

Freedom of Information Act 2000

Decision notice

Date: 10 March 2015

Public Authority: Thurrock Council

Address: Civic Offices

New Road

Grays

RM17 6SL

Decision (including any steps ordered)

1. The complainant requested information relating to council tax from Thurrock Council (the Council). The Council provided some information and stated that nothing further was held. During the course of the Commissioner's investigation further information was provided to the complainant. The Commissioner's decision is that it is likely on the balance of probabilities that the Council has now provided the complainant with all of the relevant information it held when the request was made. However, in responding to the complainant's request the Council breached sections 10 and 17 of the Freedom of Information Act 2000 (the Act).

Request and response

2. On 19 December 2013, the complainant wrote to the Council and requested information in the following terms:
 - *Could "you" find out why if a "Person" is issued with a summons xxxxxx Borough Council "require" the "Person" to pay any outstanding Council Tax plus legal costs of £95.00 and not just the £65.00 summons costs?*
 - *Could "you" find out how these costs are reasonably incurred? How much time is spent preparing the summons and liability order paperwork, how much it costs for printing (The cost of Paper,*

Printer ink, etc.) Postage costs, court attendance costs and the cost for the use of the Northgate IT system?

- *The total cost for Council Tax Administration for the FY 2011-2012 [and] The total cost for Council Tax Enforcement for the FY 2011-2012*
- *The total Court costs raised for the FY 2011-2012.*

3. The Council responded on 22 January 2014 as follows:

- Provided an explanation for why it considered this charge was necessary.
- Provided a history of how the original charge was determined and how it has increased in line with inflation.
- Stated the figures could not be provided as the costs were often shared between the two processes.
- Provided the figure of court costs raised for the relevant period. This figure was later shown to be a mistake and amended in future correspondence.

4. Following on from this was a lengthy series of correspondence between the complainant and the Council, in which the Council elected to use its complaints procedure to respond to the complainant's concerns. On 7 May 2014 the complainant wrote to express his dissatisfaction over the stage 2 complaint and stated:

You have also stated that the authority to charge these reasonable costs has come from the magistrate's court, i have submitted a FOI to the magistrate's court and i have been informed that the authority doesn't exist..!

The Council took this to be a new request for information.

5. On 15 July 2014 the Council issued its stage 3 complaint response and stated that this also constituted its internal review to the complainant's request. This addressed the complainant's remaining requests as follows (numbers added by the Commissioner for reference):

- 1) Costs to run the Council Tax Administration Department – information not held, although the figure for the core cost of running the entire Council Tax Department was provided.
- 2) Costs to run the Council Tax Recovery Department – same as item 1.

- 3) A breakdown of the £65 summons cost and the £30 liability costs – information not held.
- 4) A copy of the authority from the court (that the Council alleges it has received) to charge the costs reasonably incurred – suggest document is held but was not disclosed or explained why it was withheld.

Scope of the case

6. The complainant contacted the Commissioner on 19 August 2014 to complain about the way his request for information had been handled. He considers that the Council holds information for items 1 and 2 of the request, and that it has a legal responsibility to hold the relevant information for item 3 of the request.
7. The Commissioner considers the scope of the case to be whether further information is held for items 1 – 3 of the request, and whether the information identified for item 4 of the request can be disclosed.

Reasons for decision

Items 1 & 2 of the request – costs of Council Tax Administration and Recovery Department

8. Section 1 of the Act states that if an individual submits a request for recorded information to a public authority, the authority has to confirm or deny whether it holds the information. Should it hold the information it has an obligation to provide the information. (These rights are subject to various exemptions under the Act.)
9. In cases where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes might be held, the Commissioner – in accordance with a number of First-Tier Tribunal decisions – applies the civil standard of the balance of probabilities. In essence, the Commissioner will determine whether it is likely or unlikely that the Council holds information relevant to the complainant's request.
10. The complainant's argument for why the information should be held is that councils are required to be accountable for public spending, so it must be known the exact figure for how much is spent on the relevant functions of the Council Tax Department.
11. The Council argued that it was not possible to provide a breakdown to the requirements of the complainant's request, primarily for two

reasons: firstly, the Council Tax Department staff performs both administration and recovery roles; and secondly, the department shares a number of overheads jointly and also with the Housing Benefit Department.

12. Regarding the staffing issue, the Council explained that its staff are "multi-functionary" and complete work on both the administration and recovery functions of the Department. The individual staff members do not record the time spent involved in each activity, so it is not possible to split the staffing costs between the different functions. The Council argued that without this it is not possible to determine the specific cost for each function.
13. Similarly regarding the Department's overheads, it is not possible to work out how much IT support is offered to the Department for its administration function as the support is provided jointly to the Department as a whole. Further, overheads such as IT are jointly shared with the Council's Housing Benefit Department, which further complicates any attempt to isolate the specific costs for each function of the Council Tax Department.
14. The Commissioner accepts these arguments as valid. The complainant has already been provided with the annual charge Serco issues for carrying out the council tax functions. To break this figure down to the specific degree the complainant wants is not possible due to the structure of the Department's overheads and the way it utilises its staff. Therefore on the balance of probabilities the Commissioner does not consider it likely that the requested information is held.

Item 3 of the request – breakdown of summons and liability costs

15. During the course of the Commissioner's investigation the Council obtained a copy of the relevant information from another local government authority within Essex. The Council provided the complainant with a copy of the information in full. However, the Commissioner needs to make a decision on whether the information was held at the time the request was made.
16. The Council made references to the breakdown of its summons and liability costs in its response to the complainant. This stated that the breakdown originated after a meeting between the District Councils (Recovery Enforcement Officers) & Essex Magistrates' Courts in a meeting held on 17 November 1999. This meeting revealed that different councils used different costs to issue a summons and it was agreed that a standard cost should be reached. The Council explained that at the next meeting of this group on 18 May 2000 "*detailed costings were produced ...and passed to the Magistrates*".

17. Despite this the Council stated that it did not hold the detailed costings or any other breakdown of the £65 summons cost and the £30 liability cost. The complainant argued that it was not reasonable to have knowledge of these costings yet not hold a copy of them. To support his view he referred to the Department for Communities and Local Government (DCLG) guidance on council tax and stated that the Council is "legally obliged" to provide this information:

*"Local Authorities are reminded that they are only permitted to charge reasonable costs for the court summons and liability order. In the interests of transparency, Local Authorities should be able to provide a breakdown, on request, showing how these costs are calculated."*¹

18. The Commissioner disagrees with this view. The complainant is confusing guidance with statutory law, so whilst the Council would do well to follow the guidance it is not in breach of any legal Act by failing to hold the information. Furthermore, whilst it was possible that the information was held at some point and is referred to in an official record, it is not guaranteed that the information would be held. The Commissioner would consider it best practice that the justification for the costings is held so that the Council is compliant with DCLG guidance but does not consider the existence of the guidance to be sufficient to confirm that the Council does hold the requested information.
19. In response to the Commissioner the Council confirmed that it had not produced any further costings since those produced 14 years ago. There had not been any major review of the costings which contained details of the original work, and the only change had been to increase the amount in line with inflation. It had carried out reasonable searches to identify the requested information but had not been able to locate it. Based on these points the Commissioner's decision is that it is unlikely that the information was held by the Council at the time of the request.

Item 4 of the request – copy of the authority the Council obtained from court to justify the costs

20. In its internal review response the Council confirmed that it held this information but stated that:

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/210478/Guidance_on_enforcement_of_CT_arrears.pdf

"This is not a public document; however I have reviewed the same and am satisfied that an open and transparent dialogue has taken place to arrive at an agreement of costs to be applied."

21. The Commissioner reminded the Council that it is only allowed to withhold information in response to a freedom of information request if it is exempt under the terms of the Act. During the course of the Commissioner's investigation the Council sought to disclose this document with some minor section 40(2) redactions (third party personal data), but eventually disclosed the document in its entirety. The Commissioner is satisfied that this fulfils the request.

Section 10 breach

22. The Council provided its initial response to the complainant's request 21 working days after it was received. Section 10 of the Act requires that public authorities provide a response no later than 20 working days after receipt of the request.

Section 17 breach

23. In response to the complainant's request for a copy of the authority the Council obtained from court to justify its costs the Council refused to provide the information but did not explain why. This is a breach of section 17(1) of the Act which requires all refusals to state the fact and explain why the information is being withheld with reference to the exemptions in the Act. The Council is reminded that it has a duty to explain why information is being withheld and to fail in this is to decrease transparency in its decisions.

Right of appeal

24. 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 123 4504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

25. 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.
26. 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

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