

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 3 January 2013

**Public Authority:** Oldham Metropolitan Borough Council

**Address:** Civic Centre  
West Street  
Oldham  
OL1 1UT

#### **Decision (including any steps ordered)**

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1. The complainant requested information from Oldham Metropolitan Borough Council ("the council") relating to the number of people charged in police station custody areas by the council during the years 2003 until 2011. The council said that some information was not held. Regarding the information that was held, the council said that it could not be provided without exceeding the costs limit under section 12(1) of the Freedom of Information Act 2000 ("the FOIA").
2. The Commissioner's decision is that the council correctly relied on section 12(1). It breached section 16(1) by failing to offer reasonable advice and assistance.
3. The Commissioner does not require any steps to be taken because the council has now provided reasonable advice and assistance.

#### **Request and response**

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4. On 19 October 2011, the complainant requested information from the council in the following terms:
  - "1. The number of people charged in Police Station Custody Areas by Oldham Metropolitan Borough Council by Trading Standards Officers in 2003*
  - 2. The number of people charged in Police Station Custody Areas by Oldham Metropolitan Borough Council by Trading Standards Officers in 2004*

*3. The number of people charged in Police Station Custody Areas by Oldham Metropolitan Borough Council by Trading Standards Officers in 2005*

*4. The number of people charged in Police Station Custody Areas by Oldham Metropolitan Borough Council by Trading Standards Officers in 2006*

*5. The number of people charged in Police Station Custody Areas by Oldham Metropolitan Borough Council by Trading Standards Officers in 2007*

*6. The number of people charged in Police Station Custody Areas by Oldham Metropolitan Borough Council by Trading Standards Officers in 2008*

*7. The number of people charged in Police Station Custody Areas by Oldham Metropolitan Borough Council by Trading Standards Officers in 2009*

*8. The number of people charged in Police Station Custody Areas by Oldham Metropolitan Borough Council by Trading Standards Officers in 2010*

*9. The number of people charged in Police Station Custody Areas by Oldham Metropolitan Borough Council by Trading Standards Officers in 2011 up to October 2011".*

5. The council responded to the complainant on 15 November 2011 and said that it did not hold all of the information requested. It explained that it only retains records for six years and therefore would no longer hold the information requested in points 1 and 2. It said the information held in respect of point 3 is likely to be incomplete. In respect of the remaining points, the council confirmed that it holds the information however it said that to comply would exceed the cost limit under section 12 of the FOIA. The council said that it had estimated that it would take more than 18 hours to respond to the request because it would involve a manual search of hundreds of files.
6. The complainant expressed dissatisfaction with the council's response on 1 December 2011. He said that the information should be readily available.
7. The council completed an internal review on 22 December 2011. It said that it wished to maintain its position and it provided some further details about what would be involved in complying with the request.

## Scope of the case

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8. The complainant complained to the Commissioner on 31 March 2012. The complaint was not initially clear. The Commissioner sought clarification from the complainant and said that if he did not specify otherwise, the Commissioner would only consider whether the council had correctly relied on section 12(1). The complainant did not specify any other complaint.

## Reasons for decision

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### Section 12(1) – Costs exceed appropriate limit

9. 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. Under the FOIA, the appropriate limit is £450 for local authorities.
10. 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".*
11. 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.
12. The council explained to the complainant that compliance with the request would involve a manual review of approximately 600 investigation files. In its internal review, the council provided some more information about why it had estimated that compliance with the request would exceed the appropriate limit.

13. The council explained to the Commissioner that the basis of its refusal under section 12 was focused on the time it would take to locate the information and extract it from the relevant files. The council provided the Commissioner with a detailed account of the way it holds the relevant information to justify its refusal under section 12. Those details have been set out below.

### **Trading standards files**

14. The council said that each file exists as both an electronic record in a database and a hardcopy file. In relation to the hardcopy file, the council said that there is no legal obligation for such files to exist in a certain form or contain specific information, however there is a requirement to retain any material obtained or produced during an investigation. The council explained that when charges are brought at a police station a copy of the "charge sheet" is given to the trading standards case officer. This document will then be retained in the hardcopy file.
15. The council said that the files can vary in size and contents by a significant amount depending on the complexity of the case. It said that the files range in size from a single folder to multiple lever arch binders. However, it said that the bulk of any file will be comprised of three sections: the witness statements, witness exhibits and unused material. A charge sheet (if present) would be located in the exhibits section or, more likely but not exclusively in the used material section. The council said that each of the three sections will be accompanied by a schedule identifying the contents of those sections. Therefore, it should not be necessary to look at every document in the case. However, the council highlighted that it would still be necessary to look at the relevant sections of the file, and since there are no tabs, the location of each of the relevant section would not be immediately apparent. Furthermore, the schedules themselves can sometimes run to many pages depending on the nature of the case.
16. In relation to the electronic records, the council said these are held on a database. The council said that the electronic records will often be less detailed than the hardcopy file and there is no guarantee that the information being sought by the complainant would even be recorded electronically. The council said that the details of each case are held by means of a combination of codes, numbers and free text on the database. It is possible to search any of the pre-defined codes so if there was a code that was the same for all cases where there had been charging at the police station the council could use that in a helpful way to limit the amount of hardcopy files that need to be searched. However, the council said that there is no specific code to indicate this.

The council explained that the numbers are connected to relevant dates relating to the case; namely the date the record was created, the date it was closed, the date of the offence and the date of the court hearing. The council highlighted that although it could filter results using these dates, in instances where charging at a police station took place, none of these dates would necessarily indicate the relevant date so would be of little assistance. The council said that there is no way of searching free text for a particular word or phrase.

17. The council also highlighted to the Commissioner that in relation to both electronic and hardcopy records, it would not be simple matter to identify relevant records from the various years specified by the complainant. It explained that the records are numbered consecutively based on numbers generated by the database when the electronic record is created. The council said that historically these records are often created towards the end of an investigation and as such, the numbering is not always helpful in terms of identifying which year the relevant record relates to. The council said that if there had been charges in a particular case, these could have taken place at any time from the date of the offence. Furthermore, reference numbers will occasionally be "reallocated" adding another layer of difficulty. The council explained that the database will use the next consecutive reference number unless a lower number becomes available due to an earlier record having been created in error and subsequently deleted.
18. The council told the Commissioner that the earliest record for which it still retains a hardcopy is reference number 186 created on 29/03/05. The number of records created between that date and the end of October 2011 is 599. Approximately 10% of these records were created by other sections so that leaves approximately 540 trading standards cases to review. The council said that in order to respond to the request, it would need to look at all these records manually, check for a charge sheet, note the charge date and collate the results into the relevant years. The council said that even assuming a conservative estimate of 5 minutes per record to undertake that task, compliance with the request would clearly exceed the appropriate limit of 18 hours.

### **Legal Services records**

19. The council said that its prosecution files are given a specific code based on the client. The code for Trading Standards is PR01 and is followed by a consecutive numbering system. Prior to September 2006, the case numbering system was less precise and most cases were simply given the reference PRO1 regardless of whether they were trading standards cases or not. From September 2006, the council had numbered up to PR01/144. The council is now up to PR01/86. Prior to

2006, it would be necessary to examine each PRO1 file to determine whether it is in fact a trading standards prosecution file.

20. The council said that there is no standard way of organising the files however typical information would include; witness statements and exhibits, unused material by the investigating officer, costs information, correspondence with the court or defendant, correspondence with the investigating officer or external barrister if one is instructed. The council said that it would need to locate a copy of the summons created by legal services and signed by the court or a copy of the charging sheet from the police station provided to legal services by trading standards. The relevant documents will usually be located towards the back of the prosecution file but they are often held with other documents in several lever arch files. The council explained that the information on the files may not necessarily be neatly divided into separate sections and therefore the location of the relevant information would not be obvious.
21. The council also explained that the cases are opened on an electronic case management system, mainly for time recording purposes, and it is possible to save certain documents onto that system such as a summons. However, not all documents will be saved electronically on the system and in practice it is rarely used in this way as evidenced by the fact that many of the standard templates are out of date.
22. The council said that there are two ways of commencing a prosecution; by charging the defendant in the police station (resulting in the production of a charge sheet as already mentioned) or by serving a summons on the defendant. For a person to be prosecuted by way of a summons, the court has to sign a summons prepared by the council. The council said that if a summons had been produced using the case management system, a copy could be located quickly because it would be saved in the electronic history of the particular file. However, the council said that it would still be necessary to look at the hardcopy file to find a signed copy from the magistrate's court so that the council could be certain that the electronically produced summons was actually used in the particular case and the case did not in fact involve charging at a police station. The council said that it is possible that the summons may have been produced in error on the case management system and not deleted subsequently.
23. The council further explained that legal files are retained for 6 years after they are closed. After closure, they are stored in an underground car park and someone would have to retrieve them. The council said that the filing codes indicate that there may be approximately 32 prosecution files for trading standards that are in the archives. The council said that once the files had been located, retrieving them would

also take additional time. It estimated an average time of at least 20 minutes per file and even adopting a conservative estimation, the work involved would still clearly exceed the appropriate limit of 18 hours.

24. The Commissioner was satisfied that in this case the council had clearly been able to demonstrate that compliance with the full request would exceed the appropriate limit of 18 hours. The council has been able to provide a detailed account of how the relevant hardcopy and electronic records are held, and the time-consuming nature of locating, retrieving and extracting the relevant information in relation to the full request is readily apparent. The Commissioner therefore accepts that section 12 was correctly applied in this case.

### **Procedural issues**

25. The council failed to offer any reasonable advice and assistance in this case, once it had determined that section 12 was engaged. This is not in accordance with the council's duty under section 16 of the FOIA. However, appropriate advice and assistance has now been offered.
26. The council wrote to the complainant during the Commissioner's investigation outlining more details of the estimated time it would take per file to search the trading standards files. It offered to work up to the appropriate limit of 18 hours, in view of the difficulties in being precise about how many files could be searched because of the variable nature of the files. The council said that it could search the records by commencing with the lowest numbered or highest numbered according to the reference numbers allocated by the council's electronic database and it explained to the complainant why it could not search more precisely by specific years. In view of the council's description of the way it holds the relevant records, the Commissioner accepts that the council has offered reasonable advice and assistance to the complainant.



## Right of appeal

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27. 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](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

28. 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.
29. 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**  
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**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
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