

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

### **Decision notice**

**Date:** 28 April 2020

**Public Authority:** Oldham Metropolitan Borough Council

**Address:** Civic Centre  
West Street  
Oldham  
OL1 1UT

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

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1. The complainant submitted two requests for information to Oldham Metropolitan Borough Council (the Council) in relation to car parking matters managed by the Council and data held by the Council regarding equality. In relation to the first request, the Council provided some information, but refused to comply with the remainder of the request under section 12(1) (costs) of the FOIA. With regards to the second request, it disclosed part of the information requested, withheld part of it citing section 22(1) (information intended for future publication) of the FOIA and stated that it did not hold the remainder of the requested information.
2. The Commissioner's decision is that the Council has:
  - correctly relied on section 12(1) of the FOIA when it refused to comply with parts 12-17 of the first information request;
  - correctly stated that it did not hold information in recorded form within the scope of part 6 of the second information request; and
  - as the withheld information under section 22(1) of the FOIA (information intended for future publication) was published during the course of the Commissioner's investigation, she did

not deem it necessary to consider the application of this exemption.

3. The Commissioner does not require the Council to take any step in order to comply with this decision notice.

## Requests and responses

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### Request 1

4. On 24 March 2019, the complainant wrote to the Council regarding an information request comprised of 17 parts<sup>1</sup>.
5. The Council provided the complainant with a response on 23 April 2019. It disclosed information in relation to parts 1-11 and refused to provide information within the scope of the remaining 6 parts: 12-17. The Council cited section 12(1) as its basis for refusal, claiming that complying with these requests would exceed the appropriate limit of costs.
6. On the same date the complainant wrote to the Council expressing his dissatisfaction to which the Council responded on 5 June 2019, advising him to refine and narrow the scope of the request.
7. The complainant wrote back to the Council providing an explanation about the purpose of his questions he considered to be outstanding. The Council treated this correspondence as a request for internal review.
8. The Council provided the complainant with the outcome of its internal review on 11 June 2019. It provided some additional explanations, but it did not change its original position about the application of section 12.

### Request 2

9. On 24 March 2019, the complainant wrote to the Council regarding an information request comprised of 7 parts<sup>2</sup>.
  10. The Council provided him with a response on 23 April 2019:
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<sup>1</sup> The wording of this request has been reproduced and attached to this decision notice – see Annex 1

<sup>2</sup> The wording of this request has been reproduced and attached to this decision notice – see Annex 2

- The Council stated that it did not hold information in recorded form in relation to part 6 of the complainant's request.
  - The Council stated that the information requested in part 1 was due to be published in the near future. Similarly in relation to parts 2, 3, 4, 5 and 7, the Council stated that the information would be available on its website once the Annual Equality Data Report was published. Although the Council did not specifically quote the exemption, it appeared that the Council intended to rely on section 22(1) of the FOIA (information intended for future publication).
11. On the same date the complainant wrote to the Council expressing his dissatisfaction and subsequently chased it up with the Council's Director of Legal Services.
  12. On 25 April 2019 the Council informed the complainant that the above correspondence would be treated as a request for internal review and provided its response on two separate occasions:
    - on 5 June 2019 it provided additional explanation in relation to part 6 and a link to a report which, according to the Council, contained the information requested in parts 1, 2, 3, 4, 5 and 7 of the request.
    - on 11 June 2019, in relation to the complainant's subsequent queries regarding part 6, the Council further clarified its position, but it maintained that it did not hold this information.

## Scope of the case

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13. The complainant contacted the Commissioner on 19 June 2019 to complain about the way his requests for information had been handled. Bearing in mind that both requests were submitted by the same complainant against the same public authority, for practical purposes the Commissioner decided to issue a joint decision notice for both complaints.

### **Relating to Request 1**

14. During the course of the Commissioner's investigation, the complainant confirmed that the Council's response to parts 1-11 satisfied Request 1.
15. However, the complainant maintained that the Council incorrectly applied section 12(1) of the FOIA in relation to parts 12-17 of the initial information request.

## Relating to Request 2

16. The complainant told the Commissioner that the web-link provided in response to parts 1, 2, 3, 4, 5 and 7 of the second request was not correct because it redirected him to the Equality Annual Report of the previous year - 2018 - whilst his request was about the same report for 2019. However, the Commissioner examined the Council's website and found that during the course of the investigation the Council had published the Equality Annual Report 2019<sup>3</sup>. In light of this publication, this decision notice does not address the application of section 22(1) of the FOIA.
17. The following analysis considers:
  - whether the Council correctly refused parts 12-17 of the request under section 12(1) of the FOIA, and whether it complied with its duty to provide advice and assistance to the complainant under section 16 of the FOIA in relation to the first request; and
  - whether the Council correctly stated that it did not hold information in recorded form in relation to part 6 of the second request.

## Reasons for decision

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### Section 12(1) – cost of compliance exceeds appropriate limit

18. Section 12(1) of the FOIA states that a public authority is exempted from its duty to comply with a request for information if it estimates that the cost of complying with the request would exceed the appropriate limit.
19. The "appropriate limit" is defined in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations"), and is set at £600 for central government departments and £450 for all other public authorities. The Fees Regulations also state that staff time should notionally be charged at a flat rate of £25 per hour, giving an effective time limit of 24 hours as the appropriate time to be spent in complying with a request.

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<sup>3</sup> [https://www.oldham.gov.uk/downloads/file/5884/annual\\_equality\\_data\\_report\\_2019](https://www.oldham.gov.uk/downloads/file/5884/annual_equality_data_report_2019)

20. When estimating the cost of complying with a request, a public authority is entitled to take account of time or cost spent in:
- determining whether it holds the information,
  - locating the information, or a document which may contain the information,
  - retrieving the information, or a document which may contain the information, and
  - extracting the information from a document containing it.
21. A public authority does not have to make a precise calculation of the costs of complying with a request; instead only an estimate is required. However, it must be a reasonable estimate. In accordance with the First-tier Tribunal in the case of *Randall v IC & Medicines and Healthcare Products Regulatory Agency (EA/2007/0004)*, the Commissioner considers that any estimate must be "*sensible, realistic and supported by cogent evidence*"<sup>4</sup>. The task for the Commissioner in a section 12 matter is to determine whether the public authority made a reasonable estimate of the cost of complying with the request.
22. In determining whether the Council has correctly applied section 12 of the FOIA in this case, the Commissioner asked the Council, with reference to the four activities above, to provide a detailed estimate of the time/cost it would take for it to provide the information, to clarify whether a sampling exercise has been undertaken and confirm that the estimate has been based upon the quickest method for gathering the information.
23. The Commissioner also asked the Council, when providing these calculations, to include a description of the nature of work that would need to be undertaken, explaining that an estimate for the purposes of section 12 has to be "reasonable". Thus, it is not sufficient for a public authority to simply assert that the appropriate limit has been met; rather the estimate should be realistic, sensible and supported by cogent evidence.

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<sup>4</sup> <http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i136/Randall.pdf>

24. The requests in question here concern the Council's expenditure on car-park allowances for its employees classified in different pay scales over two years.
25. The Council explained that it does not have separate lists of recorded data as per the complainant's request for information. It is the Council's position that in order to identify, retrieve and extract all the information held within the scope of parts 12-17 of the first information request, it would have to manually examine large amounts of data contained in different formats.
26. The Council confirmed that there are 442 allowance and deduction criteria within its payroll system and they are not classified according to specific salary grades. By way of example, the Council explained that a simple search in relation to car mileage allowance for 12 months produced 41,201 records. In order to comply with the complainant's request, these results would have to be filtered further for the purpose of extracting the information for each salary grade.
27. During the course of the Commissioner's investigation, she asked the Council to conduct a sampling exercise in order to determine the estimate of costs incurred.
28. The Council informed the Commissioner that it considered whether additional searches focused on each salary grade would provide results that would be within the costs limits. It stated that "*a test search was carried out on the database for one grade – in this instance when searching for Grade 3 the test produced a 162,000-line report.*" The Council explained that it would have to manually examine these results line by line and that identifying, collating and extracting the requested information, at one minute per line, would take up to 27 hours.
29. The Council stated that the process of conducting this exercise alone took around 11 hours. It provided a breakdown of how long each activity required: identification of the attributes included in the complainant's request for allowances related information – one hour; data extraction and creating the report – seven hours; payslip look up – two hours; and crosschecks and final summary – one hour.
30. The Commissioner considers the Council's position to be both plausible and persuasive. The Commissioner notes that the complexity of the requests made by the complainant, which are made up of numerous individual enquiries, strongly suggests that they would be excessively time consuming to comply with.
31. In order to extract and compile the information requested by the complainant, the Commissioner accepts that the Council would need to

individually examine a very large volume of data and that it estimated reasonably that the time required to do so would be far in excess of the 18 hours limit set by the Fees Regulations.

32. Therefore, it is the Commissioner's view that the Council was entitled to rely on section 12(1) of the FOIA to refuse to comply with the complainant's requests.

*Advice and Assistance*

33. Section 16 of the FOIA requires a public authority to provide reasonable advice and assistance to those making or wishing to make a request.
34. In cases where a public authority considers that a request could not be answered within the cost limit, the Commissioner would normally expect advice and assistance to be provided to help the requestor bring their request within the cost limit.
35. In this case, the Commissioner notes that during the handling of the information request in question, the Council did not explicitly offer the complainant advice to help him make a request that would fall within the cost limit. However, during the Commissioner's investigation the Council indicated that they sought to engage with the complainant with a view to provide some of the information requested but it was unable to reach agreement
36. In the circumstances and given the analysis above, the Commissioner considers that the Council has taken reasonable steps to comply with its duty to advise and assist as required by section 16 of the FOIA, albeit only belatedly during the Commissioner's investigation.

**Was further information held within the scope of part 6 of the second request?**

37. Section 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."*

38. In scenarios such as this one, where there is some dispute between the public authority and the complainant about the amount of information that may be held, the Commissioner, following the lead of a number of

First-tier Tribunal decisions, applies the civil standard of the balance of probabilities.

39. In this case, the Commissioner has sought to determine whether, on the balance of probabilities, the Council held any information within part 6 of the scope of the second request. That request was for the total number of interviewers grouped by ethnicity that recruited or recommended candidates for employment to Oldham Council during 2018, and the same in relation to "*Lead interviewers*".
40. In deciding where the balance of probabilities lies, the Commissioner will consider the complainant's evidence and arguments. She will also consider the searches carried out by the public authority, in terms of the extent of the searches, the quality of the searches, their thoroughness and the results the searches yielded. In addition, she will consider any other information or explanation offered by the public authority which is relevant to her determination.
41. In its response to the Commissioner's investigation letter, the Council explained that it does not keep records in relation to the ethnic background of interviewers or lead interviewers during its recruitment processes.
42. The Council was asked whether, even given the explanation referred to above, it had carried out any searches to check whether it held any information within the scope of this request. It stated that "*there is no requirement for the Council to retain a copy of record of interviews, but it is a good business practice that they are retained from the date of the interview up to 6 months. As the request was made on 25.03.2019 the interview records up to September 2018 would have been destroyed.*"
43. In addition, the Council explained that there is no requirement for interviewers or lead interviewers to declare their ethnic background. Therefore, even if it were possible to examine all the recorded information from all recruitment processes that the Council conducted during 2018, it would not be possible to provide the complainant with the information requested.
44. Having considered this explanation from the Council, and in the absence of evidence to the contrary, the Commissioner is satisfied that the Council was correct when it stated that it did not hold any information within the scope of part 6 of the second request. Therefore, on the balance of probabilities, the Commissioner considers that the Council has complied with section 1(1) of the FOIA in relation to this request.



## Right of appeal

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45. 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@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)

46. 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.
47. 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 .....**

**Ben Tomes**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**

## Annex 1

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The formulation of the **first request** submitted by the complainant on 24 March 2019 was as follows:

*"[1] How many council employees are on OR benefit from Car-park allowance, for the year 2018,*

*[2] How many employees who claim car-park allowance earn above Grade 10 of the NJC\_Payscale\_2016\_to\_March\_2018\_Intranet\_post\_Living\_Wage [http://www.oldham.gov.uk/downloads/file/2634/njc\_payscale\_2016\_to\_march\_2018],*

*[3] How many employees getting free parking space earn above Grade 10 of the*

*NJC\_Payscale\_2016\_to\_March\_2018\_Intranet\_post\_Living\_Wage*

*[http://www.oldham.gov.uk/downloads/file/2634/njc\_payscale\_2016\_to\_march\_2018],*

*[4] How many employees who claim car-park allowance earn below Grade 3 of the*

*NJC\_Payscale\_2016\_to\_March\_2018\_Intranet\_post\_Living\_Wage*

*[http://www.oldham.gov.uk/downloads/file/2634/njc\_payscale\_2016\_to\_march\_2018],*

*[5] How many employees getting free parking space earn below Grade 3 of the*

*NJC\_Payscale\_2016\_to\_March\_2018\_Intranet\_post\_Living\_Wage*

*[http://www.oldham.gov.uk/downloads/file/2634/njc\_payscale\_2016\_to\_march\_2018],*

*[6] how many individual directors and assistant directors used free parking space at the Oldham Council civic building, West st, OL1 1UT?*

*[7] how many individual directors and assistant directors used car-parking allowance in the Oldham area?*

*[8] how much has Oldham council spent on Car-park allowance related expenses, for the year 2018,*

*[9] what was the gender of staff who benefit from Oldham council car-parking allowance,*

*[10] what was the ethnicity make up of staff who benefit from Oldham council car-parking allowance,*

*[11] how many disabled employees at Oldham council benefit from free parking OR car-parking allowance,*

*[12] can I have the list of all the allowances Oldham council paid to employees earning above Grade 10 of the NJC Payscales\_2016\_to\_March\_2018\_Intranet\_post\_Living\_Wage [http://www.oldham.gov.uk/downloads/file/2634/njc\_payscales\_2016\_to\_march\_2018],*

*[13] can I have the list of all the allowances Oldham council paid to employees earning Grade SM1 [KH350] and above of the NJC Payscales\_2016\_to\_March\_2018\_Intranet\_post\_Living\_Wage [http://www.oldham.gov.uk/downloads/file/2634/njc\_payscales\_2016\_to\_march\_2018],*

*[14] can I have the list of all the allowances Oldham council paid to employees earning below Grade 3 of the NJC Payscales\_2016\_to\_March\_2018\_Intranet\_post\_Living\_Wage [http://www.oldham.gov.uk/downloads/file/2634/njc\_payscales\_2016\_to\_march\_2018],*

*[15] how much did Oldham council spent on all the allowances for employees earning above Grade 10 of the NJC Payscales\_2016\_to\_March\_2018\_Intranet\_post\_Living\_Wage [http://www.oldham.gov.uk/downloads/file/2634/njc\_payscales\_2016\_to\_march\_2018],*

*[16] how much did Oldham council spent on all the allowances for employees earning Grade SM1 [KH350] and above of the NJC Payscales\_2016\_to\_March\_2018\_Intranet\_post\_Living\_Wage*

*[http://www.oldham.gov.uk/downloads/file/2634/njc\_payscales\_2016\_to\_march\_2018],*

*[17] how much did Oldham council spent on all the allowances for employees earning below Grade 3 of the*

*NJC Payscales\_2016\_to\_March\_2018\_Intranet\_post\_Living\_Wage [http://www.oldham.gov.uk/downloads/file/2634/njc\_payscales\_2016\_to\_march\_2018]"*

## Annex 2

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The formulation of the **second request** submitted on 24 March 2019 was as follows:

*"[1] [i] is the Oldham council working on producing the Annual Equality Data Report 2019, for the past year 2018?*

*[ii] where and when can the Oldham Council report be download OR access.*

*[2] if possible can the Council include contracted and consultancy staff in the figures below:*

*[i] what was the total number of female employees at the Oldham Council by the end of year December 2018?*

*[ii] what was the total number of white female employees at the Oldham council by the end of year December 2018?*

*[iii] what was the total number of minority female employees at the Oldham council by the end of year December 2018?*

*[3] on average income:*

*[i] what was the average income for the white female employees at the Oldham council in the year 2018?*

*[ii] what was the average income for the minority female employees at the Oldham council in the year 2018?*

*[4] Ethnicity – new starters' and leavers' year to date [reference table 15f & 15g of Annual\_Equality\_Data\_Report\_January\_2017]*

*[i] what was the number of white female employees that left the Oldham Council in year 2018?*

*[ii] what was the number of minority female employees that left the Oldham Council in year 2018?*

*[iii] what was the number of white female employees that joined the Oldham Council in year 2018?*

*[iv] what was the number of minority female employees that joined the Oldham Council in year 2018?*

*[v] what was the total number of female employees that left the Oldham council in 2018?*

*[vi] what was the total number of female employees that joined the Oldham council in 2018?*

*[5] Response to recruitment adverts [reference table 15u & 15v of Annual\_Equality\_Data\_Report\_January\_2017 ], [note if a job position filter candidates using multiple interviews each stage of interview must be indicated, with the final stage labelled 'final' OR 'last'. That is, at first interview 10 white female 8 minority female, second stage 3 white female 2 minority female, third/final stage 2 white female 2 minority female]*

*[i] what was the total number of white female that applied for advertised jobs at the Oldham Council in year 2018?*

*[ii] what was the total number of white female candidates that attended job interviews at the Oldham Council in 2018?*

*[iii] what was the total number of minority female that applied for advertised jobs at the Oldham Council in year 2018?*

*[iv] what was the total number of minority female candidates that attended job interviews at the Oldham Council in 2018?*

*[6] the Oldham council staff that conducted the interviews in 2018, that is, the interviewers and lead interviewer.*

*[i] what was the total number of interviewers grouped in ethnicity? that is, 40 white 30 black 15 asian and so on,*

*[ii] what was the total number of Lead interviewers grouped in ethnicity that recruited OR recommend candidates for employment to the Oldham Council in 2018? this data is specifically interest in the ethnicity of the employee who makes the decision to fill an employment position at Oldham council. this should be closer to the responsible teams recruiting, not the formal process of the Oldham Council HR Office unless they are recruiting for their team.*

*[7] on average income:*

*[i] what was the average income for the female employees at the Oldham council in the year 2018?*

*[ii] what was the average income for the male employees at the Oldham council in the year 2018?*

*[iii] what was the average income for the employees at the Oldham council in the year 2018?"*