

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 August 2015

Public Authority: West Sussex County Council
Address: County Hall
Chichester
PO19 1RQ

Decision (including any steps ordered)

1. The complainant has requested information about a 'West Sussex Fire and Rescue Stop the Cuts' campaign. West Sussex County Council ('the Council') has refused to comply with the request under section 12 of the FOIA because it says it would exceed the appropriate limit to do so.
2. The Commissioner has decided that section 12 is engaged and West Sussex County Council is correct not to comply with the request. He also finds however, that the Council did not comply satisfactorily with section 16 as it did not offer the complainant sufficient advice and assistance as to how he might refine his request.
3. He does not require the Council to take any steps.

Request and response

4. On 11 February, the complainant wrote to West Sussex County Council and requested information in the following terms:

"Copies of any emails and documents (electronic and paper) that refer to the West Sussex Fire & Rescue Stop the Cuts campaign, to or from, and in the mailboxes of the Chief Fire Officer, Deputy Chief Fire Officer, Assistant Chief Fire Officer, the West Sussex Fire & Rescue Service Media Team, Councillor Louise Goldsmith and Councillor Lionel Barnard .

This should include all that contain any reference to:

The West Sussex Fire & Rescue Stop the Cuts Facebook page,

*The West Sussex Fire and Rescue Service Stop the Cuts blog,
Any generic reference to opposition to the Fire and Rescue Service
2015-16 budget,
Any generic reference to opposition to Future Fire & Rescue Phase Two,
Any reference to me by name or inference."*

5. The Council responded on 10 March. It said that it was not obliged to respond to the request under the provision at section 12 of the FOIA.
6. Following an internal review the Council wrote to the complainant on 15 April. It maintained its position.

Scope of the case

7. The complainant contacted the Commissioner on 5 May to complain about the way his request for information had been handled. He provided the Commissioner with additional information about what he considers to be the Council's shortcomings in how it presents information to the public and its compliance with the FOIA, more generally. The Commissioner has noted this information but his investigation must focus on the Council's handling of this request in particular and whether it has correctly applied section 12 to the request.

Reasons for decision

8. Section 1(1) of the FOIA says that when a public authority receives a request, it must confirm or deny whether it holds the information, and if it does, the information must be communicated to the requester.
9. Section 12 of the FOIA says that a public authority is not obliged to comply with section 1(1) of the Act if the authority estimates that the cost of complying with the request would exceed the appropriate limit. The estimate must be reasonable in the circumstances of the case.
10. The appropriate limit is currently £600 for central government departments and £450 for all other public authorities. Public authorities can charge a maximum of £25 per hour to undertake work to comply with a request; 18 hours work in accordance with the appropriate limit of £450 set out above, which is the limit applicable to West Sussex County Council. If an authority estimates that complying with a request may cost more than the cost limit, it can consider the time taken to:
 - (a) determine whether it holds the information
 - (b) locate the information, or a document which may contain the

information

- (c) retrieve the information, or a document which may contain the information, and
 - (d) extract the information from a document containing it.
11. Where a public authority claims that section 12 of the FOIA is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit, in line with section 16.
 12. The complainant suggested to the Council that an "automated search" of its electronic records would enable the information to be identified within the cost limit. The Council's view was that this would not be sufficient to deal with the whole process of responding to the request.
 13. The Council has also told the Commissioner – and the Commissioner agrees – that it would not be possible to search on the basis of an "inference" as the complainant has requested in the final part of this request. This would require a subjective interpretation by the officer undertaking any search, which would take additional scrutiny and time.
 14. The Council estimated that to interrogate the electronic mail of the elected members referred to in the request would take approximately one day per member. Additional time would then be needed to go through all the hard copy correspondence that it holds, dating back to 20 August 2014. Further time would also be needed to undertake the same tasks for the Chief Fire Officer, Deputy Chief Fire Officer, Assistant Chief Fire Officer and the West Sussex Fire and Rescue Service Media Team.
 15. The Council's Democratic Services team has outlined the process that would need to be undertaken to identify, locate, retrieve and collate information held by Councillors. It notes that the request only refers to two councillors but has told the Commissioner that in order to identify information relating to the West Sussex Fire and Rescue Stop the Cuts campaign, it would be necessary to interrogate five mail boxes: the two councillors' mentioned, the Cabinet Member for Residents Services', the 'Talk with Us' mailbox and the generic Leader mailbox.
 16. At the time of the complainant's request, the Council says that the two councillors had in total 1,462 emails in their inboxes. One of the councillors had a further 16,000 emails in her archive and many more in folders. The second councillor also had further emails held in folders. The Member for Residents Services held a total of 14,118kb of emails and the 'Talk with Us' mail box held 9,550kb worth.

17. The Council confirmed that each Member's inbox would take approximately one day to search, and half a day each to search the 'Talk with Us' mailbox and the generic Leader mail box. In addition, the Council says that it would also have to search:

- at least five different electronic correspondence folders, each with 100s of letters in them
- County Local Committee (CLC) Facebook traffic in relation to the 'Stop the Cuts' Facebook page
- CLC minutes and correspondence as opposition to the budget cuts was expressed at meetings and in letters and emails.

The Council estimates that it would take at least three days to search through these folders.

18. Having liaised with the Fire and Rescue Service, the Council has been able to estimate the amount of time it would take to identify, locate, retrieve and collate relevant information – if held – from the Chief Fire Officer, Deputy Fire Officer, Assistant Chief Fire officer and the West Sussex Fire and Rescue Service Media Team. The eight mailboxes concerned held 72,017 items in total at the time of the request. The Council has estimated that each mailbox would take one day to search, which includes searching archived material.

19. In addition, the Council says there are at least 20 other folders that are associated with the 'Future Fire and Rescue Service Programme and the Governance Board'. These include over one hundred files, some of which may fall within the definition of 'documents' that the complainant has requested, such as meeting minutes, agendas, reports and press statements. Various social media responses would also have to be searched. The Council estimates that it would take one staff member of manager grade and with some understanding of the above programme, approximately five days to review these folders and files against the complainant's request criteria.

20. In total, the Council has told the Commissioner that it would take in excess of 20 working days (at seven hours per day) to comply with the request; that is, to determine if it holds the requested information, locate it, retrieve it and extract it. While this does seem to the Commissioner to be a large amount of time, he recognises that, if the Council holds the information, it may not hold it only in individual email accounts that can be quickly searched electronically. Searching paper folders and files is time consuming. The Council also says it would need to search further afield, in social media sites. The Commissioner is therefore prepared to accept that the processes involved in complying

with the request in the manner that the Council has described are reasonable and credible. And even if it took a quarter of the time that the Council has estimated, it would still take in excess of five days to comply with the complainant's request, which would exceed the appropriate limit of 18 hours, under section 12. The Commissioner is therefore satisfied that section 12 applies to this request.

21. As mentioned, under section 16 of the FOIA public authorities are obliged to help a requester refine their request so that it could possibly be dealt with within the cost and time limit.
22. Prior to submitting his request of 11 February, the complainant had submitted a request on 8 February. The Council had advised the complainant that, given the scope of that request, it was not obliged to comply with it and it suggested that he refine his request, specifically "to make a new request for a narrower category of information", so that it might be possible to comply with it within the cost limit. This resulted in the complainant's request of 11 February, which the Commissioner considers is substantially similar to the earlier request.
23. Whilst the Commissioner accepts that the Council may not have been able to suggest how the request could have been further refined, he considers that it did not attempt to engage with the complainant to identify any possible alternative options he may have wished to consider. For example, restricting the search to the records of a particular individual may have been something the complainant would have considered. Although the same process may have been necessary, the refined search may or may not have exceeded the costs limit.
24. The Commissioner accepts that whilst refinements to a request may not always appear possible to a public authority, this does not remove its general obligation under section 16 to provide advice and assistance to a complainant. The Commissioner therefore considers that the Council has breached section 16 of the FOIA in this case.

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 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: 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

Pamela Clements
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