

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

### **Decision notice**

**Date:** 19 December 2023

**Public Authority:** Southend-on-Sea Borough Council

**Address:** Civic Centre  
Victoria Avenue  
Southend-On-Sea  
Essex  
SS2 6ER

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

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1. The complainant has requested information regarding an organisational structure chart, including job roles and pay scales, from the Southend-on-Sea Borough Council ("the Council").
2. Having made a number of disclosures, the Council advised that it had disclosed everything that had been requested. The Commissioner does not agree with this position. The Commissioner's decision is that the Council, on the balance of probabilities, does hold further information within the scope of the request.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
  - Conduct a further search for the requested information and issue a fresh response which either discloses that information or explains why it is exempt from disclosure.
4. 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 the Act and may be dealt with as a contempt of court.

## Request and response

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5. On 18 March 2023, the complainant wrote to the Council and requested information in the following terms:

“Under the Freedom of Information Act, could you please provide me with an organisation structure chart with all Job Titles and NJC [National Joint Council] Salary Scales only for your Social Work, Early Help and Youth Support department.

Please note that I am not asking for any names of employees or information about their current salary.

Please supply the information using the same format as your response to [a different request].”

6. The Council responded on 11 April 2023. It stated that it did not hold the requested information.
7. Following an internal review the Council wrote to the complainant on 2 August 2023. It revised its position and provided some information to the complainant.

## Scope of the case

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8. The complainant initially contacted the Commissioner on 21 July 2023 to complain about the way their request for information had been handled; this was prior to receiving an review. Following receipt of the internal review, the complainant advised that they remained dissatisfied.
9. The Commissioner considers that the scope of his investigation is to consider whether, on the balance of probabilities, the Council holds any additional information within the scope of the request.

## Background

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10. The Council have explained to the Commissioner that the Children’s Service discharges the Council’s statutory duties for youth offending, children in need (including those deemed to be in need due to disability), children subject to child protection plans, cared for children, care experienced children, fostering and adoption.

11. During the Commissioners investigation, the Council issued the complainant with two further responses to their request. All three responses differ significantly and list different, incomparable data.
12. The first additional response was sent on 11 October 2023, and contained two documents. One of these was a pay structure from April 2022 and the other contained a staff structure chart for the Children's Social Work, Early Help and Youth support department.
13. Despite the Council providing this further information, the complainant advised that the information was not provided in the format they had requested and a more up to date pay scale was expected.
14. Following further correspondence with the Commissioner, the Council issued a final response on 30 November 2023. This response complied with the format requested by the complainant however, it did not include all the job roles listed in the previous staff structure chart. For this reason, the complainant believed that further information was held. The Council advised that they had disclosed all of the requested information.

## **Reasons for decision**

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

15. Section 1(1) of 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."
16. When a public authority receives a request for information it has two obligations under section 1(1) of FOIA. Firstly, it must explicitly confirm or deny whether it holds the information in question. Secondly, if it does hold that information, it must either provide a copy to the requester or issue a refusal notice. If it receives a request that contains multiple elements, its response must be clear about which information it holds and which it does not.
17. 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 arguments. 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. Finally, he will consider any reason why it is inherently likely or unlikely that information is not held.

18. For clarity, the Commissioner is not expected to prove categorically whether the information is held, he is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.

### **Complainant's position**

19. The complainant acknowledged that the Council has provided some of the requested information, but they still believed further information within the scope of their request was held.
20. The complainant explained to the Commissioner that, in its final disclosure, the Council provided information for only one service manager. However, the complainant believed that the Council employs more than five service managers and this information has not been provided.
21. The complainant also stated that some information within the scope of the request was clearly missing from the responses. For example, they advised that the following roles fell into the scope of the request, but were not included in the Council's final response: 'Director of Service, Head of Corporate Parenting', 'Placements and Resources, Head of Assessment, Support & Protection', 'Court Progression Manager', 'Edge of Care Practitioner', 'Local Authority Designated Officer (LADO)', 'Safeguarding Advisor' and 'Principal Reviewing Officer'.

### **The Council's position**

22. The Council advised the Commissioner that the information it had provided in its three disclosures would not be comparable, ie there would be a 'mismatch' between the structure chart, the list of job titles and salary grades, due to the information coming from two different sources. The job titles and salary grades are from the Council's Human Resources ('HR') management system which holds establishment information, whereas the structure chart is created separately by the service area and used for operational reasons. Therefore, the two sources will not be a match.
23. The Council added that currently the HR system does not have the capacity to create structure charts.

24. However, despite the initial differences, in the Council's most recent response, it concluded that it had now provided the complainant with **all** of the requested information.

### **The Commissioner's decision**

25. The Council's final disclosure to the complainant, made on 30 November 2023, identifies the roles and pay bands for 104 members of staff.
26. The Commissioner has reviewed the further comments set out by the complainant regarding job roles that appear to be missing and, having conducted his own search, he acknowledges that some additional roles are listed on the Council's website that have not been provided to the complainant<sup>1</sup>.
27. The Commissioner is of the view that the Council must necessarily know who it employs in each role within the Social Work, Early Help and Youth Support department, although he accepts that this information may not be readily retrievable. For example, it would not be able to pay its staff if it didn't know who it employed, their job roles and their pay scales; this information must be available. Whilst the information may not be conveniently held in one place, this does not mean that it is not held at all.
28. The Commissioner is therefore satisfied that the Council has the "building blocks" necessary to produce the requested information despite the HR system not being able to produce an automated structure chart. The Council has not advised that there is particular skills or expertise to put the building blocks together.
29. Based on the above, the Commissioner is not satisfied that the Council does not hold additional information within the scope of the request. Whilst it may not be able to readily extract all the requested information from one system, this does not mean that the information is not actually held.
30. The Commissioner requires the Council to conduct a further search for the requested information taking into consideration the exact wording of the request and the comments made by the complainant in paragraphs 20 and 21. The Council should then issue a fresh response to this request, or provide an appropriate refusal notice.

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<sup>1</sup> [SBC publication template - Word \(southend.gov.uk\)](https://www.southend.gov.uk)

## **Other matters**

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31. The Commissioner would like to remind the Council that whilst internal reviews are not legally required under FOIA, they are still considered to be good practice. An internal review should be completed within 20 working days, with the maximum amount of time required of 40 working days.
32. In the circumstances of this case, the Council failed to provide the internal review within 40 working days, which the Commissioner considers to be poor practice.
33. The Commissioner will use intelligence gathered from individual cases to inform his insight and compliance function. The Commissioner aims to increase the impact of FOIA enforcement activity through targeting of systemic non-compliance, consistent with the approaches set out in our FOI and Transparency Regulatory Manual<sup>2</sup>.

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<sup>2</sup> [https://ico.org.uk/media/about-the-ico/documents/4020912/foi-and-transparency-regulatory-manual-v1\\_0.pdf](https://ico.org.uk/media/about-the-ico/documents/4020912/foi-and-transparency-regulatory-manual-v1_0.pdf)

## Right of appeal

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34. 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)

35. 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.
36. 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 .....**

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