

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 September 2014

Public Authority: Bury Council
Address: Town Hall
Knowsley Street
Bury
Lancashire
BL9 0SW

Decision (including any steps ordered)

1. The complainant has requested information relating to Penalty Charge Notices. Bury Council stated that the cost of dealing with the request would exceed the appropriate limit and refused to comply, citing section 12(1) of the FOIA. During the Commissioner's investigation the council disclosed some of the requested information to the complainant.
2. The Commissioner's decision is that Bury Council:
 - Failed to provide some of the information in 20 working days and breached section 10(1) of the FOIA;
 - Failed to issue a proper refusal notice and breached section 17(5) and section 17(7) of the FOIA;
 - Correctly applied section 12(1) to the information requested in part 2 and 3 of the request.
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 27 March 2014, the complainant wrote to Bury Council (the "council") and requested information in the following terms:

- "1. How many Penalty Charge Notices have been issued since 11th August, 2008, where the notice was specifically designated as "Parked without clearly displaying a valid pay & display ticket or voucher (06)", and the area in which the vehicle was parked allowed for an initial free period, such as in Silver Street.*
- 2. What was the total amount of money paid by the recipients of these notices?*
- 3. How many of these notices were paid within 14 days?"*
5. The council responded on 15 April 2014 and stated that, relation to each part of the request, the cost of compliance would exceed the appropriate limit. In refusing to provide the information the council did not cite the specific section of the FOIA upon which it was relying. The council did not state whether or not it provided an internal review procedure for addressing complaints about its handling of requests for information.

Scope of the case

6. On 23 July 2014 the complainant contacted the Commissioner to complain about the way their request for information had been handled.
7. Subsequent to a complaint being submitted to the Commissioner, the council conducted an internal review of its handling of the request. The review outcome (issued on 8 August) disclosed the information in part 1 of the request and confirmed that the remaining information was being withheld on cost grounds under section 12(1) of the FOIA.
8. The Commissioner agreed with the complainant that his investigation would consider whether section 12(1) was applicable to parts 2 and 3 of the request.

Reasons for decision

Section 10 – duty to provide information within 20 working days

9. Section 1 of the FOIA requires a public authority to confirm or deny whether the information specified in a request is held and, where it is, to provide it to a requester.

10. Section 10 of the FOIA requires a public authority to comply with section 1 within 20 working days of the date of receipt of the request.
11. In this case the request was submitted on 27 March 2014. The council disclosed some of the requested information to the complainant at the time of its internal review, on 8 August 2014.
12. The Commissioner has concluded that in disclosing the information outside 20 working days the council breached section 10(1) of the FOIA.

Section 12 – cost limit

13. Section 12(1) of the FOIA 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. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Regulations") sets the appropriate limit at £450 for the public authority in question. Under the Regulations, a public authority may charge a maximum of £25 per hour for work undertaken to comply with a request. This equates to a total of 18 hours work in respect of the following activities:
 - 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.

Would the cost of compliance exceed the appropriate limit?

15. As is the practice in such cases the Commissioner wrote to the council and asked it for details of the information held, the manner in which it is held and the steps it would need to take to gather the information for disclosure.
16. The council explained that the information is recorded in a database known as Notice Processing System. The database is supplied and owned by the company (NSL) contracted to undertake enforcement work on behalf of the council. It confirmed that contraventions are recorded by NSL Civil Enforcement Officers and the information identified in part 2 of the request is recorded in the database.

17. The council explained that, in relation to income received for contraventions (for which there are many different variants and associated codes) its records do not differentiate between that received for any individual contravention code. The information is purely recorded under one heading for budgeting purposes and each case or file on the NSL systems is separately updated when the monies are initially received.
18. The council confirmed that, in order to find the amount paid by each recipient of a Penalty Charge Notice (PCN) for an 06 offence, it would need to interrogate each case individually and then add each sum together. The council estimated that it would take in excess of 1 minute per PCN case to conduct this task. As some 9614 PCNs were issued, the council confirmed that it would take approximately 160 hours to comply with this part of the request.
19. In relation to part 3 of the request, the council has confirmed that each PCN is downloaded onto its database, the only immediately available information relates to whether the case is "live" or "closed". The council has stated that, in order to find out which PCNs for an 06 contravention were paid within 14 days would require each case to be separately interrogated. The council has estimated that this would take in excess of 1 minute per PCN case and, as there were 9614 PCNs issued during the period this would amount to some 160 hours work.
20. The complainant has considerable experience as an IT professional and has raised concerns that the council's systems should be capable of extracting the requested information with some ease. The complainant has provided evidence of requests made for comparable information to other authorities which have resulted in the information being provided within the appropriate limit.
21. Mindful of the complainant's concerns, the Commissioner has spent some considerable time pressing the council for comprehensive explanations of its systems for recording PCN. During the course of his enquiries the Commissioner asked the council how it would extract the information in question for the purposes of, for example, processing an appeal against a PCN.
22. In responding, the council has explained that most requests for information that it receives are from individuals querying their own case or are for only a limited amount of information. It has stated that it has, therefore, not been felt to be necessary to consider amendments to its software, which would, in any event, have potential resource implications. In relation to facilitating its handling of appeals against PCNs, staff in the department can use either the PCN number or vehicle

registration to locate the relevant file and interrogate it to find the information required for the Traffic Penalty Tribunal.

23. Whilst the Commissioner is sympathetic to the complainant's concerns he also recognises that it is for public authorities to decide what information should be recorded and how in order to support its business or statutory functions. He has no evidence that the council's explanations of its systems or the basis for its estimates are inaccurate and, having given this matter consideration he has concluded that the council has correctly stated that the cost of complying with request parts 2 and 3 would exceed the appropriate limit by some degree. The Commissioner's decision, therefore, is that the council has correctly applied section 12(1) in this instance.

Section 16 – advice and assistance

24. Section 16(1) of the FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45 code of practice (the "code")¹ in providing advice and assistance, it will have complied with section 16(1).
25. In its internal review the council explained why it was not possible to provide the information within the confines of the appropriate limit. The Commissioner is satisfied that the council provide such advice and assistance as was reasonable in the circumstances and that it complied with section 16(1).

Section 17 – refusal notice

26. Section 17(5) of the FOIA states:

"A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give that applicant a notice stating that fact."

27. Section 17(7) states:

¹ <http://www.justice.gov.uk/downloads/information-access-rights/foi/foi-section45-code-of-practice.pdf>

"A notice under subsection (1), (3) or (5) must-

(a) Contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and

(b) contain particulars of the right conferred by section 50."

28. In this case the council's initial response of 15 April 2014 did not explicitly state that it was relying on section 12 of the FOIA. The response also did not contain particulars of its procedure for handling complaints nor state that it didn't provide such a procedure and it also did not provide particulars of the right conferred by section 50 of the FOIA.
29. In light of the above the Commissioner has concluded that the council breached section 17(5) and section 17(7) of the FOIA.

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,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

31. 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.
32. 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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