

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

### **Decision notice**

**Date:** 22 August 2022

**Public Authority:** Lancashire County Council  
PO Box 78  
County Hall  
Fishergate  
Preston  
Lancashire  
PR1 8XJ

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

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1. The complainant has requested information regarding teachers and furlough. Lancashire County Council ("the council") provided some information but stated that other information was not held.
2. The Commissioner's decision is that, on the balance of probabilities, the council has provided all of the information it holds which is in scope of the request.
3. The Commissioner does not require any steps.

## Request and response

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4. On 11 April 2022, the Commissioner served decision notice "IC-93296-L5V1"<sup>1</sup> on Lancashire County Council requiring the council to issue a fresh response to the following request within 35 calendar days. The request is regarding supply and agency teaching staff:

"2) Anonymised copies of claimed variations to contracts for those furloughed by LCC, along with original contracts.

3) Details of supply teachers/agencies hired by LCC during the lockdown period, i.e. starting after 20th March 2020 through to August.

- Anonymised ID
- Name and address of agency if agency paid, or LCC
- Start date
- End date
- Pay rate
- School"

5. The council responded on 21 July 2022. It provided some information in scope of question 2), and withheld some information on the basis of section 40(2). The council provided some information in scope of question 3). It stated that information regarding teachers or agencies hired directly by schools is not held by the council. It advised that schools are public authorities for the purposes of the FOIA and therefore requests should be made to them directly. It provided the complainant with a directory of schools in the Lancashire area and their contact details.

## Scope of the case

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6. The complainant contacted the Commissioner on 25 July 2022 to complain about the way their request for information had been handled.

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<sup>1</sup> [ic-93296-l5v1.pdf \(ico.org.uk\)](https://ico.org.uk/subject-access/ic-93296-l5v1.pdf)

Specifically that the council holds further information in scope of question 3).

7. The scope of this case and of the following analysis is whether the council is likely, on the balance of probabilities, to hold further information, within the scope of question 3), for the purposes of section 1.

### **The Lancashire Teaching Agency (LTA)**

8. The Lancashire Teaching Agency ("LTA") is a partnership between Lancashire County Council and Reed Education ("Reed") which delivers a long and short term staff supply service to schools across Lancashire.

### **Reasons for decision**

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

9. 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.
10. 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.
11. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the ICO, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
12. In other words, in order to determine such complaints, the ICO must decide whether on the balance of probabilities a public authority holds any - or additional - information which falls within the scope of the request (or was held at the time of the request).

#### **The council's position**

13. In the response to the request, the council stated that:

- it only holds details of supply teachers who were employed by LTA during the period of the request scope, which it has provided in response to the request.
  - schools may contract with supply agencies directly. The council has no reason to hold this information, and does not hold this information.
14. The council confirmed to the Commissioner that no further information within the scope of 3) had ever been held by the council, and therefore no information had been deleted.
15. The council confirmed to the Commissioner that it has no business purpose or legislative requirement to hold information, where schools contract with supply agencies directly. Therefore the information is simply not held.

### **The complainant's position**

16. The complainant's position is that schools report to the council, therefore the council is in a position to collect and collate the information requested.
17. The complainant provided an example of a hiring made by a particular school during the period in question.

### **The Commissioner's conclusion**

18. The Commissioner has considered the council's position, in conjunction with the request.
19. The complainant considers that the council should either hold the information, or be able to collect and collate the information.
20. The FOIA provides a right to access information that is held by a public authority. The legislation is not concerned with whether or not information should be held.
21. If a public authority does not hold certain information within the scope of a request, then there is no requirement for the authority to create it. Neither is a public authority required to ask a third party for the information, unless the third party holds it on the authority's behalf.
22. In terms of obtaining the information from the schools, the question therefore is whether the schools hold the information on behalf of the council. In this case, the Commissioner understands that the council only requires the information relating to staff supplied by the LTA. It holds this information because the council is a partner in the LTA. In the

scenario where a school hires staff directly or through another agency, the council does not have a purpose for holding this information.

23. The council has confirmed that there is no legislative nor other reason for holding the information. It advises that it has provided all of the information it holds which is in scope of the request. The Commissioner has no contradictory evidence to indicate that this position is wrong.
24. The Commissioner also acknowledges that the council was correct to refer the complainant to the schools concerned, for the information that it does not hold. This is because schools are public authorities for the purposes of the FOIA.
25. On this basis the Commissioner has concluded that, on the balance of probabilities, the requested information is not held by the council.

## **Right of appeal**

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26. 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)

27. 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.
28. 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 .....**

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