

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 28 March 2023

**Public Authority:** Tees Valley Combined Authority  
**Address:** Teesside Airport Business Suite  
Teesside International Airport  
Darlington DL2 1NJ

### Decision

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1. The Commissioner's decision is that Tees Valley Combined Authority is entitled to refuse the request under Section 12(2) of FOIA as the cost of complying with Section 1(1) would exceed the appropriate limit.

### Request and response

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2. On 10 May 2022 the complainant submitted the following refined information request to Tees Valley Combined Authority (TVCA) after his initial one had been refused under Section 12 of FOIA with some information disclosed on a 'discretionary basis':
  - I would like you to state how many jobs you can demonstrably prove have been created through the specific intervention of the Mayor's office since Ben Houchen assumed office in May 2017.
  - I would like the Mayor's office to state how many of these jobs for that period are full-time and part time.
  - I would like the Mayor's office to state how many of these jobs for that period were and are fixed term or temporary contracts, as well as how many were and are permanent.
  - I would like the Mayor's office to state how many of these jobs for that period pay a rate that is at or above the 'Real Living Wage' supported by trade unions and the Living Wage Foundation of £9.90 per hour."
3. TVCA responded to the complainant's refined request on 12 May 2022 as follows:

**"You asked:-** I would like you to state how many jobs you can demonstrably prove have been created through the specific intervention of the Mayor's office since Ben Houchen assumed office in May 2017.

**Our response:-** We don't hold any further information beyond the TVCA figures that we provided previously.

**You asked:-** I would like the Mayor's office to state how many of these jobs for that period are full-time and part time.

**Our response:-** The jobs numbers provided are FTE numbers.

**You asked:-** I would like the Mayor's office to state how many of these jobs for that period were and are fixed term or temporary contracts, as well as how many were and are permanent.

**Our response:-** TVCA does not hold this information.

**You asked:-** I would like the Mayor's office to state how many of these jobs for that period pay a rate that is at or above the 'Real Living Wage' supported by trade unions and the Living Wage Foundation of £9.90 per hour.

**Our response:-** TVCA does not hold this information."

5. On 20 July 2022 TVCA upheld its original response following an internal review.
6. As the complainant was unhappy with the response from TVCA, he referred the matter to the Commissioner who issued a Decision Notice on 15 December 2022 under the reference: IC-181082-T8D8<sup>1</sup>. In his Decision Notice the Commissioner found TVCA breached Sections 1(1) and 10(1) of the FOIA by failing to carry out adequate searches to identify and locate all the recorded information held. Accordingly, he ordered a fresh response to be issued and in particular, further and more detailed searches to be carried out of individuals' computers and email accounts within 35 calendar days.
7. On 9 February 2023 TVCA responded to the complainant following the intervention of the Commissioner. In its response, it apologised for the

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<sup>1</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4023411/ic-181082-t8d8.pdf>

delay and stated that having carried out the further searches ordered it was applying Section 12 of FOIA.

## **Reasons for decision**

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8. On 9 February 2023 the complainant contacted the Commissioner to complain about the response he had received from TVCA. In particular, he said he did not believe TVCA had the capacity or ability to supply any of the information requested and furthermore, had failed to carry out a comprehensive search.
9. The scope of the Commissioner's investigation will be to assess whether TVCA was justified in applying Section 12(2) of FOIA to refuse the request.

### **Section 1(1)(a) of the FOIA – determining whether information is held**

10. Under Section 1(1)(a) of FOIA a public authority must confirm whether it holds information that has been requested.

### **Section 12(2) of the FOIA - Exemption where cost of compliance exceeds appropriate limit**

11. However, under section 12(2) a public authority is not required to comply with Section 1(1) if the cost of establishing whether or not it holds the requested information would exceed the appropriate limit. This is £450 (18 hours work at £25 per hour) in the case of TVCA.
12. In its response to the complainant, the Chief Executive of TVCA stated it had considered the Commissioner's Decision Notice IC-181082-T8D8 and in particular, paragraph 29 which stated:

“However, the Commissioner is not satisfied that TVCA has carried out as comprehensive searches as it could in the circumstances. TVCA advised the Commissioner that searches of individual computers and email accounts had not been carried out because all relevant information would be held in the project folders which have been searched. Whilst TVCA is confident that no information is missing from the project folders, the Commissioner is of the view that in order to mitigate the risk of individuals having failed to upload information to the project folders, that individual accounts should be checked by TVCA.”
13. In response to the Commissioner's findings in his Decision Notice, TVCA detailed the action it had taken and the results received.

#### Relevant staff identified

14. Firstly, TVCA stated that it had identified the 8 members of staff who might hold information falling within the scope of the request. These were all Claims and Monitoring Officers and comprised the same group identified when responding to the initial information request dated 10 May 2022 and the subsequent internal review.

#### Searches possible

15. Secondly, TVCA stated it had contacted its IT Support Service provider to consider what additional searches could be carried out and was advised that it was able to remotely search the 'personal areas' of individual computers.
16. Having identified the relevant staff members and the extent of searches available to it, TVCA instructed its IT provider to carry out the following searches:

#### Searches carried out

17. Firstly, a search the personal areas of each of the Claims and Monitoring Officers using the search key words, 'jobs', 'direct jobs' and 'job creation'.
18. And secondly, a search the email accounts for each of the identified Claims and Monitoring Officers using the search key words, 'jobs', 'direct jobs' and 'job creation'.

#### Search results

19. With regard to searching the personal areas of an individual's computer, TVCA said it was not possible to undertake a 'discreet search'. Therefore, the searches carried out were for the whole shared network including the personal areas of the individual staff members referred to. Following this search using the key words specified above, a total of 252,717 documents were identified.
20. Given the volume of information revealed by the search and the extensive searches already carried out in response to the original and internal review requests, TVCA stated that it was proposing to 'invoke the exemption set out at Section 12 of Freedom of Information Act 2000, which provides an exemption to a public authority where the cost of compliance with a request is likely to exceed the appropriate limit'.
21. With regard to the email accounts of the 8 Claims and Monitoring Officers, TVCA stated that its search revealed a total of 178 emails. It

added that where there was information in the emails around job creation, these were cross checked against the information already reviewed to respond to the complainant's original request for an internal review, and it was confirmed that the search had not revealed any additional relevant information.

## Conclusion

22. In conclusion, TVCA stated it was 'confident that it had carried out appropriate searches of all relevant email accounts in order to confirm that the information provided in response to the original Freedom of Information Request and the request for an Internal Review, as accurate'. Therefore, it did not hold any further information apart from that already disclosed to the complainant.

## The Commissioner's view

23. The Commissioner has considered TVCA's submissions, the searches already carried out in response to the original request as specified in paragraphs 20 to 24 of his Decision Notice IC-181082-T8D8 and the complainant's views that further information should be held (apart from that already disclosed on a discretionary basis). He considers that the additional searches of the email accounts of the 8 officers identified were appropriate and that its application of Section 12(2) in relation to the further searches of the personal areas are credible bearing in mind the key word search terms and the large number of documents to be considered.
24. The Commissioner appreciates the complainant's view that TVCA should hold further information. However, as he stated in his previous Decision Notice IC-181082-T8D8, his role is to determine, based on a balance of probabilities, whether a public authority actually holds information based on the adequacy and reasonableness of its searches and enquiries.
25. The Commissioner's decision is that it would clearly take in excess of 18 hours for TVCA to be able to confirm definitively by examining the 252,717 documents revealed by the IT searches of the personal areas as to whether or not it holds the information the complainant has requested and that, as such, section 12(2) of FOIA is engaged.

## 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: 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)

- 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.....**

**Laura Tomkinson  
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Information Commissioner's Office  
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