

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 February 2016

Public Authority: Pension Protection Fund
Address: 12 Dingwall Road
Croydon
CR0 2NA

Decision (including any steps ordered)

1. The complainant has requested information about money the Pension Protection Fund may or may not have saved as a result of a particular pension compensation cap. The Pension Protection Fund says it does not hold the information that has been requested.
2. The Commissioner's decision is that the Pension Protection Fund does not hold the requested information and has met its obligations under section 1(1) of the FOIA.
3. The Commissioner does not require the Pension Protection Fund to take any steps.

Request and response

4. On 22 April 2015, the complainant wrote to the Pension Protection Fund (PPF) and requested information in the following terms:

"Total amount saved by the PPF as a result of the Cap being introduced in respect of persons who were pensioners in payment when they retired before the Pensions Act 2004 became law on 6 April 2005.

I have been advised following my FOI request Ref: FOI 33 2013 14 FY that there were, as at 25 March 2013, 76 persons who were pensioners in payment prior to 6 April 2005 out of a total of 228 persons whose compensation had been capped.

I would like to know the amount saved by the PPF each year since 2005 as a result of the Cap being applied to this category of early retirees."

5. The PPF responded on 28 May 2015. It said that it does not hold the specific information the complainant has requested. PPF directed the complainant to where general information is published online, which it considered might be of interest to him.
6. Following an internal review the PPF wrote to the complainant on 25 June 2015. It upheld its position that it does not hold the requested information.

Scope of the case

7. The complainant contacted the Commissioner on 23 August 2015 to complain about the way his request for information had been handled. He is not satisfied with PPF's position that it does not hold the information he has requested.
8. The Commissioner has focussed his investigation on this matter.

Reasons for decision

9. Section 1(1) of the FOIA says that any person who requests information from a public authority is entitled to be informed whether the authority holds the information and, if it does, to have that information communicated to him or her.
10. By way of background, the PPF has explained to the Commissioner that it was established by the Pensions Act 2004 to, broadly, pay compensation to members of underfunded defined benefit pension schemes when their employer or scheme sponsor becomes insolvent. The legislation says that the amount of compensation is not always the same as the members would have received had the pension scheme continued to operate. In particular, pension scheme members who have not yet reached their scheme's normal pension age when the employer becomes insolvent – whether they are still in employment or have taken early retirement – generally receive compensation of 90 per cent of the value of the pension they would have received if their pension scheme still existed, but this amount is subject to a cap. The value of the cap is adjusted for inflation each year but is passed on a figure set by the Secretary of State.

11. Since the PPF was set up in 2005, it has outsourced the payment of compensation and the maintenance of the relevant records for individuals who have transferred into the PPF, to Capita.
12. The complainant's request asks the PPF to confirm, for those members of the PPF who had taken early retirement and for whom their pension entitlement exceeded the statutory cap, the difference between the value of the cap and the amount of compensation they would have received if they had been entitled to 90 percent of their pension.
13. In its submission to the Commissioner, the PPF has explained that it considers the request to pose a hypothetical question. It says that it is required to pay compensation in line with the compensation calculation framework laid down by its governing legislation. The PPF says there is no 'saving' for it because the calculation process is entirely prescribed within the legislation. PPF has never calculated the figure the complainant has requested. This is because there is no requirement for it to do so as part of its statutory obligation to pay pension scheme members the amount they are entitled to under the Pensions Act 2004. Consequently, PPF says it does not hold the information the complainant has requested.
14. The PPF acknowledged that this is a literal interpretation of the request and that it could, instead, consider the question as the hypothetical cost of removing the cap for the members in question. However, it told the Commissioner that even if it were to do this, it does not hold this information either.
15. The PPF says that, under the FOIA, there is no obligation to create information in order to respond to a request. The PPF says that it did nonetheless look into whether it would be possible to calculate the answer to the question posed in the request. It says this would not be straightforward. It would need to examine, for each capped member, their individual scheme's rules to establish what benefits they would have been entitled to had the scheme not transferred to the PPF, and how much of their pension they had taken as a lump sum.
16. This would also need to be calculated retrospectively because the PPF does not routinely capture this data when a scheme transfers to the PPF. In addition, as part of its enquiries, the PPF found that Capita's systems cannot currently provide a definitive number of capped members. As a result, the PPF says it is unable to perform the calculation that would be required in order to help the complainant. The PPF provided the Commissioner with copies of the correspondence it had with Capita which it says illustrates the attempt it made to establish whether it or Capita could calculate this information.

17. On the basis of the PPF's submission, the Commissioner invited the complainant to withdraw his complaint. The complainant remained dissatisfied. In correspondence dated 1 December 2015, he first said that he is only concerned with those PPF members who had 'retired early', before the introduction of the Pensions Act 2004 (PA 2004). He queried how, if Capita's systems do not allow it to provide a definitive number of capped pensions, it had arrived at the number of 76 individuals in response to a separate FOI request he had submitted in 2014. He said that the government has stated that there were two reasons for introducing the PPF compensation cap retrospectively, one of which was the cost saving. With regard to the cost saving argument, the complainant confirmed that he is seeking the calculation of the actual amount saved by capping these 76 individuals because he says this is relevant to the cost saving case for establishing a retrospective cap.
18. The Commissioner put these points to the PPF. The PPF acknowledged that the complainant's interest is centred on a small subset of its +/- 225,000 members. However it confirmed that it has never performed the calculation he has requested because there is no requirement for it to do so as part of its statutory obligation to pay pension scheme members the amount they are entitled to under the PA 2004. PPF told the Commissioner that responding to the request would require more than a simple calculation of data and that, instead, it would be the creation of new information by its actuaries.
19. PPF also addressed the complainant's point about Capita's systems and the complainant's previous FOI request. As background, the PPF told the Commissioner that when a pension scheme transfers into the PPF, the scheme administrator is required to transfer data about the scheme member to the PPF. This data includes the amount of compensation that was due to each scheme member under the PPF's rules, and generally an indicator for whether the compensation was capped. Capita was undertaking this processing work up to 2015. (PPF has not told the Commissioner the specific month in 2015 when Capita stopped this work.)
20. In 2014, PPF says that it noticed a discrepancy in the data on capped members that Capita had provided to it, that had not previously been identified. PPF says it investigated and discovered that in its member database, not every capped member had been identified as such. This was because it had changed the way it collected the relevant information about capped members several times since its creation in 2005. Consequently its database could not reliably identify them. In addition, it says it does not require this information to fulfil its statutory function of paying compensation. It therefore removed this data field from its data transfer requirements in 2013.

21. The PPF says that the number (76) that it released to the complainant in March 2014 referred to the position in early 2013, which it considered accurate at that time. PPF says that its historic approach of letting scheme administrators perform the capping without PPF collecting any data about it has been sufficient for carrying out its statutory function. However, it now recognises that there is a broader interest in information about members entering the PPF. An insourcing programme it completed in 2015 will give it more useful data in the future but PPF says that it needs to resolve the historical issues before it can publish an updated number and be confident of its accuracy.
22. Finally, the PPF provided the Commissioner with a copy of an email it had sent to the complainant, dated 1 December 2015. In this email the PPF provided information about the cost to the PPF of removing the compensation cap; modelling work that it had undertaken in 2012 to meet a request from the Department for Work and Pensions. It acknowledged this did not answer his request but considered this broader information might be of interest. It confirmed that it had not undertaken any modelling to calculate the cost of removing the cap for persons who were pensioners in payment when they retired, before the PA 2004 came into force in April 2005.
23. The Commissioner has considered the PPF's submissions, its correspondence with the complainant, and the points that the complainant has raised with him. On balance, the Commissioner is satisfied that the PPF does not hold the specific information that the complainant has requested. He is prepared to accept that this is because the PPF has never calculated the theoretical saving that is the focus of the request because there is no requirement for it to do so as part of its statutory obligation to pay pension scheme members the amount they are entitled to under the PA 2004.
24. The PPF is correct when it says that the FOIA does not oblige public authorities to create new information in order to respond to a request. In some cases, an authority would be expected to extract existing relevant information and present it as, for example, a list in order to respond to a request. This would not be creating new information. In the case that is the subject of this notice, it is not a matter of extracting information that already exists and presenting it in a particular way. In order to respond to the request, the PPF would have to perform a new calculation. The resulting information would be new information.
25. The Commissioner notes that the discussion from paragraphs 16 to 21 in this notice concern the PPF's investigation in to whether it could nonetheless provide the complainant with the information he has requested outside of the FOIA, as part of its customer service. For the reasons discussed in these parts, it found that it cannot.

Right of appeal

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: 0300 1234504
Fax: 0870 739 5836
Email: GRC@hmcts.gsi.gov.uk
Website: 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

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