the pensions review. This correspondence relates to those individuals who consented to the disclosure of their information. The Council confirmed that it would not hold any other electronic information relating to the request as all relevant information would be on the paper files.

36. The Council explained to the Commissioner that following receipt of the request, the Head of the Pensions Service at the Council was consulted and the paper file she held was checked. The Council confirmed that the Head of the Pensions Service also checked the paper files held by the Director of Finance and the Deputy County Secretary and Solicitor. The Deputy County Secretary and Solicitor was also consulted separately. The Council explained that it considered all of the correspondence between itself and the DWP held on the files and extracted any correspondence concerning the issue of consent or the consent forms. Having done so, the Council determined that none of it was relevant because the question of whether or not the consent forms were "illegal" was never raised.

37. As explained above, the Commissioner felt that the Council had interpreted the request too narrowly by putting too much emphasis on the complainant's subjective use of the word "illegal". In view of this, he asked the Council to reconsider whether it held any correspondence regarding problems with the consent forms. In an effort to achieve informal resolution of the complaint, the Council provided to the complainant a bundle of correspondence between its Pensions Service, its solicitor and the DWP. Following further consultation with senior members of staff, it confirmed to the Commissioner that this represented all the correspondence it held between itself and the DWP

about the review, with the exception of correspondence regarding individual pensions relating to those individuals who had consented. It explained that this correspondence was outside the scope of the request however. The Council also confirmed that no relevant correspondence had been deleted, destroyed or mislaid.

38. In the context of the above explanation, the Commissioner considered the complainant's letter dated 19 July 2010 in which the complainant had explained why he felt that further information was held. As mentioned in the Chronology to this Decision, the Commissioner formed the view that the majority of the points raised concerned information that would in any event be outside the scope of the request. It appears that at the time of writing this letter, the complainant did not appreciate that the Council and the Commissioner were limited to considering the terms of the particular request although this was subsequently explained to him. The wide variety of comments made in this letter indicated that the complainant required all the information held by the Council relating to the review in general. To give some examples, the complainant requested copies of minutes of meetings between the Council and the LFRS, copies of correspondence between particular individuals and the LFRS and copies of correspondence about individual pensions or correspondence relating to the general issue of consent rather than the consent forms themselves.

39. In view of the above, the Commissioner only approached the Council with a limited range of queries from the complainant that appeared to be most relevant. These queries are set out below together with the explanation provided by the Council.

40. It was clear from the correspondence provided to the complainant that the DWP had assisted the Council with the wording of the consent forms. The complainant believed that further dialogue about the consent forms must have taken place. This belief appears to have been based on a letter he had received from the DWP stating the following:

"I can confirm DWP staff did help with the redrafting of the consent form. We did so to ensure that those people who choose to provide their consent were fully informed as to what they were consenting to".

41. The Council maintained the position that the correspondence it had provided to the complainant represented all the information it held relating to the DWP's assistance with the consent form. Having considered the relevant correspondence, the Commissioner disagrees with the complainant's assertion that the DWP's correspondence above "proves beyond doubt" that further dialogue took place. There is

nothing in the comment that indicates to the Commissioner that anything other than the correspondence already provided was what was being referred to by the DWP when it made the comments to the complainant. He also notes that in any case, the complainant's request only covers "correspondence" and not all records of "dialogue" between the parties.

42. The complainant also provided the Commissioner with a copy of a letter from Job Centre Plus dated 15 April 2008 addressed to the Council's solicitor. The complainant noted that this letter referred to a letter from the Council's solicitor dated 11 April 2008 to a named individual and another letter from the solicitor to a named individual. The complainant stated that this correspondence had not been provided to him. The Council investigated these points and explained that this correspondence did indeed exist but it had not been provided because the correspondence simply represented cover letters or letters chasing a response to the Council's letter dated 28 March 2008 (already provided to the complainant). As such, it was not considered relevant. In view of the Council's explanation of this correspondence, the Commissioner was satisfied that these letters did not fall within the scope of the complainant's request.

43. Finally, the complainant provided the Commissioner with a copy of a letter from the Council's solicitor to a staff member at the DWP dated 15 May 2008. He has pointed out that in the seventh paragraph there is reference to the fact that when the review was started, the DWP refused to accept "out of date" consent forms. This led the complainant to believe that correspondence was held relating to this. The Council has explained that discussion regarding the age of consent forms did take place with the DWP however, this was over the telephone and no written record of these discussions was held.

44. In view of the above, the Commissioner is satisfied that on the balance of probabilities, no further information was held falling within the scope of the complainant's request. The Commissioner accepts that the Council has undertaken reasonable searches to check for relevant information, including consultation with relevant senior staff members. The Commissioner is satisfied that the majority of the complainant's reasons for not being satisfied with the information provided are based on an erroneous belief that he was entitled to more information than was specified by the actual request he had made. Even those concerns that appeared more relevant did not reveal any evidence of further information falling within the scope of the request that had not already been provided.

Procedural Requirements

45. The Commissioner found that some relevant information was held that the Council failed to provide to the complainant by the date of its internal review. It therefore breached section 1(1) and 10(1) of the FOIA.

46. The Commissioner was satisfied that no further information was held falling within the scope of the request. He was therefore satisfied that the Council did not breach the FOIA in this respect.

47. The Commissioner also notes that the Council took longer than 20 working days to respond to the complainant's request and it therefore breached section 10(1) of the FOIA for this reason.

The Decision

48. The Commissioner's decision is that the Council dealt with the following element of the request in accordance with the requirements of the FOIA:

- The Council did not hold any further relevant information other than that provided during the course of the Commissioner's investigation.

49. However, the Commissioner has also decided that the following element of the request was not dealt with in accordance with the FOIA:

- The Council breached section 1(1) and 10(1) of the FOIA by failing to provide relevant information by the date of its internal review.
- The Council breached section 10(1) of the FOIA by failing to respond to the request within 20 working days.

Steps Required

50. The Commissioner requires no steps to be taken.

Other matters

51. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:

The Commissioner notes that in this case the Council took longer than 20 working days to complete its internal review. This is not in accordance with guidance issued by the Commissioner on the website at www.ico.gov.uk. The Commissioner recommends that as a matter of good practice and to comply with the spirit of the legislation, an internal review should not generally take longer than 20 working days. The Commissioner trusts that the Council will note this guidance and make appropriate improvements in the future.

Right of Appeal

52. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

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 sent.

Dated the 8th day of November 2010

Signed ……

Andrew White
Group Manager – Complaints Resolution
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Legal Annex – Freedom of Information Act 2000

General Right of Access

Section 1(1) provides 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."

Time for Compliance

Section 10(1) provides that –

> "Subject to subsections (2) and (3), 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."