

Freedom of Information Act 2000

Decision notice

Date: 24 June 2015

Public Authority: Salford City Council
Address: Salford Civic Centre
Chorley Road
Swinton
M27 5AW

Decision (including any steps ordered)

1. The complainant requested information from Salford City Council (the Council) relating to its councillors and the Mayor of Salford. The Council initially refused the requests as vexatious under section 14(1) of the Freedom of Information Act 2000 (the Act). After an internal review the Council provided some of the relevant information it held, refused parts of the request under section 40(2) of the Act (third party personal data), and stated some of the requests did not meet the definition of a request as per section 8 of the Act. During the course of the Commissioner's investigation the Council dropped its use of section 40(2) and provided the relevant information where held.
2. The Commissioner's decision is that the Council was correct in its view that some requests were not valid as per section 8, and that on the balance of probabilities it is unlikely that any further relevant information is held.
3. The Council breached sections 1(1)(b) and 10(1) of the Act due to the delay in providing the complainant with the information for request 16 that was originally withheld under section 40(2). As the information has now been provided no steps are required.

Request and response

4. This decision encompasses five separate requests made by the complainant from 23 May to 17 June 2014. The wording of these requests can be found in Annex A at the end of this notice. For the sake of reference the Commissioner has summarised these requests as follows:

Request	Request subject
6	Tax and NI payments for Councillors.
8	Mayor's communications.
12	Experience of Council's cabinet members.
16	Mayor's motor-home.
17	Screening of questions for open council meetings.

5. The Council issued a response to all of the requests on 20 June 2014. It stated that the requests were vexatious as per section 14 of the Act.
6. The complainant requested an internal review. The Council issued this on 14 September 2014 and amended its position for each of the requests as follows:

Request	Request subject	Council position
6	Tax and NI payments for Councillors.	Refused under section 40(2).
8	Mayor's communications.	Items 1 and 2 were not valid under the Act. No information held for item 3.
12	Experience of Council's cabinet members.	Refused under section 40(2) but stated it might not be held.
16	Mayor's motor-home.	Refused under section 40(2).

Request	Request subject	Council position
17	Screening of questions for open council meetings.	Stated that items 1 and 5 of the request were not valid under the Act and that it would respond to items 2 and 3 at a later date. No mention was made of item 4 or 6 to 13.

7. In response to the Commissioner's initial investigation letter the Council amended its position for some of the complainant's requests. The new response was as follows:

Request	Internal review position	Altered position
6	Refused under section 40(2) for individual councillors.	Provided the information for the total figure rather than individuals due to complainant's request for this information instead.
8	Items 1 and 2 were not valid under the Act. No information held for item 3.	No change.
12	Refused under section 40(2) but also stated if might not be held.	Confirmed the information is not held.
16	Refused under section 40(2)	Refused under section 40(5). The Council neither confirmed nor denied whether the information is held.
17	Provided a partial answer to some of the questions, stated the rest would be answered later.	Provided a full response to all questions, with no information being withheld.

8. The only remaining change came to request 16. The Commissioner put forward his view on the application of section 40(5) and stated that if the Council wished to maintain this refusal the Commissioner would seek to overturn the exemption in a decision notice. The Council subsequently

issued a new response to the complainant on 17 February 2015 in which it confirmed the extent of the information it held and provided information where held.

Scope of the case

9. The complainant contacted the Commissioner on 14 September 2014 to complain about the way his request for information had been handled.
10. The Commissioner confirmed with the complainant that the scope of the case after the Council's internal review. The scope was to determine whether the Council was entitled to rely on section 40(2) to refuse requests 6, 12 and 16, and whether further information was held for requests 8 and 17.
11. Following the change to the Council's position the Commissioner confirmed with the complainant that the scope of the request would be as follows. For request 8: to determine whether items 1 and 2 were valid under the terms of the Act, and whether any further relevant information was held for item 3. For request 16: whether the Council was entitled to refuse request 16 under section 40(5). As the Council has disclosed the held information for request 16 the decision will focus solely on the Council's handling of request 8.

Reasons for decision

Request 16 – breaches of sections 1(1)(b) and 10(1)

12. Section 1(1)(b) confers a right on a public authority to provide information to a requester providing it is not exempt under the terms of the Act.
13. Section 10(1) of the Act states that a public authority must respond to a request promptly or "not later than the twentieth working day following the date of receipt".
14. As the Council mistakenly withheld information under sections 40(2) and 40(5) of the Act it did not initially meet its obligation to provide information which is not exempt. This is a breach of section 1(1)(b). As the Council did not provide the relevant information until after 20 working days the Council also breached section 10(1).

Request 8 – decision on sections 1 and 8

"1. Should the Elected Mayor be apolitical, given that he was elected to represent all his constituents - not just Labour supporters?"

2. Is he breaching ANY rules by using council-funded communication sources to favour Labour instead of any other party?

3. What council-funded resources does he use to operate his own Labour-supporting communications - Facebook, Twitter, Mayor Daily etc. Please include staffing, time, set-up costs, operating costs etc."

Section 8 – requests for information

15. Section 8 provides a definition for what constitutes a request for information within the parameters of the Act:

"(1) In this Act any reference to a "request for information" is a reference to such a request which –

(a) is in writing

(b) states the name of the applicant and an address for correspondence, and

(c) describes the information requested."

16. The Council stated that it did not consider items 1 and 2 of request 8 to be requests for information as per the definition in the Act. As the requests were in writing and provided both the complainant's name and an address for correspondence, the Commissioner considers that sections 8(1)(a) and (b) are both met. Instead, the Commissioner will focus on whether the complainant's requests meet section 8(1)(c).
17. Section 8(1)(c) is only concerned with the validity of the description, it cannot be used to refuse requests that are unclear. The Commissioner's view is that the requests are legible and are clear in intent, but that they do not describe the information requested. Section 84 of the Act defines information as "*information **recorded** in any form*" (Commissioner's emphasis). Items 1 and 2 of the complainant's request do not ask for recorded information. Instead they are phrased as questions designed to obtain an explanation from the Council.
18. The Commissioner's view is that items 1 and 2 are not requests for information as per section 8 of the Act. As they are not requests for information the Commissioner cannot include them in his decision. Instead he will go on to consider whether any relevant information is held for item 3 of the complainant's request.

Section 1 – relevant information held

19. In cases where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes might be held, the Commissioner, in

accordance with a number of First-Tier Tribunal decisions, applies the civil standard of the balance of probabilities. In essence, the Commissioner will determine whether it is likely or unlikely that the Council holds information relevant to item 3 of request 8 based on the information provided.

20. The Council's submissions to the Commissioner explained that the City Mayor must adhere to the Council's constitution. This constitution makes it clear that Council resources may not be used for anything other than Council business (Commissioner's emphasis):

"3.4:

You:

- a) must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage*
- b) must, when using or authorising the use by others of the resources of your authority:*
 - i) act in accordance with the council's reasonable requirements*
 - ii) **ensure that such resources are not used improperly for political purposes (including party political purposes)***
- c) must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.^{"1}*

21. The Council was adamant that "council-funded resources" – as mentioned in the request – were not used to support the Mayor of Salford for party political communications. As well as being part of the Council's constitution it was also law under section 2 of the Local Government Act 1986:

"2 – *Prohibition of political publicity*

(1) A local authority shall not publish any material which, in whole or in part, appears to be designed to affect public support for a political party.^{"2}

1

https://www.salford.gov.uk/d/council_constitution_master_copy_january_2015.doc page 294

22. It was argued by the Council that it would have no reason to support the Mayor's party political communications and so would not provide resources such as staff time or operating costs. The Commissioner considers that this is a reasonable argument and shows that it would be unlikely that the Council would hold information relevant to the complainant's request.
23. The Commissioner notes that the complainant refers to an incident where the Mayor used official Council communications to put forward messages in support of Labour. However, this does not mean that the Council has provided staffing or funding to the Mayor's party political messages. It has been made clear that for the Council to support the Mayor would be against the law and the Council's own constitution. The Commissioner does not think it likely that the Council would actively provide resources for such activities and then keep record of doing so. Added to this, the Council has confirmed that no relevant information is held.
24. The Commissioner's decision is that on the balance of probabilities it is unlikely that information relevant to the request is held. No further steps are required.

² <http://www.legislation.gov.uk/ukpga/1986/10/section/2>

Right of appeal

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: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: <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

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

Annex A – complainant's requests

Request #6 of 23 May 2014 – 'Tax & NI payments of Councillors':

"Your own Council web-page regarding remuneration of Councillors states:

"For the purposes of applying tax and national insurance regulations, members will be treated as though they were employees. All allowances paid to members will be subject to PAYE tax and national insurance where earnings are sufficient."

<http://www.salford.gov.uk/allowances-mis...>

Therefore, given that councillors are employees and Salford City Council are the employers, for EACH of the last 3 financial years:

- 1. How much was paid by Salford City Council in tax and National Insurance contributions as an employer?*
- 2. The figures paid to each Councillor are published and not confidential. Therefore, I require a breakdown of the employer tax and National Insurance for EACH NAMED Councillor for EACH of the 3 years paid by Salford City Council."*

Request #8 of 23 May 2014 – 'Ian Stewart Mayoral communications':

"Prior to the Local Elections, Ian Stewart - Elected Mayor – used his official Mayoral Facebook page to make political statements in favour of Labour. He also re-Tweeted stories that were negative towards the conservatives and UKIP.

I therefore wish to make the following Freedom Of Information request:

- 1. Should the Elected Mayor be apolitical, given that he was elected to represent all his constituents - not just Labour supporters?*
- 2. Is he breaching ANY rules by using council-funded communication sources to favour Labour instead of any other party?*
- 3. What council-funded resources does he use to operate his own Labour-supporting communications - Facebook, Twitter, Mayor Daily etc. Please include staffing, time, set-up costs, operating costs etc."*

Request #12 of 29 May 2014 – 'Experience of Salford City Council Cabinet':

"Ian Stewart (the Elected Mayor on £69,000) is cutting front line jobs. At the same time, he has pushed through additional allowances for a range of Labour councillors costing Salford an ADDITIONAL £197,349.78 - not including the Mayor's £69k.

I therefore require the following:

- 1. What SPECIFIC academic qualifications does EACH Councillor have that justifies them being given the role aside from being Labour?*
- 2. What SPECIFIC work experience (in the 'real world' not just as a Councillor) does EACH Councillor have that justifies them being given the role aside from being Labour?"*

Request #16 of 5 June 2014 – 'Has the Elected Mayor acted illegally?':

"A story in The Salford Star alleged that a motor-home owned by Ian Stewart was parked at Turnpike House without payment, whilst it 'may' also be breaching UK Laws.

If these allegations are true, they affect the suitability of Ian Stewart to hold a publicly elected office.

I therefore require the following Freedom Of Information data:

At the time of the publication of the Salford Star story, and also since that time to date:

- 1. Is the motor-home owned by Ian Stewart or any member of his family?*
- 2. Is it being parked at Turnpike House without payment?*
- 3. If a payment is being made, please supply proof.*
- 4. Does the vehicle have Road Tax? If yes, please provide proof of the start date.*
- 5. Does the vehicle have road insurance? If yes, please provide proof of the start date.*
- 6. Does the vehicle have an MOT? Please provide proof.*
- 7. If the vehicle does not possess ANY of tax, insurance or mot, when did they expire?*

8. Has the vehicle been declared SORN for both road tax and insurance if neither is possessed? If yes, please provide proof of the start date.

9. What date was the vehicle parked at Turnpike House?

10. Who drove it there?

11. If any laws have been broken, have the Police been notified? If not, why not?

12. Under whose authority is the vehicle stored at Turnpike House?"

Request #17 of 17 June 2014 – 'Screening of questions by Salford City Council':

"Salford City Council refused to answer questions put to them during an open council meeting on June 11th 2014, even though the person legally complaining about cuts to mental health services had proof he had followed submission procedures.

He was then asked to leave the 'open' meeting and subsequently questioned by police for exercising his democratic rights.

As a concerned citizen suffering from clinical depression I am concerned at the implication of these actions on both the provision of mental health services in Salford, and the transparency of Salford City Council.

I therefore wish to make the following Freedom Of Information request:

1. Why are the police being used to control people exercising their democratic rights in Salford?

2. Who called the police and when?

3. How many times in the last 12 months have the police been used by Salford City Council to control anyone not in agreement with their views?

4. How much have Salford City Council paid for such security services by the police in the last 12 months?

5. Why is there a 'Council Agenda Group' to screen questions put to the Council Meeting?

6. Who does this group consist of?

7. Whom do they ultimately report to?

8. How many questions have been submitted in the last 12 months?

9. How many questions were refused?

10. How many people have submitted questions?

11. What were the contents of the questions refused?

12. What percentage of refused questions were negative towards the council?

13. What percentage of accepted questions were negative towards the council?"