

Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)
Decision notice

Date: 10 July 2012

Public Authority: Liverpool City Council
Address: Municipal Buildings
Dale Street
Liverpool
L2 2DH

Decision (including any steps ordered)

1. The complainant requested information from Liverpool City Council ("the council") about the amount of money spent on departments relocating to other premises. The council refused to comply with the request on the basis that to do so would exceed the appropriate limit in costs set by section 12(1) of the Freedom of Information Act 2000 ("the FOIA").
2. The Commissioner's decision is that the council correctly applied section 12(1) however it should have stated that it did not hold all of the information requested by the complainant. It therefore breached section 1(1)(a) and 10(1) of the FOIA. The Commissioner has also found that the council breached section 16(1) of the FOIA by failing to offer reasonable advice and assistance.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - The council should engage directly with the complainant in accordance with its obligations under section 16(1) and offer her the opportunity to obtain information that the council can extract from its budget by working up to the appropriate limit. This may be within the scope of the request (which relates to moves between premises) or within the scope of a refined request (for example, one which relates to all relocations, including internal ones).
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court

pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 14 December 2011, the complainant requested information in the following terms:

“How much money was spent on departments relocating to other premises? Please include any overtime given to staff; the removal company and any other organisations that assisted with the relocation. Please include VAT in the final figures. I require the total cost not a breakdown of figures.

Please provide the figures from April 2004 to April 2011”.

6. The council responded on 16 January 2012. It said that it could not provide the information requested since to do so would cost more than the appropriate limit under section 12 of the FOIA.
7. The complainant responded on 21 January 2012 and expressed dissatisfaction with the response. She also reminded the council of its duty to offer reasonable advice and assistance under section 16 of the FOIA.
8. The council responded on 13 February 2012. It said that it wished to maintain its position and it provided more details of the work that would be involved.

Scope of the case

9. The complainant asked the Commissioner to consider whether the council has correctly relied on section 12(1) and if so, whether it had satisfied its obligation to provide reasonable advice and assistance in accordance with section 16(1).

Reasons for decision

Section 1(1)(a) – Was all the information held?

10. Section 1(1)(a) of the FOIA imposes a general obligation on public authorities to state whether it holds recorded information of the description specified in a request for information. In accordance with

section 10(1), it must state this within 20 working days following receipt of a request for information.

11. The council explained to the Commissioner that the only place where the information requested would be recorded is in its budget. This is made up of a variety of codes and free text descriptions of the expenditure that individual staff input. Further information may be contained in associated invoices. It said that there are no "set rules" about how to record the expenditure and the descriptions and invoices may or may not include information necessary to respond to the request, including whether the expenditure was for a move between premises or an internal move or even whether it was for a move at all. The council provided the Commissioner with a list of 17 codes from its budget, all of which could feasibly contain expenditure relating to moves prior to the years 2008/09. During the years 2008/09, a specific code for relocations was created but this does not differentiate between internal moves and moves between different premises.
12. The council indicated that it believed that it would be able to identify some expenditure relating to moves between premises and it therefore accepted that it held the information. However, it was clear that there would be occasions where money had been spent on a move and the council would not be able to identify that this was the case. In those cases, the information would not be held for the purposes of the FOIA. It therefore was not the case that the council held all the information requested by the complainant. The council breached section 1(1)(b) and 10(1) by not making this clear.

Section 12(1): Costs limit

13. 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.
14. 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”.*

15. 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.
16. As already indicated in paragraph 11 above, prior to the years 2008/09, the council would have to look at a variety of different codes under its budget and read the descriptions of the costs under those codes to try to ascertain whether those descriptions revealed whether the expenditure was relevant to the request. It would also not necessarily be apparent from an associated invoice what the cost was for. A specific code for relocations was created during the years 2008/09 but it does not differentiate between internal moves and moves between premises. The council commented that it had considered looking at invoices relating to the main external providers that handle relocations however it had identified several and those costs would also include removal costs as a result of compulsory purchase activity. The council said that it had estimated an average time of 3-5 minutes to consider each “line” of its budget under a particular code. The council said as an example, it had looked at the number of lines against a couple of codes from two years and there were 3000 against one and 14000 against another. Based on this, it had estimated that compliance with the request would exceed the appropriate limit.
17. Given the above description of the council’s budget, the Commissioner was satisfied that the estimate was a reasonable one and that compliance with the request in its current form would exceed the appropriate limit. Therefore section 12(1) was correctly applied by the council in this case.

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. When the Commissioner questioned the council about how it could demonstrate that it had offered reasonable advice and assistance to the requester in this case, it responded as follows:

"...we considered a number of ways to try to assist [the complainant] with her request albeit that the level of detail in relation to our efforts had not been conveyed to [the complainant]".

20. The Commissioner would like to highlight that offering advice and assistance is a part of a process of engagement with the requester. The requester must know what options there may be to help her to understand what information could be provided within the appropriate limit and whether she could refine her request in order to obtain information within the appropriate limit. It is clear to the Commissioner that there were some options that could have been offered to the complainant. For instance, the council could have offered to work up to the appropriate limit within the confines of the current request, starting with the specific code for relocations that existed by 2008. It could also have offered to work up to the appropriate limit within the confines of a refined request, perhaps to include entries for internal moves under the relocation code that existed by 2008. In the Commissioner's view, it would have been reasonable for the council to offer these options. The Commissioner has therefore found that the council breached section 16(1).

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

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