

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 September 2011

Public Authority: Rochdale Metropolitan Borough Council
Address: Municipal Offices
Smith Street
Rochdale
OL16 1XU

Decision

1. The complainant requested information created as a result of the council's job evaluation exercise.
2. The Commissioner's decision is that Rochdale Metropolitan Borough Council ('the council') has incorrectly applied the exemption at section 36(2)(c) of the Freedom of Information Act ('the Act') to four of the complainant's requests for information. He however finds that the council has disclosed all of the information that it holds in relation to two other requests. The council has breached section 10(1) of the Act by failing to comply with section 1(1) within 20 working days.
3. The Commissioner requires the council to disclose the information withheld under section 36(2)(c) to the complainant.
4. The public authority 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 (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Background

5. In April 2005 the council began a job evaluation exercise which aimed to assess the relative positions of jobs within the council. The new exercise was intended to "harmonise terms and conditions for staff employed within local authorities" and to ensure compliance with equal pay legislation. The complainant is an employee of the council.

Request and response

6. On 18 December 2008, the complainant submitted a request to the council for information "in relation to details of the evaluation of my role, and the scores given to my role". The complainant provided the council with his job title and pay reference. A full list of the complainant's requests is provided at Annex A.

The complainant specified that he made this request as a Subject Access Request (SAR) under section 7 of the Data Protection Act ('the DPA'), because he wished to receive information relevant to his own role. Appended to the request was a statement signed by three of the complainant's colleagues authorising the council to release the requested information – which also related to their job roles – to the complainant.

7. Following the intervention of the Commissioner, the council provided a response to the complainant on 22 February 2010. The council considered the request under the Act rather than as a SAR under the DPA. The response disclosed information in response to requests request 1, 2, 3 and 12. The council directed the complainant to "the National Agreement on Pay and Conditions", which was apparently accessible to the complainant in response to request 4, 6 and 7. The Council withheld information relevant to requests 3, 5, 8 and 10 under the exemption at section 36(2)(c) of the Act.
8. On 6 March 2010, the complainant requested an internal review of this response. The council provided the outcome of this review on 6 August 2010. This disclosed some additional information relevant to requests 2 and 4. The council confirmed that it held no further information relevant to requests 1, 2, 4 and 9, and upheld the application of section 36(2)(c) to requests 3, 5, 8 and 10.

Scope of the case

9. On 23 August 2010 the complainant contacted the Commissioner to complain about the way that the council had handled his request.
10. The complainant has confirmed that he is dissatisfied with the council's responses to requests 2, 3, 4, 5, 8 and 10. The Commissioner has therefore restricted the scope of his investigation to these requests. He has investigated:

- Whether the council holds any additional information relevant to requests 2 and 4; and
- Whether the Council was correct to apply the exemption at section 36(2)(c) to requests 3, 5, 8 and 10.

Reasons for the decision

The applicable legislation

11. The Commissioner has first considered whether the council was correct to treat the complainant's request as a request for information under the Act rather than the DPA. The complainant's request specified he was making a SAR, and the complainant explained that this was because he believes that he could be identified from the requested information, that the information was "significantly focused" on him, and that the information was determined by the information he provided to the job analyst.
12. The Commissioner has reviewed the withheld information and would first note that information relevant to request 10 is a copy of a report detailing the options that the council considered when determining the new pay and grading structure. This does not relate to the complainant or any individual specifically, and could not constitute his personal data. However, the Commissioner has considered whether other withheld information – such as a "question trace" showing the marks accorded to answers given by the complainant to a set of questions – is his personal data.
13. The Commissioner asked the council to explain why it did not treat the request as a SAR. The council stated that the complainant undertook the evaluation on behalf of three other members of staff with the same job title. It therefore considered that although the evaluation was determined by the complainant's answers, it did not in fact constitute his personal data.
14. The Commissioner acknowledges that parts of the withheld information were shaped by the complainant's input and answers to various questions. However, he notes that the complainant provided this information as a representative of a group of four staff who all hold one job title. The reference numbers that appear on the job evaluation documents do not identify any one individual, but relate to the job role itself. Consequently the Commissioner considers that the requested information relates to a job title alone, rather than any of the four

employees. He therefore considers that the requested information is not personal data and that the council was correct to consider the request under the Act rather than the DPA.

Context of the job evaluation system

15. The Commissioner notes that the council's pay and grading process is fairly complex. Several of the complainant's requests are for information that is specific to the job evaluation system used by the council, and employ terminology relevant to that system. In order to understand and properly investigate both aspects of this complaint the Commissioner has found it necessary to obtain further background information about this system. This is summarised at Annex B.

Section 1

Requests 2 and 4

16. Section 1(1) of the Act provides that a public authority in receipt of a request for information should confirm whether it holds the requested information, and if so, provide it to the applicant. In this case the council states that it has disclosed all of the information that it holds relevant to the complainant's second and fourth requests. The complainant does not accept this. In cases of this nature the Commissioner will make a decision about whether further information is held using the civil standard of the balance of probabilities test.
17. The complainant's second request was for a copy of the job overview statement for his role. The fourth request was for the "Question Trace" for his role. The complainant's role has resulted in two evaluations. These have the references AA131 and DT595. Evaluation DT595 superseded evaluation AA131 after a service restructure. The council has provided the complainant with a job overview statement and a question trace for both AA131 and DT595. The complainant however points out that as well as evaluation AA131 in 2005, and evaluation DT595 in 2007, his role was subject to a subsequent moderation and appeal. He therefore believes that additional versions of the job overview and question trace are held.
18. The council has provided copies of the job overview statement and question trace for evaluation AA131, and confirmed that no other versions are held in relation to this evaluation. This is because evaluation AA131 was not at any point subject to moderation or

appeal, and so no changes could have been made to the original versions.

19. Evaluation DT595 was originally conducted in March 2007. The post was then subject to moderation, which resulted in changes to the "knowledge" and "mental skills" factors, and a resulting overall change to the total score for the post. The complainant exercised his right of appeal against this moderation. His appeal was partially upheld and the revised score for the evaluation reverted back to the original score.

20. The council explained that when the original evaluation was undertaken in March 2007, the Gauge system would have retained a job overview and question trace. The job analyst then made changes to these documents in Gauge as a result of the moderation decision. Following the subsequent successful appeal, the analyst again amended the documents. On each occasion the previous versions of the documents were overwritten by the amended versions. The Gauge system does not have the capability to retain multiple versions of the job overview and question trace for one evaluation reference. The council has informed the Commissioner that with hindsight, it believes it would have been useful to print off hard copies of original versions before they were amended so that there was a record of the various changes to the job overview and question trace. However, this was not done at the time of the complainant's request.

21. The council has explained that whilst various versions of the job overview and question trace were created for evaluation DT595, its computer system only retains the final version. The Commissioner accepts that this is the case and is consequently satisfied that on the balance of probabilities, the council has disclosed all of the information that it holds relevant to requests.

Section 36

Requests 3, 5, 8 and 10

22. The council has withheld the information relevant to these requests under section 36(2)(c) of the Act. This section provides an exemption where:

"...in the reasonable opinion of the qualified person, disclosure of the information under this Act would otherwise prejudice, or would be likely to otherwise prejudice the effective conduct of public affairs".

23. In deciding whether the opinion was 'reasonable' the Commissioner has been led by the decision in [Guardian Newspapers Ltd & Heather Brooke v Information Commissioner & the BBC](#) (EA/2006/0011 & EA/2006/0013), in which the Tribunal considered the sense in which the qualified person's opinion is required to be reasonable. The Tribunal concluded that "in order to satisfy the sub-section, the opinion must be both reasonable in substance and reasonably arrived at" (para 64). In relation to the issue of reasonable substance, the Tribunal indicated that 'the opinion must be objectively reasonable' (para 60).
24. In order to establish whether the exemption has been applied correctly the Commissioner will therefore first consider whether the opinion was reasonably arrived at. He will then go on to consider whether the opinion was reasonable in substance.

Was the opinion reasonably arrived at?

25. The Commissioner has established that the opinion was given by the council's Monitoring Officer. The Commissioner agrees that the council's Monitoring Officer is a qualified person for the purpose of section 36.
26. The council stated that the Monitoring Officer "was asked to get involved in this matter some time in December 2009" and subsequently "a meeting was held in January 2010 with relevant personnel who could provide support". The council confirmed that the monitoring officer discussed the request "at length" with the officer who dealt with the scoring and evaluation process, staff from Human Resources and the Information Protection and Assurance manager.
27. The council informed the Commissioner that the Monitoring Officer considered "information from the HR system and files and kept an open mind" when considering the exemption. However, the council advised that the Monitoring Officer "does not recall any officer submitting arguments for or against the exemption". There are no notes of any meetings held to discuss the application of the exemption. The council states that the Monitoring Officer's opinion was "submitted directly into the letter" sent to the complainant.
28. The council has assured the Commissioner that its Monitoring Officer provided the opinion submitted into its refusal notice and the Commissioner accepts that this is the case. He also accepts that the opinion was provided prior to the refusal of the request under section 36, as the refusal notice sent to the complainant on 22 February 2010 makes specific reference to the opinion of the monitoring officer.

29. However, the Commissioner notes that the council has been unable to provide him with any of the information that the monitoring officer considered when reaching her decision about the qualified opinion. The monitoring officer has confirmed that she did not consider any submissions about the application of the exemption. The council has confirmed that the monitoring officer discussed the request with relevant staff members, but has provided no further details of the matters that were discussed or considered. In the absence of any evidence or explanation of how the Monitoring Officer reached her opinion, the Commissioner is unable to conclude that it was reasonably arrived at.

Was the opinion reasonable in substance?

30. The Commissioner has been unable to conclude that the qualified person's opinion was reasonably arrived at. Nevertheless, he is mindful of the Tribunal's comments in [McIntyre vs The Information Commissioner and the Ministry of Defence](#) (EA/2007/0068), which found that "where the opinion is overridingly reasonable in substance then even though the method or process by which that opinion is arrived at is flawed in some way this need not be fatal to a finding that it is a reasonable opinion" (para 31). The Commissioner has therefore gone on to consider whether, in this case, the qualified person's opinion is "overridingly reasonable in substance".
31. The Commissioner has reviewed the withheld information. This consists of the full job overview statements and the elimination question traces for both evaluation references AA131 and DT595, and a report to the council's members about the various models that it considered when determining the new grading structure.
32. The council relies on the threshold that disclosure of this information "would" prejudice the effective conduct of public affairs. This is because it believes that disclosure would undermine the integrity of the pay and grading process. In the case of the full job overview statements this is because it believes that the disclosure "...could lead to attempts to manipulate the system to achieve particular results. This would enable employees to manipulate the outcome as the visibility of all this information would provide employees with the opportunity and motivation to claim that they are operating at a higher level than stated in the original information provided". In relation to the elimination question trace, it believes that disclosure could also lead to employees trying to manipulate scores for their jobs, "in order to achieve a higher job evaluation score than was appropriate for their job".

33. In terms of the pay and grading report, the council argues that disclosure could “lead to attempts to manipulate grading structure outcome to achieve the allocation of particular desired pay and grading outcomes...based on the result of different grading models”.
34. The council also contends that if it were to provide the requested information to the complainant, it would then have to consider providing information to the rest of its employees. The council has over 4000 members of staff. The council argues that “disclosure would also lead to further challenges against the job evaluation and grading structure which would have severe implications for the council. It would effectively mean starting the process again resulting in major financial, legal and industrial relation implications. In addition, any changes to pay arising from a further review of the job evaluation system could expose the council to potential equal pay and sex discrimination legislation”. The council also points out that the information already disclosed to its employees as part of the job evaluation process was agreed with unions and in accordance with guidance from the National Joint Council.
35. The council argues that the impact of dealing with challenges to the pay and grading process “would impact negatively on the delivery of services and overwhelmingly burden the council by diverting resources into the review”. Whilst the Commissioner acknowledges that dealing with large numbers of challenges could prejudice the council’s functions he does not consider, for the reasons set out in paragraphs 38-41 below, that the argument has been made out.
36. The Commissioner considers that in order to assess whether the monitoring officer’s opinion is objectively reasonable, he will need to establish that it is reasonable to believe that:
 - o Disclosure of the information would lead staff to “manipulate” the pay and grading structure; and
 - o That this “manipulation” would prejudice the effective conduct of public affairs.
37. The Commissioner first notes that although the council has specifically stated that it relies on the threshold that disclosure “would” prejudice the conduct of public affairs, it also believes that disclosure “could” allow individuals to manipulate the outcomes of the grading process. The Commissioner has reviewed the withheld information and asked that the council explains why it believes that disclosure would lead to

employees manipulating the answers to questions in order to unfairly obtain an unrepresentative score.

38. The elimination question trace shows the scores that were 'blocked' as a result of the answers given to each question. The council believes that disclosure could lead to employees "identifying questions which may block or lead to a higher level", meaning that they could subsequently manipulate the outcome. The Commissioner however notes that employees chose answers to these questions from a drop-down list. For most questions the Commissioner observes that it would be clear to an employee that providing a different answer would result in a higher level, even if the exact level attributed to each answer was not known. For example, the first question under the "responsibility for supervision" factor is

"Does this job directly involve the supervision or management of Authority employees or of other people in an equivalent position?"

It would seem clear that answering "yes" to this question would result in a higher 'level' being attributed to the question than if the answer was "no", even if the exact possible factor level was not known.

39. The council argues that disclosure of the full job overview statements would allow employees to manipulate the scores given to their roles because they would be able to see the responsibilities that are not recorded as part of their roles, as well as the ones that form part of it. The council argues that employees could use this to state in a subsequent evaluation that they do undertake these roles in order to obtain an inappropriately high score. The Commissioner observes that this information includes factual statements about the role – for example "there is no requirement for the jobholder to communicate in any language other than English".
40. Whilst the council states that disclosure of the report about various grading models considered by the council's committee would allow individuals to manipulate grading structure outcomes, it provides no information about how or why this would occur. The Commissioner has reviewed this report. It details the background to the review, relevant considerations in selecting a new model, how each grading structure operates, and then considers the advantages and disadvantages of each model against certain criteria. There is no indication of how individuals could use this information to manipulate their own job scores. The council also states that the report was "a private document" relating to "private and confidential matters". The

Commissioner notes that the report is marked as private. However this does not, in itself, indicate that disclosure would impact on the council's ability to perform its core functions and subsequently upon the conduct of public affairs.

41. The council has confirmed after employees provided answers to the questionnaires they were checked and signed by their managers, and that job analysts then completed the evaluation using these questions. Evaluations that do not fit into a pattern were then submitted to a moderation panel. As there are checks and procedures in place to ensure that the information provided in response to job evaluations is accurate, the Commissioner does not accept that disclosure would lead to, or even allow, individuals to challenge their scores. Whilst the council argues that its staff could aim to manipulate the grading process to achieve inappropriately high scores, it does not suggest that the individuals involved in the monitoring and quality assurance process would also collude in this. The Commissioner concludes that the council has not demonstrated that disclosure of the information would allow employees to demand reviews of their roles and subsequently manipulate their answers in order to obtain higher scores.
42. In any case, the Commissioner does not accept that even if the disclosure of the information were to lead to challenges against the council's decisions on pay and grading, this would necessarily mean that the council would be unable to carry out its core functions. The council has provided no information about which of its functions would be affected, why this would be the case, and how this would impact upon the effective conduct of public affairs. The Commissioner would also observe that the fact that disclosure of information might lead to a challenge against a public authority is not in itself a reason to withhold the information.
43. The Commissioner is not persuaded that the opinion of the qualified person was reasonably arrived at, or that it is objectively overridingly reasonable. Consequently he finds that the exemption is not engaged and has therefore not gone on to consider the public interest test.

Section 10

44. Section 10(1) provides that a public authority in receipt of a request for information should comply with section 1(1) within 20 working days. In this case the complainant submitted his request on 18 December 2008. The council failed to respond until 22 February 2010, over 13 months later. The Commissioner notes that this response was only provided

after his intervention, despite the significant delay. He finds that the council has breached section 10(1).

Other matters

45. The Commissioner notes that the council did not provide its internal review outcome for five months. Although the Act does not stipulate a statutory limit for the provision of internal review outcomes the Commissioner would emphasise, as set out in his guidance, that he considers that any review should be provided promptly and in any case within a maximum of 40 working days. This is particularly relevant in this case, given that there had already been a significant delay of over thirteen months before the council issued an initial response to the complainant.
46. Although the council confirms that its Monitoring Officer provided the "reasonable opinion" for the application of section 36, it did not retain any record of the information she considered or the opinion itself. The Commissioner would observe that it is good practice to retain records of information of this nature.

Right of appeal

47. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

48. 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.
49. 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

Gerrard Tracey
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Annex A – the complainant's requests of 18 December 2008

- 1) "Scores that have been calculated since (and including) my first job evaluation in 2005.
- 2) Job overview statements
- 3) Full job overview statements
- 4) Question trace
- 5) Elimination question trace
- 6) Weighting factors and any changes applied to weighting factors
- 7) Factor level summaries
- 8) Data held within Gauge including Evaluator, Administrator and Grade Modeller
- 9) Appeals and Moderation
- 10) Impact of all pay lines / grading structures considered in the process
- 11) Financial Impact Assessment
- 12) All handwritten, electronic, hard copy or electronic notes and emails"

Annex B – context of the job evaluation process

The Commissioner has summarised the information provided to him about the job evaluation scheme below. Terms specifically used in the complainant's request are written in bold text.

- The council initially conducted evaluations through interviews with employees, their line managers, and a "job analyst". Employees were given an optional job description questionnaire to complete prior to the interview.
- The council later modified the evaluation process to include "desktop evaluations". This involved employees completing a compulsory job description questionnaire with their line manager. This questionnaire was then assessed by a job analyst. No interviews were carried out.
- Each job is assessed against 13 'factors' such as "knowledge", "mental skills" and "interpersonal skills". The level attained for each 'factor' is based on the answers given by the employee and their manager. This then produces an overall score for the post which impacts upon its grade. Scores are then moderated.
- '**Gauge**' is a computerised system with two main elements. '**Evaluator**' is a tool for undertaking the evaluation of a job. Evaluation of a job is completed within 'Evaluator' by a job analyst, based on answers given by an employee and their manager. When the evaluation is complete the system generates a reference number, a total score for each job, and a breakdown of each 'factor'. This data is stored in the '**Administrator**', section of 'Gauge', along with a number of additional reports.
- The '**job overview**' is a summary and explanation about the requirements of a post under each factor level. It is produced at the end of the job evaluation exercise for each post.
- The '**question trace**' records a breakdown of all the questions and answers that have been answered for each of the 13 'factors'. There are a range of questions under each factor. For example, the "knowledge" factor includes the question "what level of understanding of the relevant legislation related to the job holder's area of work is required to perform the job?".
- The '**full job overview**' contains the information detailed in the 'job overview'. However, whilst the job overview only details the specific requirements of the role, the full job overview includes elements which

are not a requirement. So, for example, the full job overview might state that an employee is required to carry out 'X' but not 'Y', and to perform this at level 'A' – but not extending to level 'B'.

- o The **'elimination question trace'** contains the information detailed in the 'question trace'. However it also includes the level that has been "blocked" as a result of a response provided by an employee. So, the 'levels' that were blocked as a result of an employee giving a particular answer would be shown.