

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 November 2016

Public Authority: Redcar & Cleveland Borough Council

Address: Kirkleatham Street
Redcar
TS10 1RT

Decision (including any steps ordered)

1. The complainant submitted two requests to Redcar and Cleveland Borough Council (the Council) requesting information relating to two roads in the Council's borough.
2. The Council aggregated the requests and cited section 12 of the FOIA (cost of compliance exceeds the appropriate limit).
3. The Commissioner's decision is that the Council has correctly applied the exemption at section 12 of the FOIA where the cost of compliance exceeds the appropriate limit. However, the Commissioner has also decided that the Council did not provide adequate advice and assistance under section 16 of the FOIA.
4. The Commissioner requires the Council to take the following step to ensure compliance with the legislation:
 - provide the complainant with appropriate advice and assistance with regard to the requested information that can be provided, to enable an appropriately refined request to be made if necessary.
5. The Council must take this step 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

6. On 9 June 2016, the complainant wrote to the Council and requested information in the following terms about Market Street in South Bank:

"What are the footpath and carriageway descriptions within the highway hierarchy ie secondary walking route / main distributor

What are the inspection frequencies for both the footpath and carriageway. Both walked and driven inspections

I would like to see all highway inspection sheets from January 1st 2010 up to date

I would like to see all repair documentation from defects noted on the footpath and carriageway from 1st January 2010 up to date

I would like to see all documentation regarding any ad-hoc inspections that have been carried out relating to the footpath or carriageway since the 1st of January 2010 up to date

I would like to see all public or councillor complaints / service requests that have been made relating to the footpath or carriageway since 1st of January 2010 up to date

I would like to know how many third party accident claims have been made against the council relating to the footpath or carriageway since the 1st of January 2010 up to date

I would like to know the specific dates any accidents happened and where on the footpath or carriageway they happened, please mark clearly on a plan please

Has the footpath ever been proposed or put on a future works programme and if so on what date was it put on the future works programme".

7. For the purposes of this Notice, that request will be known as the Market Street Request.
8. On 20 June 2016, the complainant wrote to the Council and requested the following information under the FOIA regarding West Dyke Road in Redcar:

"What are the footpath and carriageway descriptions within the highway hierarchy, ie Secondary walking route / Main distributor

What are the inspection frequencies for the footpath and carriageway, both walked and driven inspections

I would like to see all highway inspection sheets from the 1st of January 2014 up to date

I would like to see documentation from any ad-hoc inspections that have been carried out relating to the footpath or carriageway since the 1st of January 2014 up to date

I would like to see all repair documentation relating to defects noted during these inspections

I would like to see all public / Councillor complaints / service requests that have been made regarding the footpath or carriageway since the 1st of January 2014 up to date

I would like to know how many third party accident claims have been received by the council relating to the footpath or carriageway since the 1st of January 2014 up to date

I would like to know on what date any accidents happened and the exact location, please mark clearly on a plan

What would the intervention level be for a trip noted on the footpath

What would the intervention level be for a depression noted on a paved footpath ie low flagstones leaving a difference in surface level".

9. For the purposes of this Notice, that request will be known as the West Dyke Road request.
10. The Council acknowledged receipt of the Market Street request on 10 June 2016. It provided its substantive response on 11 July 2016.
11. In its response, the Council provided some information within the scope of the request but refused to provide the remainder, citing section 12 of the FOIA (cost of compliance exceeds appropriate limit) as its basis for doing so.
12. The complainant requested a review of that response on 11 July 2016.
13. The Council responded to the West Dyke Road request on 18 July 2016. It provided some information within the scope of the request but refused

to provide the remainder, citing section 12 of the FOIA (cost of compliance exceeds appropriate limit) as its basis for doing so.

14. The complainant requested a review of that response on 18 July 2016.
15. The Council sent the complainant the outcome of its internal review of its handling of both requests on 9 August 2016. It upheld its original position in the case of both requests.
16. In other words, it confirmed that, with regards to the Market Street request the complainant was provided with the information to answer the first, second and last questions but that that an exemption (section 12) had been applied to the other parts of the request. Similarly, in relation to the West Dyke Road request, he was provided with the information to answer the first two and last two questions and was informed that the same exemption (section 12) applied to the remaining questions.
17. The Council also provided further information about its application of section 12 and confirmed that it considered that the two requests could be aggregated.

Scope of the case

18. The complainant contacted the Commissioner on 10 August 2016 to complain about the way his two requests for information had been handled.
19. With respect to the Council's citing of section 12, he told the Commissioner:

"... this is the first time they have done this as in the past four years they have always answered all my many requests to them fully".
20. Although the Commissioner understands from this that the Council would appear to have complied with similar requests, this does not set an automatic precedent for disclosure under the FOIA. Each case must be considered on its merits.
21. The analysis below considers the Council's application of section 12 of the FOIA to the requested information - the Market Street Request and the West Dyke Road request.

Reasons for decision

Section 12 cost of compliance

22. 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".

23. This limit is set in the fees regulations at £600 for central government departments and £450 for all other public authorities. The fees regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 18 hours in this case.

24. Section 12(4) of the FOIA states that:

"The Secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority-

(a) by one person, or

(b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign, the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them".

25. In other words, when a public authority is estimating whether the appropriate limit is likely to be exceeded, it can include the costs of complying with two or more requests if the conditions laid out in regulation 5 of the Fees Regulations can be satisfied.

26. Regulation 5(2) of the Fees Regulations requires that the requests which are to be aggregated relate 'to any extent' to the same or similar information.

27. The Commissioner's guidance on requests where the cost of compliance exceeds the appropriate limit¹ acknowledges that public authorities can aggregate two or more separate requests. It also recognises that

¹ https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

multiple requests within a single item of correspondence are separate requests for the purpose of section 12.

28. In this case, the Council told the Commissioner:

"Most of the questions asked about Market Street duplicated or were very similar to the questions then asked about West Dyke Road. In terms of the similarity of information, it was the Council's view that, even though the requests related to different roads, the information requested was similar in character as most of the questions asked were duplicated or very similar".

29. Having considered the matter, the Commissioner is satisfied that the individual components of the two multi-part requests in this case comprise separate requests for the purpose of section 12 and that the requests relate to the same or similar information.

30. She is therefore satisfied that the Council was entitled to aggregate the requests when considering whether complying would exceed the appropriate limit.

Would complying with the request exceed the appropriate limit?

31. In estimating whether complying with a request would exceed the appropriate limit, regulation 4(3) states that an authority can only take into account the costs it reasonably expects to incur in:

- determining whether it holds the information;
- locating the information, or a document containing it;
- retrieving the information, or a document containing it; and
- extracting the information from a document containing it.

32. The four activities are sequential, covering the retrieval process of the information from the public authority's information store.

33. The complainant told the Council:

"The information I am requesting can be obtained from your computerised system within one hour".

34. In contrast, in its correspondence with the complainant, the Council told him that it had determined:

"...that it would take the authority a significant amount of time to deal with each of your requests".

35. In support of its view that the cost limit would be exceeded, the Council explained, for example, that the highway inspection sheets that the complainant had requested are held – by each inspector - in paper form only, not electronically. It told him that there have been three different inspectors from 2010 to the present day – the timeframe of his requests - all of whom would need to be contacted in order to obtain the relevant documents.
36. With respect to his request for information relating to repair documentation, the Council explained that that type of work was previously undertaken by a third party on behalf of the Council. It explained that while highways work had been transferred in-house in April 2016, the repair documentation had not been transferred to the Council. It explained that the information the Council held comprised copies of the repair tickets which were issued to the third party. It told the Commissioner that it would be necessary to search through a large number of paper repair sheets in order to retrieve the requested information.
37. With respect to the requested information about any ad-hoc inspections that have been carried out, the Council explained that there are two systems that record requests for ad-hoc inspections.
38. In that respect, it told the complainant:
- "One system would require searches for 13 different sub-headings to be conducted for each of the years requested. The data would then have to be pulled from both this system and the other system and compared to ensure that all documentation is obtained in relation to any inspections carried out".*
39. By way of estimating the costs involved, it told him:
- "Officers have estimated that extraction alone of all of the data you request will take a minimum of 8 hours for each request. This is prior to the data being compared and ordered. Due to the large volume of data that could be extracted as a result of these searches, comparison and any further work resulting for this would almost certainly exceed the remaining 2 hours within which the authority must work to comply with your request".*
40. In correspondence with the Commissioner, the Council acknowledged that its original decision regarding time/cost was based on the personal experience of the relevant officer in dealing with issues surrounding the relevant records and difficulties in their retrieval.
41. It advised however, that following the Commissioner's intervention, it had undertaken a scoping exercise. It told the Commissioner:

"This confirmed that complying with only one of the two requests would probably take in excess of 29 hours, which would vastly exceed the appropriate cost limit, particularly given that the requests were aggregated".

42. The Council provided the Commissioner with details of how that estimate was arrived at. For example, with respect to the requested highway inspection sheets it told her:

"This element of the complaint has already taken more than 8 hours as part of a scoping exercise to locate and retrieve the information for West Dyke Road only and work is only partially complete. This is largely due to the way that the Inspection sheets have been stored....".

43. With regard to those parts of the requests relating to complaints, the Council described the information as 'unstructured' and held on multiple systems. It estimated that it would take in excess of 6 hours to obtain the requested information.

The Commissioner's view

44. When dealing with a complaint to her under the FOIA, it is not the Commissioner's role to make a ruling on how a public authority deploys its resources, on how it chooses to hold its information, or the strength of its business reasons for holding information in the way that it does as opposed to any other way. Rather, in a case such as this, the Commissioner's role is simply to decide whether or not the requested information can, or cannot, be provided to a requestor within the appropriate costs limit.
45. The Commissioner recognises that there is no statutory requirement under section 17 for the refusal notice to include an estimate of the costs involved, or any other explanation of why the cost limit would be exceeded. However, in the Commissioner's view, it is beneficial to a public authority to do so because, for example, it may enable the requestor to assess the reasonableness of the estimate.
46. In this case, the Commissioner accepts that the Council told the complainant that it considered that complying with the request "*would undoubtedly exceed the limit*", and provided him with a detailed explanation as to why the exemption applied. The Council also provided the complainant with an estimate of the work involved in complying with his requests.
47. The Commissioner has considered the explanations and evidence provided by the Council. The Commissioner has also considered the Council's estimate and is satisfied that it is reasonable. The Council has

demonstrated that its records are held in such a way that it is not a straightforward exercise to recover the information the complainant has asked for.

48. From the evidence she has seen during the course of her investigation, and in consideration of the aggregation of the multiple parts of the request, the Commissioner is satisfied that the Council has demonstrated that it would exceed the appropriate limit to locate, retrieve and extract the requested information. Section 12(1) does therefore apply and the Council is not required to comply with the requests.

Section 16 advice and guidance

49. Section 16(1) of the FOIA provides that a public authority is required to provide advice and assistance to any individual making an information request. In general where section 12(1) is cited, in order to comply with this duty a public authority should advise the requester as to how their request could be refined to bring it within the cost limit.

50. The Commissioner's published guidance on section 12 sets out the following minimum advice and assistance that a public authority should provide to a requester when refusing a request on cost grounds:

- either indicate if it is not able to provide any information at all within the appropriate limit; or
- provide an indication of what information could be provided within the appropriate limit; and
- provide advice and assistance to enable the requester to make a refined request.

51. This allows the applicant to choose how to refine the request to successfully obtain a more limited piece or section of the requested information.

52. In correspondence with the Commissioner, the Council accepted that the complainant was given little in the way of advice and assistance. It pointed out however that:

"all of the complainant's questions which could be answered quickly were actually answered in the original responses to his requests".

53. The Commissioner's considers that, as a matter of good practice, public authorities should avoid providing the information found as a result of its searching and claiming section 12 for the remainder of the information. However, she accepts that while this is often done:

"...with the intention of being helpful ... it ultimately denies the requestor the right to express a preference as to which part or parts of the request they may wish to receive which can be provided under the appropriate limit".

54. She considers that the Council breached section 16 by not providing the complainant with adequate advice or assistance on the matter of whether the request could be refined to bring it within the appropriate limit.

Other matters

55. When a public authority receives a request, its first task is usually to determine whether it holds the requested information. In many cases it will be simple to locate information, particularly if the public authority practices good records management.

56. In this case, the Council told the Commissioner that it is in the process of "*tidying up*" its historic highway inspection records and that, in the future:

"... paper inspections will be stored in a robust and easily accessible format and electronic inspections begin imminently, which will remove any significant timescales for any future requests".

57. The Commissioner welcomes this approach.

Right of appeal

58. 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

59. 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.
60. 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

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