

**Mr. P. Cardin**

Our Ref:  
Your Ref:  
Direct Line: (023) 9244 6311  
Ask For: Mr Daniel Lucas,  
Non-practising Barrister.

26<sup>th</sup> January 2011

**BY EMAIL: request-56668-8afa1f50@whatdotheyknow.com**

Dear Mr. Cardin,

**Re: Freedom of Information Request/Compromise Agreements.**

I have been instructed to respond to your further appeal/request for information relating to your request (the "original request") concerning:

- 1) As far as records go back, the annual figures for the total number of current employees / ex-employees of the Council who have signed compromise agreements directly related to the resolving of dispute(s) / grievance(s) / internal and external investigation(s) / whistleblowing incident(s);
- 2) annual figures for the number of current employees / ex-employees who have agreed, following the matter being raised and made conditional as part of a compromise agreement drawn up by the body acting as the Council's legal team, to sign and forgo their right to approach the council in the future with Freedom of Information and/or DPA Subject Access requests under the relevant Acts.

The original request above was received by Havant Borough Council on the 4<sup>th</sup> of January 2011 and a response to this request was sent by Gill Kneller, Executive Head (Marketing and Development) by way of e-mail.

Your further request received by the Council on the 12<sup>th</sup> of January 2011 showed dissatisfaction at the response provided to you by the Council. You explain that you disagree with the Council's conclusions accordingly:

- 1) The Council has not established the thought processes which led to the conclusions;

- 2) 30 other Councils have disclosed details concerning 1 or 2 recipients of compromise agreements without any concern shown for a risk to personal data privacy of the risk of identification;
- 3) No exemption exists within the FOI Act to support the Council's claim.

In light of, and pursuant to the Council's "Information Management User Guide" at paragraph 9.5, your appeal is dealt with by a member of the legal team in the first instance. This is without prejudice to your further right of "review" to a Director of the Council and ultimately the Information Commissioner.

In forming this response I can confirm I have had sight of the original request, the Council's response and your further appeal/request. I have also considered the Information Commissioner's decision concerning *Liverpool Women's NHS Foundation Trust* (17-11-2009/ Ref: FS50202562).

In the *Liverpool* case the Information Commissioner decided that the Trust had correctly redacted names and dates from the Compromise Agreements which concerned the requested information. The Commissioner upheld the correct application of section 40(2) of the Freedom of Information Act 2000 exemption, in that disclosure of names and dates could amount to personal data of living individuals. The salient facts formulating this decision however, illustrate that the requester also had details concerning the actual contents of the Compromise Agreements. I note that your request does not ask for the actual contents of the Agreements. The Commissioner noted also that "*...dates may assist those with local knowledge to attach the text of compromise agreements with an individual who is known to have left the Trust at a certain date. Therefore the Commissioner considers that the withheld information in this case does constitute the personal data of those individuals*" (para 29).

I note the key difference in the *Liverpool* case includes the requestor already having possession of the actual Agreements including their terms. As such the inclusion of names and dates would amount to personal information as quite clearly a person could be identified with all 3 components in place. Your request only asks for a 'breakdown' of the numbers of Agreements annually. As such I disagree with the original finding which exempted the actual numbers of the Agreements per annum. I cannot see how this would amount to disclosure of "personal information" as expressed in section 1(1) of the Data Protection Act 1998 as no individual could be identified from the mere disclosure of numbers of Agreements per annum.

In light of the above I disclose to you the following further information you requested:

<b>Year</b>	<b>Number of Compromise Agreements</b>
<b>2005</b>	<b>1</b>
<b>2006</b>	<b>1</b>

**2007-2009**                      **Nil**

**2010**                              **2**

I trust this assists and concludes this matter. However, if you are still dissatisfied you do have the right to “review” which rests with Mrs Janet Rees, Executive Director, Havant Borough Council, Civic Offices, Havant, PO9 2AX and ultimately the Information Commissioner.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Daniel Lucas', with a stylized flourish at the end.

Daniel Lucas  
Senior Litigation Lawyer