

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 November 2022

Public Authority: Newcastle City Council
Address: Civic Centre
Newcastle-upon-Tyne
NE1 8QH

Decision (including any steps ordered)

1. The complainant requested copies of applications and submissions made in 2019, and 2020, by Newcastle Upon Tyne Council (the council) in connection with Stonewall's Diversity Champions Programme and Workplace Equality Index. They also asked for any feedback that Stonewall provided in response.
2. The complainant remains dissatisfied with the council's response to parts 1 and 2 of their request.
3. The Commissioner has determined that, on the balance of probabilities, the council does not hold information relevant to part 1 of the complainant's request.
4. With regard to part 2 of the request, it is the Commissioner's decision that the council is not entitled to rely on section 41(1) of the FOIA (breach of confidence) to withhold the requested information.
5. The Commissioner requires the council to take the following steps to ensure compliance with the legislation.
 - Disclose the information held that is relevant to part 2 of the request.
6. 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 FOIA and may be dealt with as a contempt of court.

Background

7. The Commissioner has recently issued decision notices IC-125081-Q8J6, and IC-129040-Y4T2, both of which deal with very similar requests to that which is to be considered within this decision notice.
8. The following background information is taken from decision notice IC-129040-Y4T2:
9. Stonewall first published its Workplace Equality Index (originally known as the Corporate Equality Index) in 2005. Participation in the scheme itself is voluntary and free. Each member employer receives a score from Stonewall based on how well the organisation's policies and general culture reflect Stonewall's criteria for judging what an organisation supportive of LGBTQ+ employees should offer. Stonewall publishes an annual list of the 100 employers who have received the highest ranking in that year's survey.
10. For those employers which sign up to the Diversity Champions Programme, Stonewall also provides detailed feedback on their applications, noting how the employer could better meet its criteria.

Request and Response

11. On 4 February 2021, the complainant submitted a 6 part request to the council. They have only raised concerns about the council's handling of parts 1 and 2 of their request, which were as follows :

 "This is a request under the Freedom of Information Act 2000 (FOIA). Please provide any information that you hold answering to any of the following descriptions:

 1. Any application you made in 2019 or 2020 to be a "Stonewall Diversity Champion" or to be included on Stonewall's "Workplace Equality Index," including any attachments or appendices to those applications. Please redact personal details if necessary.

 2. Any feedback you received in 2019 or 2020 from Stonewall in relation to either application or programme."
12. The council has advised the complainant that it does not hold the information relevant to part 1 of their request, and that the information relevant to part 2 of the request is to be withheld under section 41(1) of the FOIA.

Scope of the case

13. The Commissioner will decide whether:

- on the balance of probabilities, the council holds information relevant to part 1 of the request,
- the council is entitled to rely on section 41(1) as its basis for withholding the information relevant to part 2 of the request.

Reasons for decision

Part 1 of the request

14. Section 1 of the FOIA states that any person making a request for information to a public authority is entitled to be informed in writing whether information is held within the scope of the request, and if so, to have that information communicated to them.
15. The Commissioner has sought to determine whether, on the balance of probabilities, the council holds information relevant to part 1 of the complainant's request.
16. The council has confirmed that it submitted applications for the Workplace Equality Index in 2019, and 2020, via Stonewall's electronic portal. The submissions were made by various staff across the organisation who all had access to the portal.
17. The council has said that it did not keep its own record of the submissions that it made; it states that it did not regard it to be necessary to do so, given that it could access this information at any time via Stonewall's electronic portal.
18. The council has advised that a number of electronic searches have been carried out to identify if it holds any information relevant to part 1 of the request. It has also confirmed that officers that still work for the council who were known to have been involved with the submissions were asked to check if they held any information.
19. The Commissioner is satisfied that the council has carried out the appropriate searches necessary to locate any information that it might hold that is relevant to part 1 of the request. It has also provided sufficient explanation as to why it did not retain this information on its own records at the time of its submissions to Stonewall.

20. Furthermore, whilst the council may have been able to access its submissions via Stonewall's electronic portal at the time that the request was received, it is the Commissioner's view that this does not render it information held by, or on behalf of, the council.
21. Having considered the information available, the Commissioner is satisfied that, on the balance of probabilities, the council does not hold information relevant to part 1 of the request.

Part 2 of the request

22. The council has withheld the information relevant to part 2 of the request under section 41(1) of the FOIA, which states that:

"Information is exempt information if—

(a) it was obtained by the public authority from any other person including another public authority), and

(b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person."

23. The Commissioner has found that the withheld information in this case is of the same description as that which was considered within decision notice IC-129040-Y4T2. It should, however, be noted that in that case, the public authority had previously released the feedback it had received from Stonewall in response to its 2017 and 2018 submissions. The council has not, as far as the Commissioner is aware, ever disclosed or published the feedback it has received from Stonewall.
24. The Commissioner notes that the arguments presented by the council, and the public authority in decision notice IC-129040-Y4T2, in support of the decision to apply section 41, are similar.
25. Whilst the Commissioner has given consideration to the specific circumstances of this case, he can find no additional information or compelling arguments contained within the council's correspondence to the complainant, or to his office, which would lead him to draw a different conclusion to that which he set out within paragraphs 15-50 of decision notice IC-129040-Y4T2. He is therefore not persuaded that the circumstances of this particular case are sufficiently different to that set out in decision notice IC-129040-Y4T2 to warrant a different outcome.
26. The Commissioner therefore finds that, for the same reasons set out within paragraphs 15-50 of decision notice IC-1290404-Y4T2, he is not satisfied that any action Stonewall brought for a breach of confidence would succeed. The Commissioner is therefore not satisfied, based on

the current information that has been presented by the council, that any breach that results from disclosure of the requested information by the council would be an actionable breach.

27. As the Commissioner is not satisfied that an actionable breach would occur, he must find that section 41 of FOIA is not engaged.

Right of appeal

28. 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

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

29. 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.
30. 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

Suzanne McKay
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF