

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 21 June 2011

Public Authority: Portsmouth City Council
Address: Civic Offices
Guildhall Square
Portsmouth
PO1 2AL

Summary

The complainant asked Portsmouth City Council (the council) for detailed accounts information for specific properties. The council provided the complainant with some information but refused to provide everything that had been requested. This refusal was on the basis of the exemption contained at section 12 as to provide the requested information would exceed the fees limit of £450. The Commissioner finds that the council was correct to rely on section 12 and does not require it to take any further action.

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 Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. On 13 May 2010, the complainant made the following request:

".....I request a full and detailed copy of your Buildings Insurance Schedule with St Paul Travelers Insurance Company

.....I require detailed accounts and receipts for the maintenance and upkeep of Settlers and Australia Close and the comprising buildings of

Darwin, Perth, Melbourne and Sydney House for the financial years from April 2007 to April 2009."

3. The council responded on 3 June 2010 in which it refused to provide the requested information on the basis of the exemption contained at section 12 of the Act.
4. The complainant requested an internal review on 7 June 2010.
5. The council responded with the results of the internal review it had carried out in a letter dated 12 July 2010. The council upheld its application of section 12.

The Investigation

Scope of the case

6. On 15 September 2010 the complainant contacted the Commissioner to complain about the way her request for information had been handled. The complainant specifically asked the Commissioner to consider the council's application of section 12
7. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.

Chronology

8. On 11 March 2011, the Commissioner contacted the Council and asked it to provide further clarification of the costs involved in locating, retrieving and extracting the information requested by the complainant.
9. In a letter dated 21 March 2011, the Council informed the Commissioner that it overlooked the complainants request for the copy of the insurance schedule and that to provide it would "breach the business confidentiality of the Insurer". With regard to the accounts information the council went on to provide further arguments in respect of its application of section 12. The Council also informed the Commissioner that it had previously provided maintenance records from Northgate (the software programme used by the Council) and Cleaning finance information for Darwin House for both financial years. The Council said that it had taken 4 hours to locate, retrieve and extract the information it had provided.
10. The Council informed the Commissioner that it had estimated the time it would take to comply fully with this request as being a minimum of 32.5 hours. It did however say that it would be able to provide the complainant with similar information to that already provided, i.e.

communal maintenance records, for the remaining 3 blocks within the fees limit. Based on the time spent in providing the previous information, it was estimated that to supply this further information would take 12 hours.

11. The Commissioner asked further questions of the Council in an email of 22 March 2011.
12. The Council responded to the Commissioner on 29 March 2011 in which it stated that it would provide the complainant with a redacted copy of the insurance schedule.
13. The Council provided a further response to the Commissioner in an email dated 4 April 2011. In this response the Council stated that it would be unable to provide any further information to the complainant within the fees limit.

Analysis

Substantive Procedural Matters

14. Section 12(1) of the Act states that:

"Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates the cost of complying with the request would exceed the appropriate limit."

15. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the "Fees Regulations") provide that the cost limit for non central government public authorities is £450. This must be calculated at the rate of £25 per hour, providing an effective time limit of 18 hours. A public authority may take into account the cost of locating, retrieving and extracting the requested information in performing its calculation. If a public authority estimates that complying with a request would exceed 18 hours or £450, section 12(1) provides that the request may be refused.
16. The Council provided the Commissioner with detailed estimates and explanations as to why it was unable to provide the requested information. It estimated that providing the detailed maintenance accounts would take far in excess of 2.5 days work. Therefore complying with the request would also exceed the £450 cost limit.
17. The issue surrounding what constitutes a reasonable estimate was considered in the Tribunal case *Alasdair Roberts v the Information*

Commissioner [EA/2008/0050] and the Commissioner endorses the following points made by the Tribunal at paragraphs 9 – 13 of the decision:

- *“only an estimate is required”* (i.e. not a precise calculation);
- the costs estimate must be reasonable and only based on those activities described in Regulation 4(3);
- time spent considering exemptions or redactions cannot be taken into account;
- estimates cannot take into account the costs relating to data validation or communication;
- the determination of a reasonable estimate can only be considered on a case-by-case basis and;
- any estimate should be *“sensible, realistic and supported by cogent evidence”*.

18. The activities referred to in regulation 4(3) are:

*“(a) determining whether it holds the information,
(b) locating the information, or a document which may contain the information,
(c) retrieving the information, or a document which may contain the information, and
(d) extracting the information from a document containing it.”*

19. The Commissioner will consider the description of the Council's activities surrounding the request and consider whether the estimate that processing the information would exceed £450 is reasonable or not.

20. The Council provided details of the costs it would incur complying with the request stating:

“It is fundamental to understand that the information held regarding repairs and maintenance is not held in an accounting ledger format. It is held in the Northgate system and separately in records detailing the work and associated costs.

The Northgate system holds base details of maintenance and other issues relating to a block or individual PCC maintained properties.....

.....We don't have receipts and accounts as such for each block. The contractors are paid for the jobs that they do. So each of these blocks would need to have the repairs records pulled and then the costing would have to be found as well. The communal bills such as gas and electric would also have to be pulled.

This not a case of being presented with bills and then we pay them.[sic]

.....the Northgate System would have to be interrogated for each financial year and each block, then the corresponding maintenance records retrieved and then the associated costing located and retrieved to provide the detailed accounts."

21. The Council provided the following estimate:

Darwin House

2007/08 – 70 maintenance records on Northgate and estimating 5 - 10 minutes per record to extract maintenance record and costing would take between 5 – 11 hours.

2008/09 – 68 maintenance records on Northgate and estimating 5 - 10 minutes per record to extract maintenance record and costing would take between 5 – 11 hours.

Sydney House

2007/08 – 36 maintenance records on Northgate and estimating 5 - 10 minutes per record to extract maintenance record and costing would take between 3 - 6 hours.

2008/09 – 44 maintenance records on Northgate and estimating 5 - 10 minutes per record to extract maintenance record and costing would take between 3.5 – 7 hours.

Perth House

2007/08 – 54 maintenance records on Northgate and estimating 5 - 10 minutes per record to extract maintenance record and costing would take between 4.5 – 9 hours.

2008/09 – 63 maintenance records on Northgate and estimating 5 - 10 minutes per record to extract maintenance record and costing would take between 5.25– 10.5 hours.

Melbourne House

2007/08 – 24 maintenance records on Northgate and estimating 5 - 10 minutes per record to extract maintenance record and costing would take between 2 – 4 hours.

2008/09 – 40 maintenance records on Northgate and estimating 5 - 10 minutes per record to extract maintenance record and costing would take between 3.25 – 6.5 hours.

22. The Council concluded:

“PCC has spent an inordinate amount of time to date (certainly over 18 hours) in providing responses and information to [name redacted]”

It also stated that if it were to provide screen shots of every record it held, once this information had been suitably redacted to remove personal data; there was a high probability that the remaining information would be the same as that already provided to the complainant.

23. The Commissioner accepts the explanation provided by the Council as to the actions required to breakdown the information. He considers that the time and resource implications for the Council would be unreasonable if it was to comply with the initial request in the detail specified by the complainant. Therefore the Commissioner upholds the application of section 12(1) in relation to the request.

Section 16 ‘Duty to provide advice and assistance’

24. Section 16(1) provides that:

“It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it”.

25. Section 16(2) provides that:

“Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case”.

26. Where a public authority refuses a request because the appropriate limit has been exceeded, paragraph 14 of the section 45 Code of Practice on

the discharge of public authorities' functions under Part I of the Freedom of Information Act 2000" recommends that the public authority should consider providing an indication of what, if any, information could be provided within the appropriate limit, and also consider advising the applicant that a narrowed or refocused version of the request could be handled within the limit.

27. The Commissioner notes that the Council has provided the complainant with the information it had been able to retrieve, that being basic details of the communal maintenance records for the properties in question, within the fees limit. The Commissioner therefore considers that the council fulfilled the requirements of section 16(1).

The Decision

28. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act, and that it was justified in withholding the information by reference to section 12 (1) of the Act.

Steps Required

29. The Commissioner requires no steps to be taken.

Right of Appeal

30. 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: 0300 1234504

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 21st day of June 2011

Signed

**Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Exemption where cost of compliance exceeds appropriate limit

Section 12(1) provides that –

“Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.”

The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (No. 3244)

The appropriate limit

Regulation 3 provides that –

“(1) This regulation has effect to prescribe the appropriate limit referred to in ... section 12(1) and (2) of the 2000 Act.

(2) In the case of a public authority which is listed in Part I of Schedule 1 to the 2000 Act, the appropriate limit is £600.”

Estimating the cost of complying with a request – general

Regulation 4 provides that –

“(1) This regulation has effect in any case in which a public authority proposes to estimate whether the cost of complying with a relevant request would exceed the appropriate limit.

(2) A relevant request is any request to the extent that it is a request–

(a) for unstructured personal data within the meaning of section 9A(1) of the 1998 Act[3], and to which section 7(1) of that Act would, apart from the appropriate limit, to any extent apply, or...

(b) information to which section 1(1) of the 2000 Act would, apart from the appropriate limit, to any extent apply.

(3) In a case in which this regulation has effect, a public authority may, for the purpose of its estimate, take account only of the costs it reasonably expects to incur in relation to the request in–

- (a) determining whether it holds the information,
 - (b) locating the information, or a document which may contain the information,
 - (c) retrieving the information, or a document which may contain the information, and
 - (d) extracting the information from a document containing it.
- (4) To the extent to which any of the costs which a public authority takes into account are attributable to the time which persons undertaking any of the activities mentioned in paragraph (3) on behalf of the authority are expected to spend on those activities, those costs are to be estimated at a rate of £25 per person per hour."

Estimating the cost of complying with a request - aggregation of related requests

Regulation 5 provides that -

"(1) In circumstances in which this regulation applies, where two or more requests for information to which section 1(1) of the 2000 Act would, apart from the appropriate limit, to any extent apply, are made to a public authority -

- (a) by one person, or
- (b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,

the estimated cost of complying with any of the requests is to be taken to be the total costs which may be taken into account by the authority, under regulation 4, of complying with all of them.

(2) This regulation applies in circumstances in which-

- (a) the two or more requests referred to in paragraph (1) relate, to any extent, to the same or similar information, and
- (b) those requests are received by the public authority within any period of sixty consecutive working days.

(3) In this regulation, "working day" means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a

bank holiday under the Banking and Financial Dealings Act 1971[4] in any part of the United Kingdom.”

Section 16 - Duty to provide advice and assistance

(1) It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.

(2) Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case.