

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 7 May 2013

**Public Authority:** West Sussex County Council

**Address:** County Hall, Chichester,  
West Sussex, PO19 1RQ

#### Decision (including any steps ordered)

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1. The complainant has requested information relating to 20 mile per hour speed limit schemes.
2. The Commissioner's decision is that West Sussex County Council (WSCC) has correctly applied section 12(1) of the FOIA.
3. The Commissioner does not require any steps to be taken as a result of this decision notice.

#### Request and response

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4. On 30 July 2012, the complainant wrote to WSCC and requested information in the following terms:

*Could you please supply me with copies of any internal or external documents, reports or communications made or received by the council, its members and officers (including the County Local Committees) on the subject of 20 mph speed limit schemes (ie 20 mph speed limits which are not accompanied by traffic calming measures). This should include any documents, reports or communications associated with developing or implementing council policy. This should cover a period from Jan 2010 to the current date.*

*Please note that I do NOT require to receive copies of public responses to the 20mph consultation questionnaire in Chichester.*

*Please include copies of material which you hold in the form of paper and electronic records including emails.*

5. WSCC wrote to the complainant on 2 August 2012 advising that it did hold information that was within the scope of the request. However, it estimated that it would cost more than the appropriate limit of £450. WSCC asked the complainant if he was able to narrow the scope of his request.

6. The complainant responded the same day and revised his request to:

*If we limited the request to email communications and documents attached or linked to those email communications then this could be done with a simple search of your email systems. I would have thought that this would take far less than the 2 ½ working days available for a request.*

7. WSCC responded on 20 August 2012. It stated that it had dealt with the request under the Environmental Information Regulations 2004 (EIR) and that it had applied regulation 12(4)(e) which states that a public authority may refuse to disclose information to the extent that the request involves the disclosure of internal communications. Therefore the information would not be disclosed.

8. Following an internal review WSCC wrote to the complainant on 29 August 2012. It revised its position in terms of the legislation under which it had dealt with the request and confirmed that it should have been dealt with under the FOIA.

9. WSCC further stated that to comply with the request would "*..require far more time and effort than the published scheme allows*" i.e. section 12 of the FOIA (costs of compliance exceeds the appropriate limit).

10. The complainant wrote to WSCC on 30 August 2012 and stated:

*With regard to the my FOI request being too general? then this seems to be a problem specific to WSCC as other local authorities have not found similar requests to be so. In order to assist then you need to outline the methods which you may have for searching your email servers for information on a particular subject. I note that you use Exchange Server 2007 and I presume that you do have a search? utility for use when FOI requests are made. In which case, how much officer effort and time does it take to conduct a search and is this specific to a single mailbox or multiple mailboxes?*

11. WSCC responded and advised that it was happy to discuss with the complainant what information was required in an attempt to refine the request further. However, it was not prepared to discuss its IT infrastructure.

12. There followed a series of emails where the complainant queried WSCC's IT capability in an attempt to be able to modify his request and WSCC declined to discuss its IT arrangements.

## **Scope of the case**

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13. The complainant contacted the Commissioner on 24 October 2012 to complain about the way his request for information had been handled. The complainant advised that he had successfully made requests in exactly the same format to other local authorities.
14. In further correspondence with the Commissioner, the complainant referred to the Section 45 Code of Practice and the Section 46 Code of Practice. These shall be addressed under 'Other matters' at the end of this decision notice.
15. The Commissioner considers the scope of this case to be to determine if WSCC has correctly applied section 12(1) of the FOIA.

## **Reasons for decision**

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### **Section 12**

16. Section 12(1) of the FOIA states:

*"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."*

17. The appropriate limit is £600 for central government and £450 for all other authorities, as per regulation 3 of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.
18. Regulation 4(3) provides that when estimating whether complying with a request may cost more than the cost limit, a public authority can consider the time taken in:
  - determining whether it holds the information;
  - locating the information, or a document which may contain the information;
  - retrieving the information, or a document which may contain the information; and
  - extracting the information from a document containing it.

19. Regulation 4(4) provides that the calculation is to be estimated at a rate of £25 per person per hour. Section 12 of the FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate cost limit which, in this case, is £450 as laid out in section 3(2) of the fees regulations.
20. As the costs are calculated at £25 per person per hour for all authorities regardless of the actual cost or rate of pay, the limit will be exceeded if the above activities exceed 18 hours.
21. The task for the Commissioner here is to consider whether the estimate of cost made by WSCC for complying with this request was reasonable. In forming a conclusion on this point he has taken into account the reasoning provided by WSCC for its estimate, as well as counter arguments advanced by the complainant.
22. WSCC stated that it had estimated the time it would reasonably take to comply with the request in determining if the information was held, locating it from various sources and individuals, retrieving the information and extracting the information from documents or files (electronic and manual). However, no precise calculation was given to the complainant.
23. WSCC further explained that it was a sensible and realistic estimate based on knowledge of how many officers and Councillors would need to be contacted as definitively holding relevant information, and was based on how that information was stored and could be located, retrieved and extracted.
24. WSCC stated it was determined that the information was held across the Council in a wide number of locations, in email boxes and folders by an identified number of 47 officers and Councillors as a minimum. There was also information in shared drives which do not belong to individual staff members or Councillors.
25. WSCC went on to say that as it was evident the appropriate limit may be far exceeded, a sampling exercise was undertaken prior to the decision to apply section 12.
26. WSCC stated that looking at one single officer's email folder showed the amount of information held was 104MB (not including archived material). At the point when it became evident that to comply with the request would engage section 12, the complainant was approached to refine his request, with help if necessary.

27. Although the complainant did hone his request, WSCC stated that it was still extremely wide-spread and far-reaching. Further attempts were made by WSCC to assist the complainant in refining his complaint further, for example asking if he put his request in context as this may help to distil the information sought and could help to bring his request within the appropriate limit.
28. WSCC stated that the complainant maintained his request would remain as it currently stood and stated that in his belief a "straightforward IT exercise" would elucidate this information. WSCC explained to the complainant that its IT capabilities may differ from other authorities and he was invited to visit County Hall to discuss his specific request.
29. Further enquiries were made by WSCC within the IT department to establish precisely how substantial the undertaking would be to secure the information. It was confirmed that the request, albeit revised, remained "an enormous" endeavour involving information relative to the request being held by over 40 officers across the county. The IT department advised that due to limitations on IT systems, searches could only be made of single folders in the email database.
30. The Commissioner sought further clarification from the Council and asked WSCC:
  - Did you consider contacting the 47 individuals identified, for example by email, to check if they held any relevant information?
  - If so, why was this not considered to be an effective method of retrieving any relevant information?
  - If not, would this be a possibility? Please explain why this would not be possible.
  - Can you provide an estimate of the time it would take to search one individual's folders for any relevant information? The term 'an enormous endeavour' does not really convey what is required by the FOIA in terms of section 12.
    - You have stated that a sampling exercise was undertaken. Please provide further detail relating to this;
      - was any actual search for information carried out?
      - how was this done i.e. physical or electronic?
      - how long did this take?
      - at what point did it become 'evident to comply with the request would engage section 12'?

31. WSCC confirmed that all the identified individuals were contacted by email to notify them of the request and secondly to advise that there would need to follow an exercise in locating, retrieving and extracting relevant information. WSCC stated that several officers expressed the view that the scope of the request was immensely broad and wide-spread as, in relation to Chichester, it took into account historic traffic calming schemes and measures which would fall under the umbrella of the request.
32. WSCC stated that only limited responses were received from the individuals contacted, consequently enquiries were made of IT capabilities to effect a search, following which a locating, retrieving and extracting exercise would need to be carried out. It was determined, having sought advice from IT Services, that to comply with the terms of the request would result in the appropriate limit being exceeded.
33. WSCC explained that providing an estimate of the time it would take to search one individual's folders for any relevant information is difficult to assess as there is a huge variance between the 47 individuals identified in terms of the extent of their involvement in the relevant project.
34. WSCC further explained that the 20mph schemes rely on a number of officers and elected councillors working together and collaboratively on separate and isolated parts of the project. It had identified one officer working closely on the 20mph Chichester scheme alone, and not having involvement on historic schemes or other current live projects, and has estimated it would take 8 hours to sift emails, electronic folders, team drives, shared drives and physical paper folders to retrieve the relevant information. IT staff endorsed this position.
35. In terms of the sampling exercise, WSCC confirmed that the officer leading the 20mph Chichester Scheme did carry out a sample search to establish the level of work involved, and if determined to be extensive, to obtain a representative illustration of the amount of time required. This was done in conjunction with the email sent to all identified relevant officers and elected councillors by both email and hard copy, and it estimated this task took approximately 3 hours to complete. The outcome was that, using both the time spent effecting a search for relevant information in one identified individual's data, combined with taking advice from IT Services, and looking broadly at the number and level of involvement in all the different parts of the Chichester project, the decision that section 12 was engaged was taken after concluding the sampling exercise.
36. Based on the submissions from WSCC it appears that in order to locate, retrieve and extract the information would be far in excess of the appropriate limit i.e. 47 individuals x 8 hours = 376hours x£25 =

£9,400. Even allowing for the fact that it may take all the individuals only 1 hour to carry out the search, would still take the request beyond the appropriate limit.

37. Having considered all the evidence available to him, the Commissioner is satisfied that WSCC's estimate that it would take more than 18 hours work to answer the request is based on a reasonable assessment of the activities that are allowed by Regulation 4(3) of the Fees Regulations. He accepts the estimate in this case and therefore finds that WSCC applied section 12(1) correctly.

## **Other matters**

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38. The complainant has raised further matters in relation to the council's obligations as a public authority under the Section 45 Code of Practice and the Section 46 Code of Practice.
39. It should be noted that both the Section 45 and 46 Codes of Practice are non-statutory and provide guidance to "*all relevant authorities as to the practice, which it would, in the opinion of the Lord Chancellor, be desirable for them to follow...*".
40. However, the Commissioner would like to draw WSCC's attention to the following:

### **Section 45**

41. The complainant highlighted his concerns to the Commissioner that the internal review procedure was not followed correctly. In particular that it had not been considered by a more senior person.
42. The Commissioner notes that the original request was dealt with a Business Practitioner. This decision was reviewed by the Director of Communities and Infrastructure, who acknowledged that the request should have been considered under FOIA rather than EIR and was subsequently processed under FOIA.
43. There was no further internal review carried out following the reclassification of the request from EIR to FOIA and subsequent refusal notice issued by WSCC on 29 August 2012.
44. As indicated above, there is no statutory requirement for an internal review to be carried under FOI, although the Commissioner encourages public authorities to review their decision making by using this process.

45. **Section 46**

46. (8.3) As part of this process authorities should consider whether any of these records should be subject to particular controls so as to ensure their evidential value can be demonstrated if required by showing them to:

d) be usable, that is, they can be retrieved, read and used.

47. (9.3) Records systems should be designed to meet the authority's operation needs and using them should be an integral part of business operations and processes. Records systems should have the following characteristics:

b) They should enable a quick and easy retrieval of information. With digital systems this should include the capacity to search for information requested under the Act.



## Right of appeal

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48. 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)

49. 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.
50. 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 .....**

**Pamela Clements**  
**Group Manager, Complaints Resolution**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**