

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 August 2012

Public Authority: Epsom and Ewell Borough Council
Address: Town Hall
The Parade
Surrey
KT18 5BY

Decision (including any steps ordered)

1. The complainant requested information from Epsom and Ewell Borough Council ("the council") relating to outsourcing to solicitors or barristers. The council supplied information relating to three years only and relied upon section 12(1) of the Freedom of Information Act 2000 ("the FOIA"), the exclusion relating to the costs limit, for the remainder.
2. The Commissioner's decision is that the council was not obliged to comply with the request because section 12(1) was engaged. The only reasonable advice and assistance the council could have provided would have been to suggest that the request was refined to the three year period for which it disclosed information. In view of this, the Commissioner has concluded that the council satisfied its obligation under section 16(1) of the FOIA.
3. The Commissioner does not require any steps to be taken.

Request and response

4. The complainant requested information from the council in the following terms:

"I would like to know how much the Council has spent outsourcing to either Barristers Chambers or Solicitors at Employment Tribunals for all Council Staff (including Teaching Staff). Any combination of those below, between 1st August 2000 and the 31 October 2010.

- 1) *For constructive dismissal*
- 2) *Unfair dismissal*
- 3) *One (or more) of the various discrimination claims and/or under the Protection from Harassment Act*
- 4) *Public Interest Disclosure Act 1998*
- 5) *Any other Employment issues, I may have omitted.*

Please name the Solicitors/Barristers that the Council have outsourced to: For example, 2010 Number Name.

I would request that you include VAT in the figures. Please provide the figures in the following format e.g. 2006 – NUMBER HERE; 2007 – NUMBER HERE; 2008 NUMBER HERE; 2010 – NUMBER HERE; etc, thus making it easier for one to read and to ensure there is no misunderstandings.

Please also send this information as 'calendar years'.

Please note that I do not seek or require any personal information such as names and addresses – only the total figures”.

5. The council asked for clarification on 17 February 2011 and the complainant provided this on 14 March 2011.
6. When the council responded on 29 March 2011, it said that it had attached the details of the figures for the years 2008, 2009 and 2010. However, the council said that payments relating to previous years are on an archive system and the council does not store details of the specific cases. It said that it would exceed the appropriate limit to comply with this part of the request and section 12 is therefore engaged. The council invited the complainant to narrow her request.
7. The complainant replied on 13 April 2011 and said that she would like the council to provide the information that it could within the appropriate limit.
8. The council responded on 25 January 2012 and it said that it had closed the case because it had not received the complainant's response within three months.
9. On 5 February 2012, the complainant replied and referred to the fact that she had responded on 13 April 2011. She questioned the application of section 12 to her original request and said that she now wanted the council to provide the information that she originally requested.
10. The council replied on 10 February 2012. It said that it wished to maintain its section 12 refusal. It said that it was not obliged to work

up to the appropriate limit because the complainant had not submitted a refined request.

Scope of the case

11. The complainant asked the Commissioner to consider whether the council had correctly refused to comply with the request using section 12(1) and whether it had satisfied its obligations under section 16(1).

Reasons for decision

Section 12(1): Costs limit

12. This exclusion states 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.
13. When considering whether section 12 applies, the authority can only take into account certain costs as set out in Statutory Instrument no 3244 "The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004". Paragraph 4(3) states the following:
- "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".*
14. When estimating the cost of a staff member carrying out the above activities, the costs are taken to be at a rate of £25 per hour which equates to 18 hours work.
15. The council explained to the Commissioner that the legal department was not involved in employment matters prior to 2008, as the Chief Executive dealt with these matters directly with the HR department. The Chief Executive and HR staff members from that time have since left the authority's employment and cannot therefore be consulted. The

council said that in order to comply with the request, it would need to look at each invoice individually for the stipulated period and scrutinise each one to see what it was for. The council indicated that the invoices would relate to various “cost centres” that correspond with different departments at the council. It commented that without being able to consult any staff from that time, it had no way of knowing under which cost centre or cost centres the information may have been recorded if indeed, any information was even held. If necessary, the council would also need to search for other associated paperwork to support the invoice. The council said that historic invoices are stored as scanned images in processed date order. The only search facility is by transaction number. The council was satisfied that looking at all of the council's invoices individually over a number of years would exceed the appropriate limit. The council also added that there was no pre-set budget for employment matters, and any spend in this area is not recorded in its accounts.

16. The Commissioner asked the complainant if she could explain why she did not accept that section 12(1) was engaged in this case and she commented that if the above was true, the council could not be said to be keeping clear financial records. The Commissioner understands that this is the complainant's opinion based on the response she received but that has no bearing on the question of whether or not the council has made a reasonable estimate in this case.
17. The Commissioner considered the council's description of how it holds the information and there was nothing to suggest that the council had not arrived at a reasonable estimate of how long it would be likely to take to comply with the request given the way the information is held.

Section 16(1): Duty to provide reasonable advice and assistance

18. If the authority wishes to maintain that section 12 is engaged, it then needs to consider its duty to provide advice and assistance under section 16 of the FOIA. The Code of Practice under section 45 of the FOIA states the following on the subject:

“Where an authority is not obliged to comply with a request for information because, under section 12(1) and regulations made under section 12, the cost of complying would exceed the appropriate limit (i.e. cost threshold) the authority should consider providing an indication of what, if any information could be provided within the cost ceiling. The authority should also consider advising the applicant that by reforming or re-focusing their request, information may be able to be supplied for a lower or no fee”.

19. The Commissioner notes that when the council responded to the request, it supplied information relating to the years 2008, 2009 and 2010. This information was not part of the council's archived system. The council applied section 12(1) to the remainder of the request. Having considered the specific circumstances of this particular request, the Commissioner considered that section 12(1) was engaged in respect of the complete request. In view of the way in the council holds the relevant information the Commissioner considers that the only reasonable advice and assistance that the council could have given regarding refining the request would have been to suggest restricting it to the 2008, 2009, 2010 material. Given that the information for those years was disclosed to the complaint the Commissioner has concluded that the council satisfied its obligation to provide reasonable advice and assistance under section 16(1) in this particular case.

20. The Commissioner would like to highlight that in the particular circumstances of this request, he is satisfied that the actions taken by the authority represented a reasonable approach, given how the relevant information is held. However the Commissioner would generally expect public authorities to provide advice and assistance to a requester to help them to refine their request before providing more limited information. This is because in many cases, there may be more than one way in which to refine the request and therefore it is reasonable and appropriate to give the requester the choice about which information they are most interested in receiving.

Right of appeal

21. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

22. 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.
23. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Jo Pedder
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