

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

### **Decision notice**

**Date:** 8 March 2018

**Public Authority:** Royal Borough of Windsor and Maidenhead  
Council

**Address:** Town Hall  
St Ives Road  
Maidenhead  
Berkshire  
SL6 1RF

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

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1. The complainant has requested information on the remuneration received by councillors from outside body appointments (i.e. made by the council) in the last two financial years. The council provided some information and said that it did not hold anything further. The complainant considered that further information must be held.
2. The Commissioner's decision is that on a balance of probabilities the council does not hold any further information falling within the scope of the complainant's request. She has also decided that the council complied with the requirements of section 1(1) of the Act, and section 17(1) of the Act. However, she has decided that the council failed to comply with the requirements of section 10(1) in that it did not provide a copy of all of the information it holds within 20 working days of receiving the request for information. The Commissioner does not require the council to take any steps.

## Request and response

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3. On 2 May 2017, the complainant wrote to the council and requested information in the following terms:

*"How much has each Councillor earn from both RBWM and outside body appointments in the last two financial years starting April 5, 2015 and April 5, 2016."*

4. The council responded on 5 May 2017. It said that the information he had requested was available online, from the councillors' Register of interests, which it provided a link to:  
<http://rbwm.moderngov.co.uk/ecSDDisplay.aspx?NAME=SD204&ID=204&RPID=4638&sch=doc&cat=13159&path=13159>.

5. On 6 May 2017 the complainant responded again to the council, asking it to carry out an internal review. He asked:

*"In the link provided there are details of monies received directly by councillors from RBWM. I am also enquiring about monies received because of their public appointment to outside bodies as representatives of RBWM. They would not be able to receive this money unless the residents had first elected them, so it is not private income.*

*In the spirit of openness and transparency (something that is quoted by leading councillors as important) this information should be available to the public. The reason for asking is this provides the Leader (who makes all the appointments) with significant patronage."*

6. On 19 May 2018 the council disclosed information on payments being made to relevant councillors by the Royal Berkshire Fire Authority.
7. The complainant then made a further clarification of his request. The Commissioner does not hold a copy of this email, however the council's response email of 23 June 2017 outlines the relevant section of his complaint. The request clarification stated:

*"Will you clarify RBWM's policy interpretation regarding the disclosure of 'private' income received by Councillors by virtue of the fact that they are Councillors?"*

*The council's response to this was that "Any outside interests are disclosed on the 'register of interests' which are published to the RBWM website. It is not a requirement to publish how much Councillors receive as private income".*

8. The council provided further information to the complainant on 23 June 2018 relating to payments made by a company called 'Housing

Solutions' to a councillor. It also outlined further outside appointments although it stated that the remuneration for those roles had yet to be decided.

9. Following an internal review the council wrote to the complainant again on 26 June 2017. It said that "*The Councillors private income is not associated with their role as Councillors and as such is a private matter for them and is not disclosable under the Freedom of Information Act*". The review however did not consider whether any further information was held, nor address the information which had been disclosed previously. It appears to have misconstrued the request to be for information on councillors' private income rather than information on remuneration received from appointments to outside bodies made by the council itself.

### **Scope of the case**

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10. The complainant contacted the Commissioner on 26 June 2017 to complain about the way his request for information had been handled. He argues that the information should be disclosed on the basis that the council is responsible for making the outside appointments. He therefore argues that any income derived from the posts is not the 'private income' of the individual councillors as it results from their position at the council and its decision to appoint them to the role. He considers therefore that the information should be disclosed.

#### Section 40(2)

11. In its review the council said that the requested information was private to the individuals councillors concerned. Although it did not specifically state this, it therefore applied section 40(2) to withhold information relating to any private (i.e. non-appointed) work carried out by councillors.
12. However in arguing this point it misconstrued the stated intention behind the request, which was for information on payments received by councillors from council appointed outside bodies. To clarify her position, the Commissioner considers that the request for information does not include a request for information on the purely private income of councillors. The request was limited to information on income received by councillors from the council and/or from their council appointed roles to outside bodies.
13. The Commissioner considers that these roles are effectively an extension of their roles within the council, and therefore any payments

made to them as a result of the role are not purely private income. They are additional remuneration received as a result of their work for the council.

14. The Commissioner has not therefore found it necessary to consider the application of section 40(2) to any private income received by councillors within this decision notice.
15. Further to this the complainant questioned the adequacy of the council's response. He considers that it did not meet with the procedural requirements for responding to FOI requests.
16. During the Commissioner's investigation the council clarified that it does not in fact hold any further information insofar as this request is concerned.
17. The Commissioner's investigation must therefore, in the first instance, focus on whether further information is held by the council falling within the scope of the request. She must also consider whether the council's responses to his request followed the procedures required by the Act.

## Reasons for decision

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### Is further information held?

18. 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."*

19. The council argues that it has provided the complainant with all of the information which it holds which falls within the scope of his request. The complainant considers that further information must be held.
20. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and argument. He will also consider the actions taken by the authority to check that the information is not held and any other reasons offered by the public authority to explain why the information is not held. He will

also consider any reason why it is inherently likely or unlikely that information is not held.

21. The Commissioner is mindful of the Tribunal's decision in *Bromley v the Information Commissioner and the Environment Agency (EA/2006/0072)* in which it was stated that *"there can seldom be absolute certainty that information relevant to a request does not remain undiscovered somewhere within a public authority's records"*. It clarified that the test to be applied as to whether or not information is held was not certainty but the balance of probabilities. This is therefore the test the Commissioner will apply in this case.
22. In discussing the application of the balance of probabilities test, the Tribunal stated that, *"We think that its application requires us to consider a number of factors including the quality of the public authority's initial analysis of the request, the scope of the search that it decided to make on the basis of that analysis and the rigour and efficiency with which the search was then conducted. Other matters may affect our assessment at each stage, including for example, the discovery of materials elsewhere whose existence or content point to the existence of further information within the public authority which had not been brought to light. Our task is to decide, on the basis of our review of all of these factors, whether the public authority is likely to be holding relevant information beyond that which has already been disclosed."* The Commissioner has therefore taken the above factors into account in determining whether or not the requested information is held on the balance of probabilities.
23. In coming to a decision in this case the Commissioner has considered the arguments provided to her by the complainant in support of his submission that the requested information is held.
24. After earlier correspondence with the Commissioner in which the council initially misconstrued the information falling within the scope of the request the council clarified that it considered that all of the information which it holds has been disclosed to the complainant.
25. On 12 January 2018, as part of her investigation, the Commissioner asked the council the following questions to determine what information it holds falling within the scope of the complainant's request and what searches it had carried out:

*"What is the role of the person who is in charge of these records?"*

*I have noted from the Housing Solutions website that a current councillor receives £5000 for their role as the council representative*

*(see <https://www.housingsolutions.co.uk/corporate/executive-team-board-members/openness-and-transparency/> ). It is clear therefore that there are currently councillors working in outside roles who receive a salary for their positions. Please clarify whether the council has a specific policy regarding the information which councillors should provide to the council from their positions with outside organisations. Please confirm if councillors are required to report the benefits/payments etc that they receive from taking such roles.*

*If councillors receive benefits/ a salary from these roles but have not yet received any money from their role would the records held by the council identify that this is the case? Essentially, a salary, regardless of when actually paid, is still a benefit to the individual concerned (albeit not yet received). Does the council hold any records where payments have been awarded but not yet received?*

*How is information received as part of these roles reported back to the council (i.e. is there a specific form which councillors are required to complete). If there is a form which needs to be completed does this refer to any payments which are made to councillors for their role?*

*If councillors specify their additional salary from such roles in declaration of interest forms, are these completed annually or would the council hold a number of forms which might, taken individually, provide information which would respond to the request, (i.e. a form completed in March referring to a salary from the Fire Authority, and a separate form completed in August referring to a salary being awarded by another organisation)? Read as individual forms would these provide the information requested by the complainant in this case?*

*Referring to the records maintained by the officer, please describe how these records are maintained at the council.*

*Please explain how the records are retained (in what format/database).*

*What sort of file system are these records maintained on?*

*Please describe the search terms/key words which were used (if any) to determine whether relevant information is held and explain why you believe that this would have located any relevant information which was held. If no searches were carried out using key words etc, please confirm why it was not possible or not necessary to carry out searches using key words etc.*

*Please also provide a further clarification of the crosschecks which were carried out. Again please specify how these crosschecks would have*

*been likely to locate any relevant information.*

*If the council maintains its position that no information is held relating to pay received by councillors from outside bodies I would appreciate it if you could explain why the council would not hold information relating to this. Does the council have a specific policy as regards the records which it records as regards outside appointments, and if so, what records are generally retained?"*

26. The council responded on 7 February 2018. It confirmed that the information provided to it by councillors is entered onto its 'Outside appointments database'. It further confirmed that this information is subsequently published on the Register of interests, which is available from its website.
27. It said that councillors are required by the Localism Act 2011 to ensure that their Register of interests is up to date at all times. This includes the provision for '*Employment, office, trade, profession or vocation carried on for profit or gain*'. It said that this provision should include any positions on outside bodies which include an allowance. The council clarified that it does not have a separate policy on this.
28. It said that to facilitate members reporting on their interests forms are sent out after elections, and are sent a reminder in January or February each year that they are required to keep their register entry up to date. The form includes guidance which does refer to outside bodies and the requirement to list remunerated position under the relevant section:

***"Membership of Other Bodies:*** *This is fairly self explanatory. It asks you to list any membership of a body in which you have general control or management AND to which you have been appointed or nominated by your authority. This includes non executive directorships of RBWM companies, provided you do not receive any remuneration from the company. If you do receive remuneration(income) for this role, you will need to declare it as a Disclosable Pecuniary Interest under 'Employment'. (see above) A 'body' in this sense means a group whose members who have a common aim or theme."*

29. The form includes the following statement to councillors:

***"PART 1: DISCLOSABLE PECUNIARY INTERESTS***

*Members are required to disclose these interests under of the Localism Act 2011 (Ss 29-34) and The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012, in relation to disclosable pecuniary interests. Failure to disclose them is liable to criminal sanction under s34 of the Localism Act 2011."*

30. However it clarified that although they must report the fact that they receive remuneration for the position, there is no requirement for them to state how much they receive from the position. The council provided the Commissioner with a copy of the relevant form as evidence that this is the case. The Commissioner notes that the form has no relevant section requiring that councillors specifically note the level of remuneration they receive from outside bodies.
31. As noted above, the council said that that it holds the information it obtains from councillors on its 'outside bodies database'. Details of the organisations and representatives are stored in the modern.gov system and listed on the website at <http://rbwm.moderngov.co.uk/mgListOutsideBodies.aspx?bcr=1> . It also holds a Microsoft excel spreadsheet extracted from the modern.gov website, with additional information relating to correspondence and administrative matters added manually.
32. In response to the Commissioner's request for clarification as to whether information might not be held if an allowance was awarded but had not yet been paid, the council said that it's 'Outside bodies' database would hold a record of this whether or not the allowance has already been paid or has yet to be paid. By this the Commissioner understands that councillors have a duty to inform the council of their pecuniary interest in the organisation even where they have not yet received any actual remuneration.
33. It said that members are expected to inform the council of any amendments to their register entry. Any amendments to the initial Register of interests form are translated across to the councillor's Register of Interests on the website upon receipt by its Democratic Services department.
34. The council said that upon receiving the request searches had been carried out through an examination of the excel spreadsheet. Individual organisation identified as providing remuneration to council appointees were then contacted to confirm current figures. The Commissioner notes, however, that in the case of remuneration provided to a councillor by Housing Solutions the figure disclosed referred to the councillor who had the role previously; not to the current councillor. This is considered further below.
35. Finally the council reiterated that the reason why it would not hold the requested information is that councillors are not required to disclose details of their income, only the fact that they hold a position attracting remuneration on their Register of interests.



36. The complainant outlined his concerns about the information which the council had, to date, disclosed to him. He felt that the council's responses to him had been unclear, potentially out of date and/or incorrect. He highlighted for instance that the Register of interests referred to one councillor who was receiving remuneration from Housing Solutions, however in reality that person was no longer working with them and another councillor had taken his place. He argues that whilst the council's response to him suggested that the remuneration figures it held referred to a remuneration of £3000 annually being received by the initial councillor, the council's response implied that the current councillor received the same amount. The Housing Solutions website currently refers to an annual remuneration of £5000 although at the time of the request it appears from the correspondence that it had not been updated, naming the wrong councillor. The amount highlighted was at that point appears to have been £3000.
37. The Commissioner notes that the Act requires the council to provide the information it holds which falls within the scope of the request. If the information which is held is out of date or inaccurate, this does not affect the council's obligation to disclose the information it actually holds in response to a request. Obviously where a public authority is aware the data is, or may be, inaccurate, the Commissioner would expect it to consider clarifying this when disclosing the information. There is though no specific requirement for a public authority to check the figures it holds prior to disclosing them in response to a request.
38. However, the council provided an internal email chain to the Commissioner which highlighted that according to its records the remuneration to the councillor was £3000 at that time. Therefore it has provided the information which it held at the time of the request. On this point, the council also noted that a different councillor had taken over the role in April 2017, and another councillor had been in the position prior to this. It highlighted however that this fell outside the scope of the request, which only asked for details between 5 April 2015 and 5 April 2016.
39. On a final point, the Commissioner has no powers to consider whether the council holding incorrect information regarding the remuneration provided to a councillor by Housing Solutions is a breach of any of the council's, or councillors' legal obligations under other legislation such as the Localism Act.

### Conclusions

40. In reaching her decision the Commissioner has considered what information she would expect the council to hold and whether there is

any evidence that the information was ever held. In doing so the Commissioner has taken into account the responses provided by the council to the questions posed by her during the course of her investigation. The Commissioner is also mindful of the Tribunal decisions highlighted above. She has also taken into account the complainant's submissions.

41. In providing a copy of its declaration of interests form to the Commissioner the council has provided evidence that councillors are not asked to declare specific details of the remuneration paid to them by outside bodies. This evidence, above all, provides an explanation as to why it does not hold information falling within the scope of the request other than for a small number of councillors.
42. The council has explained the process as to how it collects and publishes the information it does. It has explained how it searched for relevant information and that the person responsible for creating and maintaining the relevant database was asked what information is held falling within the scope of the request. It has explained what information it collects from councillors, how it goes about doing that, and has provided evidence of the information which it expects councillors to provide to it. It has explained how often it expects them to provide this information or to amend their records where that is necessary. It has also explained the legal requirements which require councillors to record such information. It has found no further information falling within the scope of the request.
43. Based upon the council's responses and the searches it has carried out the Commissioner has come to the conclusion that on a balance of probabilities the council does not hold any other information falling within the scope of the request. Therefore it complied with section 1(1) in providing the information which it held to the complainant.

### Procedural Requirements

#### Section 17(1)

44. Section 17(1) of the Act provides that:

*(1) A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which—*

*(a) states that fact,*

*(b) specifies the exemption in question, and*

*(c) states (if that would not otherwise be apparent) why the exemption applies.*

45. The council did not specifically state to the complainant that it was withholding the information from disclosure under section 40(2) of the Act, either in its initial correspondence, nor following its review of the request. It did however state its reasons for not disclosing the information to be that the income was the private income of the councillors and that the information was not therefore discloseable under the Act. At that point however it had already disclosed the information it did hold falling within the scope of the request, and was effectively seeking to apply an exemption to information which had not been requested.
46. The Commissioner has therefore decided that as the information which was requested was disclosed with no exemptions being applied the council did comply with the requirements of section 17(1)(b).
47. As a note of caution, however, if the complainant's request had included details of the private income of councillors then the response provided would have failed to state the exemption which the council was seeking to rely upon to withhold the information. The council would then have failed to comply with the requirements of section 17(1)(b).

Section 10(1)

48. Section 10(1) of the Act 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."*

49. The complainant made his request for information on 2 May 2017. The council responded providing copies of the information relating to Housing Solutions on 23 June 2017.
50. This falls outside of the 20 working days required by section 10(1) of the Act. The Commissioner has therefore decided that the council failed to comply with the requirements of section 10(1) in this case.

## Right of appeal

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51. 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](mailto:GRC@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

52. 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.

53. 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**