

Notice of Hearing

In the High Court of Justice
Chancery Division
Preston
District Registry

Claim Number	PR090110
Date	15 November 2011



LANCASHIRE COMBINED FIRE AUTHORITY	1 st Claimant Ref
PAUL PETER BURNS	1 st Defendant Ref

TAKE NOTICE that the Hearing will take place on

10 January 2012 at 2:30 PM

at Preston District Registry, The Law Courts, Openshaw Place, Ringway, Preston, PR1 2LL

When you should attend

1 hour has been allowed for the Hearing

Please Note: This case may be released to another Judge, possibly at a different Court

Application notice

For help in completing this form please read the notes for guidance form N244Notes.

Name of court	
Claim no.	
Warrant no. (if applicable)	
Claimant's name (including ref.)	
Defendant's name (including ref.)	
Date	

1. What is your name or, if you are a solicitor, the name of your firm?

2. Are you a Claimant Defendant Solicitor

Other (*please specify*)

If you are a solicitor whom do you represent?

3. What order are you asking the court to make and why?

4. Have you attached a draft of the order you are applying for? Yes No

5. How do you want to have this application dealt with? at a hearing without a hearing

at a telephone hearing

6. How long do you think the hearing will last? Hours Minutes

Is this time estimate agreed by all parties? Yes No

7. Give details of any fixed trial date or period

8. What level of Judge does your hearing need?

9. Who should be served with this application?

10. What information will you be relying on, in support of your application?

- the attached witness statement
- the statement of case
- the evidence set out in the box below

If necessary, please continue on a separate sheet.
See attached Written Evidence.

Statement of Truth

(I believe) (The applicant believes) that the facts stated in this section (and any continuation sheets) are true.

Signed Paul Peter Burns Dated 31st October 2011
Applicant('s Solicitor)(s litigation friend)

Full name Paul Peter Burns

Name of applicant's solicitor's firm N/A

Position or office held N/A
(if signing on behalf of firm or company)

11. Signature and address details

Signed Paul Peter Burns Dated 31st October 2011
Applicant('s Solicitor)(s litigation friend)

Position or office held N/A
(if signing on behalf of firm or company)

Applicant's address to which documents about this application should be sent

7 Kings Drice Fulwood Preston Lancs PR2 3HN

Postcode
P R 2 3 H N

If applicable	
Phone no.	01772 715963
Fax no.	
DX no.	
Ref no.	

E-mail address symbolseeker@tiscali.co.uk



County Court Preston.
The Law Courts
Openshaw Place
Ringway
Preston PR1 2LL

7, Kings Drive,
Preston. Lancashire.PR2 3HN.
ENGLAND.
Tel/Fax: +44 (0) 1772 715963.
symbolseeker@tiscali.co.uk

Monday, 31st October, 2011.

BURNS

My Ref: PB04511

Your Ref:

Application Specific Disclosure(CPR31.12).

Paul Peter Burns-v- CFA & LCC.

arising from

Claim Number PR090110.

Combined Fire Authority(CFA) -v- Paul Peter Burns.

Statement of Case.

The Claimant requests disclosure of 'communications' held by the Defendants before he can commence to mount a comprehensive Defence against a claim presently before the High Court by one of the Defendants, viz the CFA. The Claimant intends and needs to rely on these disclosures in his Defence. The Defendants have repeatedly refused for 4.5 years under the FOIA 2000 and the DPA1998 to release this information to the Claimant even when directed to do so by the Information Commissioner. These communications include my personal service records and my pension management details accumulated over 35+ of service. The CFA confirm existence of my personal files.

Attached Non-Compliance Analyses of Defendants performance in respect of FOIA and DPA Acts. [Page 6.]

1.00. Application for Specific Disclosure.

1.01. This Application arises directly from a pending High Court case(PR090110) and was outlined in a hand delivered letter dated 10th June 2011 to the Court, subsequently lost by the Court and replaced by hand by the Claimant.

1.02. The Defendant acknowledges receipt of a copy of the Court's Comments dated 25th October, 2011.

2.00. Application Details.

2.01. **Claimant**, Paul P Burns details on Form N244.

1st Defendant, Combined Fire Authority and agent Lancashire Fire & Rescue Service;

2nd Defendant, Lancashire County Council, pension contractor to CFA/LFRS.

3.00. Guano Paper Trail – Confirmed Existence.

3.01. LFRS, letter(Harold) refusal to comply with FOIA and DPA – to Burns[Page 7]

3.02. Information Commissioner FOIA Decision Notice – to LCC [Page 8];

3.03. Information Commissioner DPA Assessment Notice – to LFRS [Page14];

3.04. Information Commissioner DPA Assessment Notice – to LFRS [Page 17];

3.05. DWP, half narrative example, bilateral communications – to LCC [Page 32];

3.06. DWP, half narrative example, bilateral communications – to LCC [Page 35];

3.07. DWP, half narrative example, bilateral communications – to LCC [Page 37];

- 3.08. DWP, half narrative example, bilateral communications – to LFRS [Page 39];
- 3.09. LCC, half narrative example, bilateral communications – to DWP [Page 41];
- 3.10. LFRS, half narrative example, bilateral communications – to DWP [Page 43];
- 3.11. Burns, letter to LFRS refusal to supply PRFs to FSVs – LFRS(Warren) [Page 45];
- 3.12. LCC(Pensions), half narrative bilateral emails Claimant High Court Bundle No:135- to LFRS
(no copy supplied to Defendant);
- 3.13. LFRS, half narrative emails Claimant High Court Bundle No:144 – to CFA Councillors
(no copy supplied to Defendant);
- 3.14. LFRS, half narrative letter Claimant High Court Bundle No:175- to Audit Commission
(no copy supplied to Defendant);
- 3.15. LCC(Pensions), bilateral half narrative emails Claimant High Court Bundle No:182- to LFRS, (no copy supplied to Defendant);
- 3.16. LFRS, Injury Pension Review Update 26/5/10 Claimant High Court Bundle No:183- to CFA Councillors, (no copy supplied to Defendant);

4.00. Draft Order.

IT IS ORDERED THAT

1. The Defendants and their agents shall within 28 days of the service of the Orders deliver up to the Claimant relevant copies of all records in their possession, power, custody, or control relating directly or indirectly to the Claimant(the “Eventual Defendant” in the High Court) and/or a full summary of such records upon which the “Eventual Defendant” will rely on in the High Court in his Defence and specifically in relation to the following:

- a. *All* files, records, and communications known within the Lancashire Fire & Rescue Service as the Claimant’s Personal Record Files and associated files;
- b. *All* relevant bilateral communications relevant to the Injury Award dispute between the LFRS and its contractor the LCC from January 2007- to date;
- c. *All* relevant bilateral communications relevant to the Injury Award dispute between the DWP; the Audit Commission; and other agencies as yet unknown;
- d. *All* Part II Minutes of the Combined Fire Authority relevant to the Injury Award dispute;
- e. *All* CFA Injury Sub-Committee Minutes;

2. Without prejudice to the generality of the above *all* relevant Claimant/dispute records(or copies), a full summary of such records in respect of:

a. CFA Chairman:

- *All* relevant reports received;
- *All* relevant internal bilateral communications with the LFRS;
- *All* relevant internal bilateral communications with the LCC;
- *All* relevant bilateral communications with elected Members both on the CFA and the LCC;
- *All* relevant external bilateral communications with external politicians(e.g. M.P.s);
- *All* relevant instructions issued to the LFRS by the full Committee and/or the Injury Award Sub-Committee;
- *All* relevant bilateral communications with the CLG (Communities and Local Government)its departments;
- *All* financial expenses and claims lodged with the CFA by CC D.O’Toole since his appointment to the CFA. Financial records currently part of an Ordered Information Tribunal(First-Tier) Public Oral Hearing at a venue within Lancashire with a date as yet unspecified by that Tribunal.

b. LFRS:

- All relevant reports submitted to the CFA;
- All relevant bilateral communications with the LCC and *its* departments;
- All relevant internal communications;
- All relevant bilateral communications with external agencies including, but not limited, to DWP; Audit Commission; CLG; Agencies as yet unidentified;
- *Waiver of Privilege*. The LFRS in a letter dated 26th March 2009[Page 47] to Claimant declared a detailed summary of the legal Opinion they stated they had received from their instructed QC. This is a clear waiver of privilege and the Claimant now seeks a full copy of that Opinion.

c. LCC:

- All relevant bilateral communications with the LFRS and *its* departments;
- All relevant internal bilateral communications between departments in particular between politicians and the County Solicitor/Data Management/Pensions Services;
- All relevant external bilateral communications with but not limited to Audit Commission; DWP; CLG;

N.B.

'Communications', for the purposes of these Orders 'communications' is defined in its broadest sense which includes correspondence; emails; contemporaneous notes; minutes and recordings of vox conversations whether by electronic means or otherwise. The foregoing examples are not meant to be exhaustive nor exclusive.

'All', as defined in the OED.

Statement of Truth.

Insofar as the matters to which I refer are within my own knowledge they are true; insofar as they are not within my own knowledge they are true to the best of my knowledge, information, and belief.



Paul.P.Burns.

DELIVERED-ALL BY HAND.

Compliance Response Analyses

Name	Request Date	Request Reference	Request Act	Served By	Acknowledge & Date	Confirm Held	Response & Date	Time Frame	Data Released
Audit Comm	7 th Dec 2009	email	DPA	email	Yes 31 st Dec 2009	Yes	Yes 31 st Dec 2009	- 40 days	All Data Released
	19 th Dec 2009	email	FOIA	email	Yes 31 st Dec 2009	Yes	Yes 31 st Dec 2009	- 40 days	All Data Released
	3 rd Feb 2010	email	FOIA	email	Yes 3 rd Feb 2010	Yes	Yes 25 th Feb 2010	- 40 days	All Data Released
DWP	4 th Dec 2009	email	FOIA DPA	email	Yes 7 th Dec 2009	Yes	Yes 1 st Feb 2010	+ 40 days	All Data Released
LCC	24 th Jan 2008	Letter PB00208	DPA S10,1&3	Hand	Yes 29 th Jan 2008	No	Yes 29 th Feb 2008	- 40 days	No Desist Taken
	24 th Jan 2008	Letter PB00208	FOIA	Hand	Yes 29 th Jan 2008	No	Yes 29 th Feb 2008	- 40 days	Request Refused
	1 st Feb 2008	Letter 0908	FOIA	email	No	No	No	+ 40 days	Ignored
	4 th Feb 2008	Letter PB01108	FOIA	email	No	No	No	+ 40 days	Ignored
	6 th Dec 2009	Letter PB03709	FOIA	email	Yes 10 th Dec 2009	No	Yes 15 th Jan 2010	+ 40 days	No info Held
	6 th Dec 2009	Letter PB03709	DPA	email	Yes 10 th Dec 2009	No	Yes 2 nd Mar 2010	+ 40 days	Generic Data Held
	8 th Mar 2010	Letter PB01710	FOIA	Hand	Yes 9 th Mar 2010	Yes	Yes 9 th Mar 2010	- 40 days	2 emails
	9 th July 2010	Letter ICO	FOIA	email	-	-	-	-	9 - A4 Documents
LFRS	28 th Jan 2008	Letter PB00808	DPA S10,1&3	Hand	Yes 29 th Jan 2008	No	Yes 7 th Feb 2008	- 40 days	No Desist Taken
	28 th Jan 2008	Letter PB00808	FOIA(2)	Hand	Yes 29 th Jan 2008	No	Yes 7 th Feb 2008	- 40 days	Request Refused
	20 th Feb 2008	Letter PB02108	FOIA	email	Yes 23 rd Feb 2008	No	6 th Mar 2008	- 40 days	1 - A4 Document
	6 th Nov 2008	Letter PB08208	FOIA	email	Yes 7 th Nov 2008	No	Yes 28 th Nov 2008	- 40 days	Request Refused
	7 th Dec 2009	Letter PB03809	FOIA	email	No	No	Yes 29 th Jan 2010	+ 40 days	Request Refused
	7 th Dec 2009	Letter PB03809	DPA	email	No	No	Yes 29 th Jan 2010	+ 40 days	1 st Request Refused
	19 th Jan 2010	Letter PB00210	FOIA & DPA	email	No	No	No	- 40 days	Ignored
	26 th Jan 2010	Letter PB00510	FOIA & DPA	email	No	No	Yes 10 th Feb 2010	- 40 days	Request Refused
	14 th Oct 2010	Letter PB06010	DPA	email	No	No	Yes 8 th Nov 2010	- 40 days	2 nd Request Refused
	14 th Oct 2010	Letter PB06010	FOIA	email	No	No	No	+ 40 days	Ignored
	24 th May 2011	Letter PB01711	DPA	email	No	No	Yes 27 th May 2011	- 40 days	3 rd Request Refused
ICO	8 th Aug 2011	Letter PB02611	FOIA	email Webmaster	Yes	No	No	+40 days	Ignored



Mr P Burns
7 Kings Drive
Preston
Lancashire
PR2 3HN

Please ask for: Anthony Harold
Telephone Mobile:
Telephone: 01772 866964
Email: anthonyharold@lancsfireandrescue.org.uk
Your Ref:
Our Ref: AH/TMC/IPPS_08
Date: 7 February 2008

Dear Sir,

I write with reference to your letter of the 28th January, for which I thank you, and other related correspondence to the Chairman of the Combined Fire Authority, to which you should also regard this letter as a reply.

I consider the tone and substance of your correspondence to be both ill-conceived and wholly inappropriate. Therefore, I do not propose to comment further upon the specific allegations you make other than strongly to advise you to refrain from repeating or further publicising allegations against Members of the CFA or Officers of the Lancashire Fire and Rescue Service which are clearly defamatory. Should you fail to do so then injunctive relief may well be sought followed, if necessary, by proceedings for defamation.

It is categorically denied that either the CFA or the LFRS is in any way acting unlawfully in this matter. A Fire and Rescue Authority is entitled under Part 10, Rule 2, para.1 of the Fire-fighters Compensation Scheme (previously Rule L3 (1) of the Fire-fighters Pension Scheme) to suspend the payment of all or part of any injury pension as required to determine the correct amount of an award.

The Authority has no alternative but to proceed, as it has in cases such as yours, where a reasonable request for consent to obtain information as to DWP benefits, has been refused. It is this refusal to provide the Authority with the required Benefits information that has resulted in it having to consider suspending payments until the issue of liability can be resolved in accordance with its legal obligations and the fiduciary duty it owes to the public purse.

Your requests for information under either the Freedom of Information Act or the Data Protection Act are not regarded as legitimate and thus will not be complied with. Should you commence proceedings against the Authority they will be defended vigorously.

Yours faithfully


ANTHONY HAROLD
SOLICITOR

M B Winterbottom, JP, DL.LL.B Solicitor
Clerk to the Lancashire Combined Fire Authority
Lancashire Fire & Rescue Service Headquarters
Garstang Road, Fulwood
Preston
PR2 3LH



Mr P P Burns
7 Kings Drive
Preston
Lancashire
PR2 3HN

06 October 2010

References:

RFA0316356 – Subject access request dated 06 December 2009
RFA0322003 – Subject access request dated 08 March 2010
RFA0322004 – Subject access request dated 16 March 2010
RFA0351582 – Lancashire Fire & Rescue Service

Dear Mr Burns

I write further to my letters of 30 July and 07 September concerning your complaint about the processing of your personal information by Lancashire County Council. As I have already explained, our duty in relation to your complaint is to make an assessment. An assessment is a view or opinion about whether it is likely or unlikely that Lancashire County Council complied with the principles of the Data Protection Act 1998 (the DPA) in the situation that you described to us.

You were concerned that Lancashire County Council have failed to respond to your subject access requests dated 06 December 2009, 08 March 2010 and 16 March 2010. As you are aware, these are being investigated as three separate cases.

The sixth principle says:

"Personal data shall be processed in accordance with the rights of data subjects under this Act"

From the information you provided I was not able to make my assessment. I asked Lancashire County Council for their views and they have now provided the information I requested.



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RFA0316356 – Subject access request dated 06 December 2009

Lancashire County Council have once again confirmed that there is no correspondence. This is now the third time that such confirmation has been provided, and I regret to inform you that without evidence to the contrary we cannot doubt the assurances of the data controller. I cannot therefore take any further action in respect of this particular subject access request.

RFA0322003 – Subject access request dated 08 March 2010

Lancashire County Council have explained that this request was considered under the Freedom of Information Act (FOI) as you were seeking disclosure of communications between those officers of the Council that had dealt with your previous FOI request. They further maintain that as this FOI request was refused, any communications would be heavily redacted and would therefore be meaningless to you.

From the information Lancashire County Council have provided it is not clear why this request was treated solely under FOI. They have explained that your request was for communications between officers who had dealt with your original request; therefore it appears likely that at least some information would constitute your personal data and should be provided under the DPA. Furthermore, as these two pieces of legislation offer two separate access regimes, it does not follow that information refused under FOI would automatically be refused under the DPA.

For this reason it appears likely that there will be information to which you are entitled in response to this request. Also, whether or not an organisation believes the information would be meaningless to the individual requesting it has no bearing on whether or not it should be provided under the DPA.

RFA0322004 – Subject access request dated 16 March 2010

This subject access request asked for "any and all subject data held by LCC", and specifically referenced your Fire Service Personal Record.

With regards to your Personal Record, Lancashire County Council have explained that they administer the Firefighter's Pension Scheme as a data processor on behalf of Lancashire Fire and Rescue Service (LFRS),



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and are therefore not the data controller. They explain that should you wish to access copies of your personal data associated with the pension scheme, you should direct this request to LFRS. They have further explained that you have previously been informed of this fact and advised where you should direct your request.

It might be helpful to explain that the seventh data protection principle relates to the security of data. It places certain obligations on data controllers when the processing is carried out by data processors, and stipulates that there should be a contract in place. This contract should require the data processor to comply with obligations equivalent to those imposed on the data controller by the seventh principle.

When a data processor receives a subject access request, it should pass this request to the data controller to be dealt with. It is not enough to simply reply saying they are not the data controller.

Therefore Lancashire County Council should have passed this aspect of your request of 16 March 2010 to LFRS. It appears that they did not do this. LFRS, as the data controller, are responsible for the actions of Lancashire County Council in this respect, as they should have agreed procedures in place to ensure that subject access requests are passed on. I will take this aspect of this request further with LFRS, as I will explain below under reference RFA0351582.

Additional to the Personal Record aspect of this request, you have asked for any and all of your subject data. With consideration to the amount of correspondence that has passed between yourself and Lancashire County Council, it seems likely that they are the data controller for some personal data to which you would be entitled.

From the information provided, it appears that you have not received any response at all from Lancashire County Council in this respect.

From all of the information that is now available to me it appears that Lancashire County Council have failed to comply with the sixth principle in respect of your subject access requests of 08 and 16 March 2010. This is because your request of 08 March was incorrectly treated solely as a Freedom of Information request, and on the balance of probabilities it appears that they will be a data controller for some personal data to which you would be entitled as part of a subject access request.

In light of this it is my assessment that it is unlikely that Lancashire County Council have complied with the DPA in cases RFA0322003 and RFA0322004.



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I will now write to Lancashire County Council to tell them about this assessment and to recommend the steps they should take to bring their processing into compliance with the DPA in these two cases. In particular I will recommend that they ensure that they investigate these requests with a view to providing you with any personal data to which you would be entitled as a matter of priority.

These matters are now closed. Thank you for bringing them to our attention.

RFA0351582 – Lancashire Fire & Rescue Service (LFRS)

You have also more recently submitted a new complaint about LFRS. This also addresses subject access requests made to LFRS for your Personal Record. You have provided copies of letters dated 07 February 2008 and 29 January 2009.

I can see that the letter of 29 January 2009 is a response to a subject access request that you have made to LFRS, although we do not have the original request. From the information provided, I can inform you that LFRS are entitled to ask for any further details they may reasonably require in order to locate the information you have requested, and they are not under any duty to respond until you provide this information.

I can also see from point 3 that you have already requested your Personal Record from LFRS. LFRS have responded explaining that this is category 'e' data for the purposes of the DPA and you are not entitled to it on this basis.

The Freedom of Information Act 2000 (FOI) introduced some amendments to the DPA. One of these relates to personal information held by public authorities. This widens the definition of data to include "recorded information held by a public authority...which does not fall within any of paragraphs (a) to (d)". Paragraph (c) of the definition of data is information held within a relevant filing system.

Put very briefly, to constitute a relevant filing system, information has to be held in such a way that it is readily accessible. Whilst there is no easy definition, we take a very wide view of what is a relevant filing system.

You have explained in previous correspondence that your Personal Record has been passed to the County Archivist. Although we do not



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have any information as to how this may now be held, we take the view that any personal record file is likely to be held within a relevant filing system. Essentially this is because if it is held in such a way that it cannot be located, there is no point in retaining it at all. Additionally, as it is your personal record, you are quite clearly identifiable from it.

For this reason, we have formed the view that your Personal Record would fall within paragraph (c) of the definition of data, a relevant filing system, as opposed to being category (e) data. It would therefore be subject to the DPA and subject access rights apply.

From the information you have provided it appears likely that LFRS have failed to comply with the sixth principle in this case. This is because we do not agree that this information is category (e) data for the purposes of the DPA as it appears likely that it will form part of a relevant filing system. We have therefore formed the view that the information should be provided to you in response to your subject access request.

In light of this it is my assessment that it is unlikely that LFRS have complied with the DPA in this case. This assessment is based solely on the information you provided.

I will now write to LFRS to tell them about this assessment and to recommend the steps they should take to bring their processing into compliance with the DPA in this case. In particular I will recommend that they ensure that they take steps to provide you with your Personal Record as a matter of priority.

Whilst I am writing to them, as explained above, I will also address the issue of the subject access request submitted to Lancashire County Council on 16 March 2010. I will remind them of their obligations under the seventh data protection principle and ask them to ensure that their contracts and agreed procedures with data processors are sufficient to ensure that subject access requests are correctly passed on in the future.

I have made this assessment based only on the information you provided. LFRS may well want to give their point of view. If they have any information to suggest that this assessment should be changed, I will ask them to provide it within 28 days and will write to let you know. Otherwise this matter is considered as closed.

Finally, I would advise that you allow both Lancashire County Council and LFRS a reasonable amount of time, at least 28 days, to provide

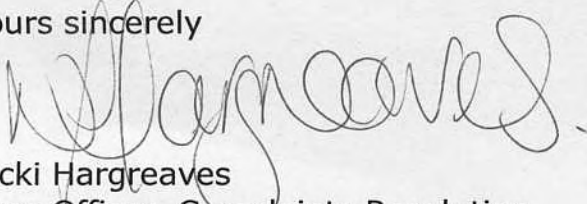


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you with your personal data as a result of these assessments. If you do not hear anything further after this time, please let me know.

Yours sincerely



Nicki Hargreaves
Case Officer, Complaints Resolution
01625 545840



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Page 13

Mr P P Burns
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14 October 2010

References:

RFA0316356 – Subject access request dated 06 December 2009
RFA0322003 – Subject access request dated 08 March 2010
RFA0322004 – Subject access request dated 16 March 2010
RFA0351582 – Lancashire Fire & Rescue Service

Dear Mr Burns

Thank you for your further correspondence relating to the above case reference numbers. For ease of reference, I will aim to address all the further issues you raise in this letter.

RFA0316356 – Subject access request dated 06 December 2009

As you are aware, this case is now considered as closed.

I note your concerns (detailed under RFA0322003 in your letter of 11 October, but with reference to your request of 06 December 2009) that your request had stated 'unlawful' consent forms, however I would note that Lancashire County Council (LCC) have confirmed now on 3 occasions that they considered your Data Protection Act 1998 (the DPA) request in this instance to be for 'all correspondence between the LCC Pensions Service and the DWP....reference to yourself and your DWP subject data', and that there is no such correspondence.

RFA0322003 – Subject access request dated 08 March 2010

As you will recall from my previous letter, I made the assessment that it is unlikely that LCC have complied with the DPA in this case. This was because it appeared likely that there would be further information to which you were entitled in response to your request. I therefore recommended to LCC that in order to bring their processing into compliance, they should investigate thoroughly with a view to providing you with your information.



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On this basis, I then closed this case.

RFA0322004 – Subject access request dated 16 March 2010

Thank you for providing a copy of the SLA agreement between Lancashire Fire & Rescue Service (LFRS) and Lancashire Pensions Service.

I acknowledge that this document makes no reference to data protection. However, I would advise that the seventh principle would require an organisation to have a written contract setting out what a data processor is allowed to do with personal data. I would expect therefore that there is a further contract in place between the relevant companies, however I can advise that this would not constitute your personal data and you would not be entitled under the DPA to view it. I can confirm however that I have reminded both LFRS and LCC of their obligations under this principle.

Furthermore, we have no evidence at present of any potential offences under section 55 of the DPA and will not be pursuing this at this time.

However, I also made the assessment that it is unlikely that LCC have complied with the DPA in this case and recommended again that to bring their processing into compliance they should investigate thoroughly with a view to providing you with your information.

On this basis, I also closed this case.

RFA0351582 – Lancashire Fire & Rescue Service

As you are aware, I made the assessment that it is unlikely that LFRS have complied with the DPA in this case. I recommended that to bring their processing into compliance on this occasion, they should take steps to provide you with your Personal file.

I can confirm I have since spoken with LFRS, and they have confirmed that you will be provided with this shortly.

On this basis, this case is now closed.

Finally, it is important to remember that the cases I have addressed have dealt only with data protection issues.



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I note your reference to the monitoring list which LCC is included on, and I would advise that the listed organisations are being monitored because it appears they are not meeting the requirement to respond to freedom of information requests on time. It is not as a result of data protection concerns.

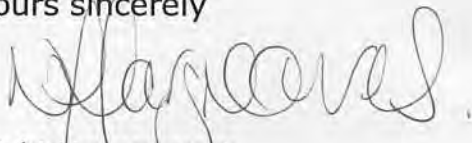
Whilst I understand that you have serious concerns about the way in which your various requests have been handled, it is important to be aware that our role under the DPA is to make an assessment. This is often the whole extent of the Commissioner's involvement.

In these cases, I have made my assessments and advised the organisations how they can bring their processing into compliance with the DPA and how to ensure future compliance. Although I note your desire for further action, I would advise that this is unlikely in an individual case, as it would be unlikely to fall within our Data Protection Regulatory Action Policy, which is available on our website should you wish to view it. The Commissioner has limited powers and resources and must use these appropriately and proportionately in each case.

With regards to the further cases you wish to send, I can confirm that I have discussed this issue with my manager. He has advised that it would in fact be more appropriate to submit any new cases you have through our website in the usual way; this will enable our systems to ensure that each individual case you wish to pursue can be set up as a case on its own. Please accept my apologies for this, however please be assured that this will enable each of your complaints to be adequately addressed. Where possible your data protection complaints will be assigned to me for investigation.

I hope that this has addressed your remaining concerns with regards to the processing of your personal information by both LCC and LFRS.

Yours sincerely



Nicki Hargreaves
Case Officer, Complaints Resolution
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Mr P Burns
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Lancashire
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8 November 2010

Dear Mr Burns,

**Re: Freedom of Information Act 2000
Complaint about Lancashire County Council**

Please find enclosed a Decision Notice issued under the the Freedom of Information Act 2000 ("the FOIA"). This Decision Notice relates to your complaint about a request for information that you submitted to Lancashire County Council ("the Council") on 6 December 2009.

The complaint has been carefully considered and in this case the Commissioner found that the Council did not, on the balance of probabilities, hold any information that was relevant to the request other than that already provided. He did however find that the Council breached section 1(1) and 10(1) of the FOIA.

The enclosed Decision Notice sets out the reasons for the Commissioner's decision and the steps that the Council is required to take. If you disagree with any aspect of the attached Decision Notice, you have the right to appeal to the First-Tier Tribunal (Information Rights). Contact details for the Tribunal are included in the Decision Notice.

The Decision Notice includes details about you and the public authority. This is to ensure that there is no doubt as to the request for information to which the Notice relates. The Commissioner will publish the decision on the ICO website, but will remove all names and addresses of complainants. Although public authorities may choose to reproduce this Decision Notice, the Commissioner would expect that they would take similar steps. The Commissioner



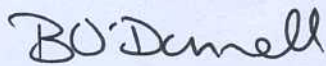
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forests, controlled sources and
recycled wood or fiber


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considers that these may be necessary in order to comply with the requirements of the Data Protection Act 1998.

I hope the above information is of assistance.

Yours sincerely,



 Elizabeth Woodworth
Senior Complaints Officer



Mixed Sources
Product group from well-managed
forests, controlled sources and
recycled wood or fiber

Cert no. TT-COC-002272
www.fsc.org

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 8 November 2010

Public Authority: Lancashire County Council
Address: Chief Executive's Office
Christchurch Precinct
County Hall
Preston
Lancashire
PR1 8XJ

Complainant: Mr Paul Burns
Address: 7 Kings Drive
Preston
Lancashire
PR2 3HN

Summary

The complainant asked Lancashire County Council ("the Council") to provide all the correspondence it held between the Council's Pensions Service and the Department for Work and Pensions ("the DWP") regarding a particular issue. The Council responded that it did not hold the information requested. The Commissioner investigated and decided that the Council had not interpreted the request correctly because it should have disregarded some subjective language used in the request. The Commissioner found that some relevant correspondence was held and this was provided to the complainant. The complainant alleged that further information was held. However, the Commissioner was satisfied that, on the balance of probabilities, no further relevant information was held. The Commissioner found that the Council breached section 1(1) and section 10(1) of the Freedom of Information Act 2000 ("the FOIA"). He requires no steps to be taken.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the FOIA. This Notice sets out his decision.

Background

2. Under the terms of a contract with Lancashire Fire and Rescue Service ("the LFRS"), the Council's Pensions Service administers a pensions scheme.
3. Towards the end of 2007, the LFRS decided to undertake a review of all fire injury pensions being paid following discovery of an overpayment. The regulations governing fire injury pensions require that the actual injury allowance payable must be offset by benefits paid by the state in respect of the same injury. This is designed to ensure that individuals are not compensated twice for the same injury. While the terms of the Pensions Scheme require LFRS to obtain details of the additional benefits received by those pensioners eligible for injury pensions, the Scheme does not expressly provide for the obtaining of this information from the DWP. In view of this, individuals were asked to give their consent for this information to be obtained from the DWP. However, a number of those individuals refused to consent because they felt that this would be a breach of their rights under the Data Protection Act 1998 ("the DPA"). Where consent was not given, LFRS considered that they were justified in suspending injury pension payments until the necessary information was provided and wrote to inform those affected of its position.
4. In an attempt to address the above issue, the Council began an exchange of correspondence with the DWP. The Council sought disclosure of the information without consent because it believed there was a legal basis for doing so under the DPA. However, the DWP refused to provide the information in the circumstances without consent.
5. As part of the above exchange of correspondence, the DWP raised issues with the Council regarding what it called the "Authority to Disclose" letter and it suggested some amendments.
6. The complainant has been in correspondence with the Council over a period of time expressing grievances with the above situation, and the

particular request that is the subject of this complaint concerns issues with the consent form.

The Request

7. On 6 December 2009, the complainant wrote to the Council and requested information in the following terms:

"...all correspondence between the LCC PS and the DWP in the matter of the illegality of the 'consent' forms..."
8. On 15 January 2010, the Council responded and confirmed that it held no information regarding correspondence with the DWP in the matter of "the illegality of the consent forms".
9. On 27 January 2010, the complainant replied and expressed dissatisfaction with the response. He stated that he believed that the Council had not conducted proper searches for the information. He also attached documents and stated that the documents referred to correspondence that he felt was relevant to this request.
10. On 2 March 2010, the Council replied and confirmed that the correspondence referred to did not fall within the scope of the request because it was "generic" in nature.

The Investigation

Scope of the case

11. On 1 May 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider whether the Council held the information he had requested.
12. For clarity, the request in question went on to state "and specifically correspondence reference to myself and my DWP subject data, particularly in respect of imputed fraud by the LCC PS and the LFRS". This part of the request was deemed to represent a subject access request by the Commissioner and will therefore be considered separately under the terms of the DPA. It forms no part of this Decision Notice.

13. During the Commissioner's investigation, the complainant also referred to other requests that he wished to complain about. These issues have also been dealt with separately.

Chronology

14. On 16 June 2010, the Commissioner wrote to the complainant setting out his understanding of the complaint.
15. On the same day, the Commissioner telephoned the Council to discuss its position that the information requested was not held. He also sent a letter to the Council asking some questions to help him to consider this issue further.
16. On 1 July 2010, the complainant telephoned the Commissioner. He spoke in detail about the background to the request and stated that he was aware that the Council had discussed the consent forms with the DWP and the issue of compliance with the DPA.
17. On 5 July 2010, the Commissioner telephoned the Council. He advised the Council that it appeared that the complainant wanted correspondence that the Council had had with the DWP about problems with the consent forms. He asked the Council to disclose this information to the complainant if it was willing to do so, as the Council confirmed that some information of this nature was held.
18. The next day, the Council telephoned the Commissioner confirming that it would release the information to the complainant. However, it stated that it wished to maintain its position that it did not hold the information based on the wording of the request.
19. On 7 July 2010, the Council responded to the Commissioner's letter. It confirmed that it was willing to provide copies of the exchange of correspondence that had taken place between the relevant department, the Council's solicitor and the DWP. It explained that it had posted this correspondence to the Commissioner.
20. On 12 July 2010, the Commissioner contacted the Council having received confirmation that the Council would supply the exchange of correspondence to the complainant. He asked the complainant to confirm whether he was able to withdraw his complaint following receipt of this correspondence.
21. On 19 July 2010, the complainant wrote to the Commissioner explaining that he was not satisfied with the information that had been

provided. He alleged that further information was held and he made a number of points regarding this.

22. On 28 July 2010, the Commissioner contacted the Council explaining that he believed that the Council should not have interpreted the request as narrowly as it did. He explained that in his view, the Council should have disregarded the subjective language in the request and put the request into the context of its exchanges with the complainant. He explained that if it had done this, it would have been reasonable to understand from the request that the complainant was seeking correspondence between the Pensions Service, the solicitor acting on behalf of the Pensions Service and the DWP relating to problems with the consent forms. The Commissioner asked the Council for further details about the searches it had undertaken.
23. On 29 July 2010, the Commissioner also sent a follow-up letter asking the Council to clarify whether the bundle of correspondence it provided to the complainant represented all of the correspondence it held between itself and the DWP concerning the pensions review.
24. The Council replied on 18 August 2010 and explained the searches it had undertaken. It did not clearly address the point raised about whether the information provided to the complainant represented all the correspondence it held between itself and the DWP regarding the pensions review.
25. On 19 August 2010, the Commissioner telephoned the Council with the particular aim of clarifying the details provided in the Council's letter dated 18 August 2010.
26. The Council replied on the same day confirming that the Head of Pensions and the Deputy County Secretary and Solicitor had been consulted again and had confirmed that the only other correspondence between itself and the DWP held relating to the pensions review concerned specific individuals who had consented to the disclosure of their information. Therefore, this correspondence would not be relevant to the request.
27. On 23 August 2010, the complainant telephoned the Commissioner to discuss the progress made in investigating his complaint. The Commissioner explained to the complainant that he would consider whether any more information was held "on the balance of probabilities". He also explained that he had noted that, when asked to explain why he was not satisfied with the information that had been provided to him, the complainant had raised a number of points

regarding information that the Commissioner believed would fall outside the scope of his request.

28. On 31 August 2010, the Commissioner wrote further to the Council raising some of the complainant's concerns which appeared most relevant to the Commissioner's considerations of whether any more information was held falling within the scope of the request.
29. The Council replied on 8 September 2010 responding to these concerns. It maintained its position that no further relevant information was held.

Analysis

Substantive Procedural Matters

Did the Council hold information relating to the request?

30. The Council's position was that it did not hold information relevant to the request because it had not discussed with the DWP whether the consent forms were "illegal".
31. The Commissioner has taken a different view. Although the Commissioner considers that it is obviously important to have regard to the specific wording of a request, he also considers that a public authority should avoid claiming that it does not hold information because of subjective wording used by the complainant (for example, a suggestion that something was illegal), when it would otherwise be clear from the context what information was required. The Commissioner considers that this approach is supported by the Information Tribunal's findings in the case of *Barber v the Information Commissioner* (EA/2005/0004). In line with *Barber*, The Commissioner felt that in this case, the Council should have disregarded the subjective viewpoint of the complainant and interpreted his request as being for relevant correspondence between the Pensions Service and the DWP about problems with the consent forms. The Commissioner also felt that the request covered any such correspondence between the Council's solicitor and the DWP because the solicitor would have been acting on behalf of the Pensions Service.
32. In view of the Commissioner's interpretation, the Commissioner considers that some relevant information was held, which the Council provided to the complainant in an effort to achieve informal resolution of this matter.

Was any more information held that was relevant to the request?

33. Despite the provision of information showing the exchange of correspondence between the Pensions Service, the Council's solicitor and the DWP, the complainant alleged that further information was held.
34. In cases where a dispute arises over the extent of recorded information that was held by a public authority, the Commissioner will consider whether any more relevant information was held "on the balance of probabilities". This involves consideration of the scope, quality, thoroughness and results of the searches undertaken by the public authority and, where relevant any other explanations offered as to why information was not held.
35. The Council explained to the Commissioner that it holds three paper files regarding the pensions review. These are held by the Head of the Pensions Service, the Council's Secretary and Solicitor and the Director of Finance. Correspondence with the DWP regarding individual claims is also held on an electronic system relating to pensions. The correspondence with the DWP regarding the individual claims is also held on the paper files as part of the pensions review. This correspondence relates to those individuals who consented to the disclosure of their information. The Council confirmed that it would not hold any other electronic information relating to the request as all relevant information would be on the paper files.
36. The Council explained to the Commissioner that following receipt of the request, the Head of the Pensions Service at the Council was consulted and the paper file she held was checked. The Council confirmed that the Head of the Pensions Service also checked the paper files held by the Director of Finance and the Deputy County Secretary and Solicitor. The Deputy County Secretary and Solicitor was also consulted separately. The Council explained that it considered all of the correspondence between itself and the DWP held on the files and extracted any correspondence concerning the issue of consent or the consent forms. Having done so, the Council determined that none of it was relevant because the question of whether or not the consent forms were "illegal" was never raised.
37. As explained above, the Commissioner felt that the Council had interpreted the request too narrowly by putting too much emphasis on the complainant's subjective use of the word "illegal". In view of this, he asked the Council to reconsider whether it held any correspondence regarding problems with the consent forms. In an effort to achieve

informal resolution of the complaint, the Council provided to the complainant a bundle of correspondence between its Pensions Service, its solicitor and the DWP. Following further consultation with senior members of staff, it confirmed to the Commissioner that this represented all the correspondence it held between itself and the DWP about the review, with the exception of correspondence regarding individual pensions relating to those individuals who had consented. It explained that this correspondence was outside the scope of the request however. The Council also confirmed that no relevant correspondence had been deleted, destroyed or mislaid.

38. In the context of the above explanation, the Commissioner considered the complainant's letter dated 19 July 2010 in which the complainant had explained why he felt that further information was held. As mentioned in the Chronology to this Decision, the Commissioner formed the view that the majority of the points raised concerned information that would in any event be outside the scope of the request. It appears that at the time of writing this letter, the complainant did not appreciate that the Council and the Commissioner were limited to considering the terms of the particular request although this was subsequently explained to him. The wide variety of comments made in this letter indicated that the complainant required all the information held by the Council relating to the review in general. To give some examples, the complainant requested copies of minutes of meetings between the Council and the LFRS, copies of correspondence between particular individuals and the LFRS and copies of correspondence about individual pensions or correspondence relating to the general issue of consent rather than the consent forms themselves.
39. In view of the above, the Commissioner only approached the Council with a limited range of queries from the complainant that appeared to be most relevant. These queries are set out below together with the explanation provided by the Council.
40. It was clear from the correspondence provided to the complainant that the DWP had assisted the Council with the wording of the consent forms. The complainant believed that further dialogue about the consent forms must have taken place. This belief appears to have been based on a letter he had received from the DWP stating the following:

"I can confirm DWP staff did help with the redrafting of the consent form. We did so to ensure that those people who choose to provide their consent were fully informed as to what they were consenting to".

41. The Council maintained the position that the correspondence it had provided to the complainant represented all the information it held relating to the DWP's assistance with the consent form. Having considered the relevant correspondence, the Commissioner disagrees with the complainant's assertion that the DWP's correspondence above "proves beyond doubt" that further dialogue took place. There is nothing in the comment that indicates to the Commissioner that anything other than the correspondence already provided was what was being referred to by the DWP when it made the comments to the complainant. He also notes that in any case, the complainant's request only covers "correspondence" and not all records of "dialogue" between the parties.
42. The complainant also provided the Commissioner with a copy of a letter from Job Centre Plus dated 15 April 2008 addressed to the Council's solicitor. The complainant noted that this letter referred to a letter from the Council's solicitor dated 11 April 2008 to a named individual and another letter from the solicitor to a named individual. The complainant stated that this correspondence had not been provided to him. The Council investigated these points and explained that this correspondence did indeed exist but it had not been provided because the correspondence simply represented cover letters or letters chasing a response to the Council's letter dated 28 March 2008 (already provided to the complainant). As such, it was not considered relevant. In view of the Council's explanation of this correspondence, the Commissioner was satisfied that these letters did not fall within the scope of the complainant's request.
43. Finally, the complainant provided the Commissioner with a copy of a letter from the Council's solicitor to a staff member at the DWP dated 15 May 2008. He has pointed out that in the seventh paragraph there is reference to the fact that when the review was started, the DWP refused to accept "out of date" consent forms. This led the complainant to believe that correspondence was held relating to this. The Council has explained that discussion regarding the age of consent forms did take place with the DWP however, this was over the telephone and no written record of these discussions was held.
44. In view of the above, the Commissioner is satisfied that on the balance of probabilities, no further information was held falling within the scope of the complainant's request. The Commissioner accepts that the Council has undertaken reasonable searches to check for relevant information, including consultation with relevant senior staff members. The Commissioner is satisfied that the majority of the complainant's reasons for not being satisfied with the information provided are based on an erroneous belief that he was entitled to more information than

was specified by the actual request he had made. Even those concerns that appeared more relevant did not reveal any evidence of further information falling within the scope of the request that had not already been provided.

Procedural Requirements

45. The Commissioner found that some relevant information was held that the Council failed to provide to the complainant by the date of its internal review. It therefore breached section 1(1) and 10(1) of the FOIA.
46. The Commissioner was satisfied that no further information was held falling within the scope of the request. He was therefore satisfied that the Council did not breach the FOIA in this respect.
47. The Commissioner also notes that the Council took longer than 20 working days to respond to the complainant's request and it therefore breached section 10(1) of the FOIA for this reason.

The Decision

48. The Commissioner's decision is that the Council dealt with the following element of the request in accordance with the requirements of the FOIA:
 - The Council did not hold any further relevant information other than that provided during the course of the Commissioner's investigation.
49. However, the Commissioner has also decided that the following element of the request was not dealt with in accordance with the FOIA:
 - The Council breached section 1(1) and 10(1) of the FOIA by failing to provide relevant information by the date of its internal review.
 - The Council breached section 10(1) of the FOIA by failing to respond to the request within 20 working days.

Steps Required

50. The Commissioner requires no steps to be taken.

Other matters

51. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:

The Commissioner notes that in this case the Council took longer than 20 working days to complete its internal review. This is not in accordance with guidance issued by the Commissioner on the website at www.ico.gov.uk. The Commissioner recommends that as a matter of good practice and to comply with the spirit of the legislation, an internal review should not generally take longer than 20 working days. The Commissioner trusts that the Council will note this guidance and make appropriate improvements in the future.

Right of Appeal

52. 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: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

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.

Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 8th day of November 2010

Signed 

Andrew White
Group Manager – Complaints Resolution
Information Commissioner’s Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Legal Annex – Freedom of Information Act 2000

General Right of Access

Section 1(1) provides 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.”

Time for Compliance

Section 10(1) provides that –

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

SUMMARY

- Late 2007 Numerous requests from LCC for benefit details were actioned - it was thought that authority stencil signed by customer was sufficient.
- 6.3.08 Article on the front page of Lancashire Evening Post about Firemen having to pay back thousands of pounds due to not declaring to LCC the DWP benefits they were receiving.
- 3.4.08 E-mail sent to Linda Gilroy from [REDACTED] querying why he had received details of benefits paid to him when he had not requested it. This was because he had not signed authority to give the information to LCC, therefore the information was sent to him directly for him to pass to LCC if he chose to do so.
- 5.4.08 E-mail sent to Linda Gilroy (copied to 27 Councillors, 4 M.P.'s, LCC Data Protection Team, LCC Pensions Team, Under Secretary) from Mr Burns mostly complaining about LCC's actions but also making an accusation against DWP. Enclosed was a copy of a letter from Diane Lister, the LCC Pensions Manager, which explains the conditions of receipt of the firemen's injury pension.
- 10.4.08 Letter sent to Mr Burns [REDACTED] stating will give information to LCC if we have the customers signed authority, if we don't have the authority we will send details direct to the customer for them to do what they choose with the information.
- 29.4.08 Further article in Lancashire Evening Post.
- 30.4.08 [REDACTED] was about to reply to a request for information from LCC when she noticed that the customer authority was in "relation to the injury which caused the customers retirement" - not to all benefits. A decision was taken to investigate further before any more requests are actioned.

2.5.08

[REDACTED] telephoned [REDACTED] to check what action they were taking. They have not received any requests from LCC that they know of. They will keep a look out for any that may be received and will contact us to find out latest situation before taking any action on any.

[REDACTED] also telephoned Burnley BDC and was told to contact [REDACTED] Band C [REDACTED]. The phone was continually engaged so an e-mail was sent to her asking her to contact us.

[REDACTED] phoned and spoke to [REDACTED]. Burnley have received many requests and have actioned them. They had not realised either that the authority was in relation to benefits received relating to the injury sustained.

6.5.08

[REDACTED] spoke to Dorothy Lambert, one of the case workers at LCC, regarding the problems we were now facing. [REDACTED] mentioned that we had no way of knowing if our incapacity was relating to the fire fighters injury. She mentioned that most of the requests from LCC don't even have an injury stated on them. Dorothy stated that if they knew the injury they put it on the letter but in many cases LCC did not know the injury themselves! Dorothy suggested that on the cases where the injury was known that we make a judgement call as to whether our incapacity relates to the injury. [REDACTED] informed her that this was not for us to do.

7.5.08

On reading the authority to disclose letter very carefully it emerged that the authority is for LCC to request information from DWP but does not actually specify that DWP can give the information. The intention is there but is badly worded. Letter constructed to send to LCC explaining that the information we require before we provide information to them.

27.5.08

T/call from Julie Wisdom@ LCC 532091 wanting explanation of why we returned queries. I explained what had happened and that DPU had checked old authority and said it was not satisfactory. I explained that if they had the authority amended to include incapacities then they may be able to decide if the incap related to the injury - I gave hypothetical eg. of a firemen losing a limb but his med certs being for depression, the depression would probably be as a result of the limb loss but we would not be able to correlate the two. I pointed out that many requests did not even have the details of the injury - I told her that if the injury had been registered with us then IIDB may be able to give them the details providing they had an updated customer authority. Julie asked when we had come to this decision (finalised last week) as some of their requests date back to last year, and if we had actioned them timeously we would have replied to them and they would have the information they wanted. Julie asked if all DWP had been informed - I told her that all the BDC's in the Lancs area had been informed along with IIDB at Barrow. Julie pointed out that they had had replies from us, Burnley and Barrow; I replied that these had been done assuming the authority was ok when in fact it is not. Julie said she would have to look at this again.

12.6.08

Letter received from LCC solicitor querying our stance.

13.6.08

██████████ faxed above letter to ██████████ for her to forward to Policy division.

20.6.08

Acknowledgement letter issued to LCC solicitor.

1.7.08

Letters received from LCC regarding 4 firemen who have all signed new authorities. E-mail to Linda Gilroy to confirm it is ok to start actioning them.

job plus

Part of the Department
for Work and Pensions

Lancashire Pensions Services,
PO Box 100,
County Hall,
Preston,
PR1 0LD



Our Address

Jobcentre Plus
Preston BDC
Pittman Way
Preston
PR11 2BJ

NI Number

Our phone number
Our fax number
Minicom users only
Website
Direct line
Date

0845 608 8524
0845 608 8718
0845 608 8505
www.dwp.gov.uk
01772 841202
21 May 2008

Dear Sir/Madam

Re: Fire fighters and Police Pension Scheme enquiries

I am writing in response to the queries we have received from you regarding the above pension schemes, and the conversation my colleague, Jackie Holden, had with Dorothy Lambert on Tuesday 6th May 2008.

We are aware of the ongoing difficulties you are experiencing with the administration of these schemes, however we have serious concerns about providing you with the information you require due to the restrictions of the Data Protection Act (DPA).

Personal information is usually given to the Department for a specific purpose, and as such attracts a common law obligation of confidentiality. As a general rule, in the absence of consent personal information given for one purpose cannot be used for another purpose or disclosed to a third party.

The Department is a major custodian of personal information and it is important that our customers, individually and collectively, are confident that we hold their personal information securely, and use it only for the purposes for which we are permitted to use it.

In order to maintain this customer confidence, DWP holds that:-

All personal information held by the Department is regarded as confidential. Information will not normally or routinely be disclosed to third parties without the consent of the person concerned.

Therefore, in order for us to be able to assist you with your queries we would need the following issues to be addressed by yourselves:

- 1) The 'Authority to Disclose' letter needs to be amended. The way it is worded at the moment only gives you authority to request the information from DWP - it does not authorise DWP to release the customer's personal information to you.
- 2) At the moment the Authority letter only requests details of benefits that the customer "receives in relation to the injury that resulted in their retirement". Of the 34 queries we have outstanding at the moment, there are only 10 where you have told us what the relevant injury is. Even with these 10 we have no way of knowing that the incapacity given

Barry House is now closed to the public but you can phone us between

Opening Times

Monday, Tuesday, Thursday and Friday
9:00 to 5:00pm

Wednesday

10.00am to 5:00pm

Page 1 of 2

on the medical certificates relates to the injury they sustained in the course of their duties. In the conversation of 6th May, Dorothy Lambert suggested that we should take a judgement call as to whether the incapacity is relevant to the injury sustained. I am sorry, but DWP cannot be expected to do this.

In order to ensure compliance with the DPA, we require a sentence to be added to the Authority form, that is "I give the DWP authority to disclose details of all incapacities and benefits received to Lancashire Pension Services". Once signed by the customer, this would give us authority to release all details of benefits to you. You would then be in a position to make the decision yourselves as to whether or not the incapacity is relevant to the injury sustained.

- 3) If the customer is not prepared to sign an authority to disclose details of all benefits and incapacities, but restricts it to the specific injury, we will be unable to process the request without confirmation from you that the incapacity relates to the specific injury.

I have enclosed the 34 cases that we are unable to process. I would ask that you resubmit each request once you have obtained the customer's signature on a new Authority to Disclose' form, amended as described above.

If you do not have the details of the relevant injury our Industrial Injuries Disablement Benefit Section at Barrow BDC may be able to assist you. They will also require the new "authority to disclose" form signed by the customer. The mailing address is Barrow BDC, DWP Mailroom, Royal Mail Preston, Pittman Way, Preston, PR11 2BJ.

I realise that this may cause you some problems, but it is the only way that we can envisage being able to supply you with the information you require.

If you have any queries regarding this please do not hesitate to contact myself or my colleagues on the above number.

Yours faithfully



Miss Susan Cook,

Incapacity Benefit Team

DWP
Department for
Work & Pensions

Our Address Information and Devolution Policy
DP & FOI (part of Legal Group)
2nd Floor
The Adelphi
1-11 John Adam Street
London
WC2N 6HT

Our fax number 020 7962 8541
My telephone number 020 7712 2418
Email chris.bennett@dwp.gsi.gov.uk

Website www.dwp.gov.uk
Date 16 June 2008

Ian Young,
Deputy County Secretary & Solicitor,
Lancashire County Council,
County Secretary & Solicitor's Group,
PO Box 78,
County Hall,
Preston,
PR1 8XJ

Dear Mr Young,

Firefighters' Compensation Scheme (England) Order 2006 - Disclosure of Personal Information

Thank you for your letter of 15 May and your further explanation of the need for the personal information of some DWP customers who are also claiming from the Compensation Scheme. Thank you also for your follow-up letter of 9 June. I am sorry not to have replied sooner but I have spent some time considering your request in relation to a number of other factors bearing on our data sharing more generally.

The Data Protection Act exemptions you mention could be argued to apply here but they do not, of themselves, confer a power for us to disclose the information. In the absence of a statutory gateway, we would have to rely on our common law power to disclose in the public interest.

When we consider using our common law power, we have to weigh up the benefits against the risks and the likelihood of challenge. Our confidence in our common law powers is not as robust as it once was because of our field being so heavily legislated.

A suitable way forward with this would be for a national approach to be made for a data sharing agreement in relation to the scheme. Presumably it would be possible to garner support for such an approach as I assume that Lancashire CC is not alone in having to address this scenario. Part of any dialogue which might ensue from such an approach would be whether we felt able to have confidence in our common law powers in the context of a national arrangement or whether a statutory gateway covering these disclosures would need to be sought.

You have agreed that such an arrangement would be the most suitable long term solution but had concerns about the time it might take for it to be arrived at. The risks we would associate with using common law powers to provide a more short term solution, for your authority alone, must, I am afraid, outweigh your concerns about the delay in brokering a national agreement.

In your recent letter you have indicated that you have now taken the step of suspending awards pending the supply of the relevant information. You also mention the possibility that the individuals affected may bring legal proceedings (and the possibility that DWP might be involved as an interested party). It will be interesting to see what the Court might make of this scenario in the light of the beneficiaries' refusal to consent to the disclosure being at the heart of the issue. If as a result of any action, the Court orders the Department to disclose, then so be it.

I am sorry I am not able to help further at the moment. We will be ready to hear from you, the LGA, or other umbrella organisation as appropriate, if it is decided to open discussions on a national arrangement.

Your sincerely,

A handwritten signature in black ink that reads "Chris Bennett". The signature is written in a cursive, slightly slanted style.

CHRIS BENNETT

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DWP

Department for

Work & Pensions

Our Address Information and Devolution Policy
(part of Legal Group)
Data Protection & Privacy
5th Floor
The Adelphi
1-11 John Adam Street
London
WC2N 6HT

Our fax number 020 7962 8725
My telephone number 020 7712 2418
Email chris.bennett@dwp.gsi.gov.uk
Website www.dwp.gov.uk
Date 3 June 2010

Mr A Harold
Lancashire Fire and Rescue Service
Garstang Road
Fulwood
Preston
PR2 3LH

Dear Mr Harold,

Thank you for your letter of 21 May. You had previously referred to the possibility of taking action against individuals. As I mentioned, if the Court orders the disclosure of information for the purpose of the legal proceedings, that would, of course, constitute a suitable legal enabler for us to disclose it.

I have explained our legal position in my previous correspondence with you and with Mr Young at Lancashire County Council and do not propose to rehearse it here. It is a shame that the various possibilities for discussion about the disclosure of information have not been taken up. However, presumably your organisations have had their own reasons not to.

If the disclosure of information is to be ordered by a Court, I do not believe you need to think in terms of a named individual being summoned as a witness. If the court considers that certain information is necessary for its proceedings, they would presumably simply order the Department for Work and Pensions, possibly citing the Secretary of State, to disclose it.

In terms of the possibility of me being a suitable individual to name, you will probably be aware that, to comply with the proportionate processing requirements of the Data Protection Act, individual officers of the Department only have access to individual customers' information if they need it to conduct their duties. My legal policy responsibilities do not afford me such access.

I hope that is helpful.

Yours Sincerely,

C BENNETT

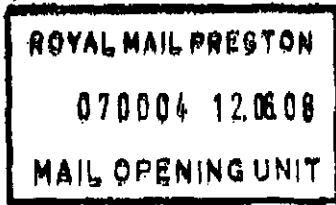
tel (01772) 533531
fax (01772) 534702
e-mail ian.young@lancashire.gov.uk

Incapacity Benefit Team
Jobcentre Plus
Preston BDC
Pittman Way
Preston
PR11 2BJ

Your ref
Our ref LSG10/IY/25/2327
Date: 9 June 2008

To enable us to allocate your correspondence promptly please quote our reference

Lancashire County Council does not accept service by email



Dear :

Firefighters and Police Pension Scheme Enquiries

I am writing in response to your letter dated 21 May addressed to Lancashire Pensions Services regarding the above matter.

Your letter has caused some confusion. We are of course well aware of the Data Protection provisions you refer to and note your comments in relation to the changes which you say need to be made to the "Authority to Disclose" letter to "ensure compliance with the DPA".

I am sure that it will not have escaped your attention that notwithstanding your comments about the need to ensure compliance with the DPA in fact your approach has been to provide the information requested by Pensions Services based on the original "Authority to Disclose" letter which you now say is inadequate and not DPA compliant. It must follow that you believe that you have been in breach of the DPA.

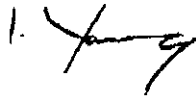
It is not clear why you have suddenly decided to take a different approach given that the DPA has not changed. However, you may wish to note that we had already raised the issue of disclosure of information held by DWP for the purposes of administering the Firefighters' Pension Scheme with the DWP Permanent Secretary on the basis that the DPA allows the disclosure of such information by DWP without requiring consent from individual pensioners.

Ian Young, Deputy County Secretary & Solicitor
County Secretary & Solicitor's Group
P O Box 78 • County Hall • Preston • PR1 8XJ
DX 710928 PRESTON COUNTY HALL



DWP have indicated that they are exploring the legal position and I have been corresponding with the Information & Devolution Policy Division. In the circumstances you may wish to check that the stance you are now taking is endorsed by DWP.

Yours sincerely



Ian Young
Deputy County Secretary & Solicitor

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Rt.Hon. Yvette Cooper M.P.
Secretary of State
DWP
Caxton House
Tothill Street
London
SW1H 9DA

Please ask for: Anthony Harold
Tel: 01772 866964
Fax: 01772 865144
Date: 22 March 2010

Dear Secretary of State,

Injury Pensions Review – Mr.Paul Burns

One of the responsibilities of this Authority is to oversee the administration of the Firefighters Pension Scheme ("The Scheme").

Under the Scheme if a firefighter is injured on duty and has to retire from the Service in addition to an ill-health pension an additional award is made relating to the on-duty element. It is a requirement of the scheme that there should be deducted from this additional element an amount equivalent to any relevant state benefits that "an individual is in receipt of".

Firefighters who retire on injury related pensions are required to advise the pension administrator of any changes in their state benefits as these impact on the scale of the injury payment.

The Audit Commission required this Authority to participate in a data matching exercise to assist in the prevention and detection of fraud. This authority did so under the National Fraud Initiative.

This exercise has revealed that in certain cases there have been overpayments made because the individual concerned failed to notify the Authority that he has received Industrial Injuries Disablement Benefit which has to be deducted.

We have difficulty in accounting accurately the precise value of the liability to this Authority of one individual whose name is Burns in respect of overpayments of injury pension.

We have sound evidence that he must have received a substantial sum by way of overpayment but we do not know the amount of overpayment.

Mr.Burns refuses to disclose the benefit which we know should have been taken into account since 1999. We have made numerous requests for this information to your department, personally and to his solicitors who at the present time have come off the record.

We have made every effort to extract the evidence we require from Mr.Burns but to no avail. At the present time because of the potential size of his debt we have felt it necessary to stop paying his pension for the time being. This is not a satisfactory situation but we have no choice.

320 377

In the above circumstances Mr. Burns is well aware he has been overpaid. With this knowledge he is refusing to return the funds he has misappropriated having failed to notify the Authority of the additional payment which he knows has to be deducted.

DWP obviously hold the information we require although your local offices have previously refused to disclose this on alleged data protection grounds. It is unclear whether the position which your officials have adopted is based upon legal advice. However we are of the view that you are able to disclose the information we require in accordance with s.29 (3) of The Data Protection Act 1988 to enable us to comply with our statutory obligations.

We would ask for your advice as to whether you are willing to assist us so we can comply with our legal duties and make a proper assessment of the overpayments he has received for which he refuses to account.

Yours faithfully,

Anthony Harold
Solicitor

321 378



Mr.P.Holland
Chief Officer
Lancashire Fire & Rescue Service
Garstang Road
Fulwood
Preston
PR2 3LH

**7, Kings Drive,
Preston.
Lancashire.
PR2 3HN.
ENGLAND.
Tel/Fax: +44 (0) 1772 715963.
symbolseeker@tiscali.co.uk**

Thursday, 4th August 2011.

BURNS
My Ref: PB02511.
Your Ref:

High Court Claim Number PR090110.

**The Information Commissioner
and
Related Matters.**

Dear Mr. Holland,

- (1) You will be aware that I have made an Application for Specific Disclosure (CPR Pt 31) to the High Court for documents which include my Personal Record Files and associated files; the Minutes of the CFA Injury Sub-Committee; and *all relevant correspondence relating to this matter* between you and your pension contractor the LCC Pensions Services. Documents without which I cannot mount a comprehensive Defence to your Claim.
This and other Applications currently rest before District Judge I.R. Knifton at Chorley Crown Court for his deliberations.
- (2) In this self same matter in relation to the Information Commissioner you have continuously refused for over a year to release these documents to myself and to other disabled FSV who have made Requests to you both under the FoI and in particular under our individual subject data rights of the DPA. Your actions simply confirm deliberate procrastination with the malignant purposes of the denial and obstruction of Justice.
- (3) The Information Commissioner has once more informed you and all applicants on the 16th May 2011 that his determinations have been made and are final; that the matter is concluded and that you have been informed of the appropriate action which you must take which is to 'revisit' and act 'promptly' on his determinations. In other words to release the documents.
- (4) In spite of this knowledge your response in writing on or about the 1st June 2011 to all the applicants was a deliberately unlawful act of perverse procrastination which also amounted to deliberate malfeasance which ultimately seeks to mislead the Courts. You stated the following ...

"Consequently it is our view that at this time no final determination of our practice regarding your access request has been made. You will appreciate that it in these circumstances it would not be appropriate for us to take the steps you request until this correspondence with the Information Commissioner has been finalised .

Once this correspondence is concluded we will obviously review our position in light of any response received from the Information Commissioner and act accordingly."

- (5) Whilst authoring this letter you were fully aware that the Information Commissioner had yet again sent you his final unpalatable determinations; had told you to 'act accordingly' which was to promptly 'revisit' and 'review' your position and, as a matter of 'priority', to release these documents. The written statements you made to disabled FSVs were simply time wasting mendacious falsehoods.
- (6) Lest you plead doubt or ignorance the Information Commissioner has repeatedly and recently(24th June 2011) in response to my further enquiries confirmed yet again that my subject data and other applicants subject data is held in a 'relevant filing system' for the purposes of the Act and must be released under that Act to myself and all those other applicants who have paid for and repeatedly asked you for the same documentation.
- (7) The Information Commissioner's initial determination, which still stands, was made in September 2010 and you were informed so at that point in time.
- (8) The purpose of this letter is to seek clarification from you *on the record* what your final publically declared position is on the release of this documentation?
You have had more than enough time to 'review' your untenable position; to make a determination; and to 'act accordingly'.
Are you going to release these documents?
A simple yes, or no, will suffice.
- (9) If I do not receive your promptly stated position or the confirmation of your intention to promptly release the documentation by 16:00hrs on Friday 12th August 2011 I must assume you are continuing to refuse my Requests and are thus knowingly prepared to continue to act unlawfully with contempt for the law particularly in the light of the Information Commissioner's directives to you to release them.
- (10) In either event I intend to lodge your response or your failure to respond to me before District Judge Knifton in order to assist him and the Courts in their determination of my Application for Specific Disclosure.
- (11) In the pursuit of Justice I urge you to 'revisit' your intransigence and to 'promptly' release all these documents to myself and to all the other disabled FSVs involved.
It continues to be our strong belief that the release of all these documents will lead to a train of enquiry(Peruvian Guano Test) which will confirm the case of your pension maladministration stretching back for several decades.

Yours Truly,



Paul P. Burns. GIFireE
Divisional Fire Officer (Rtd)

Cc The High Court Claim Number PR090110.



Mr

Please ask for: Bob Warren
Direct Line: 01772 866805
Email: bobwarren@lancsfireandrescue.org.uk
Your Ref: -
Our Ref: BW/LK
Date: 26 March 2009

Dear Mr B

FIREFIGHTERS PENSION SCHEME - INJURY PENSION REVIEW

Further to previous correspondence and discussion in respect of the recovery of the overpayment you have received. I have no record of having received any proposal from yourself.

Since our discussion, we have sought legal opinion from a Queens Counsel about the options that are available to us.

His advice was very detailed but in summary stated the following:

1. The amount of benefits paid by the Department of Work and Pensions must be deducted from the Injury Award to determine the amount of injury pension due.
2. The onus is on the individual to notify the pension provider of changes in the level of benefits paid.
3. The lack of notification has resulted in the overpayments.
4. Pensioners who have been overpaid should not be permitted to benefit at the expense of those pensioners who did obey the rules.
5. The amount of overpayment has to be calculated for each individual and is a precise figure without any element of discretion.
6. The monies involved are public funds. Therefore, full repayment should be made together with interest.
7. There is no grounds for discounting this figure on compassionate grounds as this would amount to an unlawful gift.
8. However, a pragmatic approach is required in terms of recovery of outstanding funds. It would not be permissible to reduce the amount due on "compassionate" grounds but it would be permissible to consider the financial effect on individuals.
10. Where agreement has already been reached then it is not necessary to revisit to add interest to the sums involved.
11. If a short period of repayment is agreed or a lump sum paid then some reduction in the amount of debt could be agreed.

Cont.

Headquarters

Lancashire Fire & Rescue Service
Garstang Road, Fulwood
Preston
PR2 3LH



I would stress this is legal advice we have received, however, before considering adding interest etc the Service would invite you to offer a proposal to refund the overpayments.

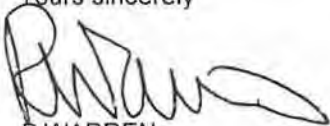
To assist, the Service has considered how the financial position could be considered and I enclose a worked example. This is based on the procedure adopted by Social Services and I have arranged for the experts in these calculations in Social Services to be available to consider individual circumstances.

If as a result of this assessment, it is clear that repayment would not be practicable then this would allow the Service to consider reducing the debt owed.

If I have not received an acceptable proposal by 30 April 2009, then I believe it is necessary to formally comply with Counsel's advice including formally calculating the debt adding interest.

If you require any assistance, please do not hesitate to contact me.

Yours sincerely



B WARREN
DIRECTOR OF PEOPLE AND DEVELOPMENT