

Freedom of Information Act 2000

Decision notice

Date: 17 March 2015

Public Authority: London Borough of Lambeth
Address: Town Hall
Brixton Hill
Lambeth
SW2 1RW

Decision (including any steps ordered)

1. The complainant made a request for the number of employees of the London Borough of Lambeth (the Council) who were members of organisations "such as the Freemasons". The Council refused the request under section 12 of the Freedom of Information Act 2000 (the Act) on the grounds that complying with the request would exceed the appropriate limit.
2. The Commissioner's decision is that Council is entitled to refuse the request under section 12 of the Act. However, it has breached section 16 of the Act by not providing assistance on how the complainant could reduce the scope of his request so that it comes within the appropriate limit.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Provide the complainant with reasonable assistance on how to limit the scope of his request so that it can be complied with within the appropriate limit.
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 27 June 2014, the complainant wrote to the London Borough of Lambeth Living and requested information in the following terms:
"How many members of London Borough of Lambeth Council Staff, have Declared Membership of, Societies, such as the Freemasons?"
6. Lambeth Living responded on 2 September 2014 and denied holding any relevant information. It also passed the request to the Council as it is a separate body and more likely to hold the requested information.
7. The Council responded on 10 September 2014. It refused the request under section 12 of the Act as complying with the request would exceed the appropriate limit.
8. This was upheld in the Council's internal review of 6 October 2014.

Scope of the case

9. The complainant contacted the Commissioner on 16 October 2014 to complain about the way his request for information had been handled.
10. The Commissioner considers the scope of the case to be whether the Council is entitled to refuse the request under section 12 of the Act. On the condition that the Council is entitled to refuse the request under section 12, the Commissioner will determine whether the Council has met its obligations under section 16 of the Act to provide advice and assistance to the complainant.

Reasons for decision

11. Section 12 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.
12. The appropriate cost limit is defined in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. Under regulation 3 the appropriate cost limit is set at £450 for a public authority such as the Council. Under regulation 4 the Council may apply this by reference to the rate of £25 per hour to determine whether information is held, and then locate, retrieve and extract the information. At this rate, the appropriate cost limit equates to 18 hours – or 1,080 minutes – of work.

13. The Commissioner has based his decision on the submissions of the Council. To reach the decision he has relied upon the arguments which can be seen as reasonable and – if possible – can be backed up by cogent evidence.
14. The Council stated that the information would be submitted by members of staff on a Declaration of Interest form. For the purposes of the Commissioner's investigation the Council conducted a sampling exercise within its Corporate Complaints Unit, which has 10 members of staff. This found that it took approximately 5 seconds to extract the information from a form. The Commissioner views this as reasonable; whilst the Commissioner has not seen the form it would make sense that the declarations would all be in the same location on the forms and easy to identify within a matter of seconds.
15. It was argued by the Council that the reason why the request exceeded the appropriate limit was due to the work involved in locating the forms. The Council has over 3,000 employees and currently there is no standard practice for where these forms should be located within the Council's records. The form has to be passed to the employee's line manager, but there is no central storage system and there is no requirement to either have the form in electronic or manual form.
16. The Council stated that this arrangement meant there were forms stored in a number of different places. A line manager might keep the forms for their staff in a single location or they might store them in the personnel file for each member of staff. Should it be the latter then it would be contained with a multitude of other files that relate to the employee's service (expense claims, sickness history etc.). The Council's sampling exercise amongst its Corporate Complaints Unit found that it took approximately 25 seconds to locate the appropriate form within its records for each of the 10 members of staff.
17. The estimate put forward by the Council showed that it would take 30 seconds to comply with the request for each member of staff. Even by limiting the estimate to 3,000 employees this comes to 1,500 minutes. This is beyond the 1,080 minute appropriate limit established under section 12 of the Act.
18. The Commissioner's view is that the Council's arguments are reasonable and based on cogent evidence. Therefore he accepts the estimate and his decision is that the Council is entitled to refuse the request under section 12 of the Act.
19. However, under section 16 of the Act a public authority has an obligation to provide advice and assistance where reasonable to a requester. The Commissioner's view is that where a request is refused under section 12 a public authority should inform the requestor of what

information can be provided within the appropriate limit in order to comply with section 16.

20. In its internal review the Council stated that the complainant "may wish to reduce the scope of [his] request" but did not provide any specific assistance on the best ways to do so. The Commissioner does not consider that this meets with the obligation, as it would be well within the Council's ability – and far more useful for all concerned – if the Council provided details on the way the scope of the request could be reduced so the complainant could obtain information that is of interest to him.
21. In its submissions to the Commissioner the Council stated that it could provide the requested information "for the top two management tiers" in the Council. Whilst the Commissioner does not know how many individuals there are in the top two management tiers, it would seem likely that more information could be provided. As an example – going off the Council's estimation of 30 seconds for each employee – a request for information about 2,000 staff members of staff would come to 1,000 minutes, which would be within the appropriate limit.
22. Therefore, the Commissioner requires the Council to provide the complainant with assistance on ways in which to reduce the scope of his request so that it complies with the Act. He asks that the Council ensures that the complainant is offered the opportunity to seek as much information of interest as is reasonable.

Other matters

23. The Commissioner notes that the request could not be complied with primarily because of the Council's irregular records management system for Declaration of Interest forms. The Commissioner would remind the Council of the section 46 Code of Practice which states [Commissioner's emphasis]:

*"9.3 Records systems should be designed to meet the authority's operational 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 quick and easy retrieval of information. With digital systems this should include the capacity to search for information requested under the Act;"

24. In this instance the Council's records systems have not enabled quick and easy retrieval of the requested information. The Commissioner recommends that the Council reviews its current system to see if improvements could be made for any future requests for Declaration of Interest forms.

Right of appeal

25. 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>

26. 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.
27. 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
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