

Decision Notice 014/2022

Pension fund figures

The Applicant

Public authority: Fife Council

Case Ref: 202100502



Scottish Information
Commissioner

Summary

The Council was asked for information related to figures contained within a presentation about the Council's pension fund. The Council stated that it did not hold any recorded information falling within the scope of the request. The Commissioner investigated and found that no recorded information was held.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 17(1) (Notice that information is not held)

The full text of each of the statutory provisions cited above is reproduced in Appendix 1 to this decision. Both Appendices forms part of this decision.

Background

1. On 3 March 2021, the Applicant made a request for information to the Council in respect of pension fund assumption figures from a presentation document. The information request is reproduced in full in Appendix 2.
2. The Council responded on 18 March 2021, and provided the Applicant with the relevant name in respect of part 1 of his request. In respect of part 2, the Council notified the Applicant that no information was held.
3. The following day, the Applicant wrote to the Council requesting a review of its decision.
4. The Council notified the Applicant of the outcome of its review on 19 April 2021, and confirmed that no information was held. By way of advice and assistance to the Applicant, the Council explained that it was not obliged to create information to respond to information requests and was only obliged to provide any recorded information held within the scope of the request at the time the request was made.
5. On 22 April 2021, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated he was dissatisfied with the outcome of the Council's review because, as a result of other published information related to the figures quoted, he believed that there must be information held.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that the Applicant made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to him for a decision.
7. On 23 June 2021, the Council was notified in writing that the Applicant had made a valid application. The case was then allocated to an investigating officer.
8. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application.
9. The Council was asked about the searches it had carried out to locate any information falling within the scope of the request and for any reasoning as to why it should not hold any such information.

10. The investigating officer appraised the Applicant of the Council's submissions that the assumptions in question had appeared in a staff presentation document, and had been used as an example only. The investigating officer explained that the Council had reiterated that the assumptions were not factual information, and did not require any agreement by any person for the purposes of the presentation. Therefore, no reasoning for agreement could be expected to be held. No recorded information could be held about any person agreeing the example assumptions, which had been created solely for the purposes of the presentation.

Commissioner's analysis and findings

11. In coming to a decision on this matter, the Commissioner considered the relevant submissions, or parts of submissions, made to him by both the Applicant and the Council. He is satisfied that no matter of relevance has been overlooked.

Submissions from the Applicant

12. The Applicant reiterated that his point was that the Council had stated, not once but twice, that the assumptions in question could be classed as "measures of success".
13. The Applicant was of the view that the Council had used the stated example assumptions as a "measure of success" when in fact their fund had fallen into a cash deficit. Therefore, he questioned how could this be deemed "a measure of success".

Submissions from the Council

14. The Council submitted that, on receipt of the Applicant's request, the Information Management and Request Team forwarded the request to the service responsible for Investments within the Council. This was then sent to the Finance Operations Manager.
15. To identify the Committee Report, a search was carried out on Fife Council's intranet, where all Committee documents are held, using the words "investment strategy".
16. The content of the Committee Report highlighted by the Applicant was also searched to identify the information he was referring to. Once it was identified that it was a presentation document, it was confirmed that no information was held in relation to anyone recording their agreement with the assumptions, and any account of why they had done so.
17. Further searches were carried out in staff email accounts using the name of the Investment Adviser and a further search for emails received from the Head of Finance.
18. A discussion also took place between the Actuary and the Finance Operations Manager about the decision to include the assumption figures in the presentation and it was confirmed that the inclusion was by way of an example only. The assumptions were not factual information and therefore did not require any actuarial agreement for the purpose of the presentation. The Council submitted that the slide within the presentation was there to show the link between contributions and returns and was not there to say this is what the Council's contribution rate should be.
19. The Council explained that the "Measures of Success" graph referred to by the Applicant appeared in the same presentation document under discussion and was not another document, as alluded to by the Applicant.
20. The Council stated that, in the context of that document section, again the graph is there as an example only. The paragraph before says "the relationship between investment return

and contribution is illustrated in the chart below, which plots the future service contribution rate against the assumed return above the Fund's liability discount rate (gilts)". The Council explained that while it was not the same numbers that were quoted, it was still simply an illustration/example and not part of the Council's actual pension fund calculations.

The Commissioner's findings

21. The Applicant's request is for recorded information on how the person or persons who agreed the example assumptions with the Actuary accounted for their agreement (i.e. the documentation of a person's justification for reaching a conclusion). It is highly unlikely that such a justification would appear in a pension minute. The example assumptions themselves appear in the minute, but not any person's justification for the assumptions being agreed.
22. The Council clearly explained that the two assumption figures were simply example figures used for an exercise in the presentation and were not actual figures to be used by the Council as part of its pension fund calculations, and needing to be agreed with the Actuary.
23. The Commissioner accepts that, because the assumption figures used were merely examples made up for part of a presentation, there would be no need for anyone to agree the assumptions with the Actuary.
24. The Commissioner understands that agreement with the Actuary would only be required if assumptions were being adopted as part of the actual Council Pension Fund calculations. The Commissioner must therefore conclude that it would highly unlikely, for the Council to hold any information on *how the person who agreed the assumptions with the Actuary accounted for doing so*. The information provided to the Commissioner by the Council makes it clear that no agreement with the Actuary would have been required.
25. The Commissioner can only conclude therefore that, on the balance of probabilities, the Council does not hold any information outlining the reasons why assumptions were agreed with the Actuary, if they were never agreed with the Actuary in the first place.
26. In the light of the above, and taking account of the Council's explanations and searches, which failed to find any relevant information, the Commissioner is satisfied that the information sought is not held by the Council.

Decision

The Commissioner finds that Fife Council complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by the Applicant.

Appeal

Should either the Applicant or the Council wish to appeal against this decision, they have the right to appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days after the date of intimation of this decision.

Margaret Keyse
Head of Enforcement

25 January 2022

Appendix 1: Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.

...

- (4) The information to be given by the authority is that held by it at the time the request is received, except that, subject to subsection (5), any amendment or deletion which would have been made, regardless of the receipt of the request, between that time and the time it gives the information may be made before the information is given.

...

17 Notice that information is not held

- (1) Where-
- (a) a Scottish public authority receives a request which would require it either-
 - (i) to comply with section 1(1); or
 - (ii) to determine any question arising by virtue of paragraph (a) or (b) of section 2(1),if it held the information to which the request relates; but
 - (b) the authority does not hold that information, it must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant notice in writing that it does not hold it.

...

Appendix 2: Information Request

1. Who within Fife Council has to AGREE the actuarial assumptions used by the Fife Council pension fund actuary (It used to be Brian Livingston)?
2. It appears, from an ALM completed by John Dickson (Hymans Robertson) on 23/10/18, named: "Development of an investment strategy" that Fife Councils contribution rates for the years 2018-2021 were associated such, that an AOA of 2.4% was assumed for a 24.5% contribution rate (yet in the 2017 actuarial valuation the AOA was stated as 1.8%). As the pension fund accounts for 2019/20 show an actual withdrawal from the fund. Clearly, the contribution rate at 24.5% for 2018/21 was too low and should never have been stabilised. If the AOA is 1.8% then Fife Council's contribution rate should have been 28.8% (according to John Dickson from Hymans Robertson (our actuarial firm in 2018)). How does the person who agreed the assumptions with the actuary account for the above stated public domain figures?

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