

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 May 2017

Public Authority: Cheshire East County Council
Address: Municipal Buildings
Earle Street
Crewe
CW1 2BJ

Decision (including any steps ordered)

1. The complainant made two requests for information on separate dates with regards to roadworks, traffic and congestion in Sandbach. Cheshire East County Council (the council) aggregated the two requests and refused them under section 12 of the FOIA as it considered to respond would exceed the appropriate limit.
2. The Commissioner's decision is that the council has correctly applied section 12 of the FOIA to the aggregated requests and has complied with section 16 of the FOIA in providing appropriate advice and assistance to the complainant.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 25 August 2016 the complainant made the following information request to the council:

"[name redacted] emails, both sent and received, from 01/04/2016 to 14/04/2016. Please provide me only emails specifically referencing roadworks/traffic/congestion in Sandbach.

I understand that under the Act I am entitled to a response within 20 working days of your receipt of this request. Some parts of the request may be easier to answer than others. Should

this be the case, I request that you release information as soon as possible.

If my request is denied in whole or in part, I ask that you justify all deletions by reference to specific exemptions of the act. I will also expect you to release all non-exempt material. I reserve the right to appeal your decision to withhold any information or to charge excessive fees.

I would prefer to receive the information electronically.

If you require any clarification, I expect you to contact me under your section 16 duty to provide advice and assistance if you find any aspect of this FOI request problematic."

5. The council responded on the same day acknowledging the request.

6. On the 26 September 2016 the complainant also requested:

"[name redacted] emails, both sent and received, from 15/04/2016 to 30/04/2016.

Please provide me only emails specifically referencing roadworks/traffic/congestion in Sandbach.

Please provide the information in the form of electronic mail.

In accordance with Regulation 9 please can you provide any advice and assistance that may help my request to be more effective? In any case if my request is too general please provide advice and assistance as to how it can be refined.

I look forward to your response within 20 working days, as stipulated by Regulation 5."

7. This request being for similar information to the first request, only it had a different date range.

8. The council responded to both these requests on the 29 September 2016, it explained that it had aggregated both requests and issued a refusal notice under section 12 of the FOIA – as it considered the cost of compliance would exceed the appropriate limit.

9. The council also noted that the complainant had made this request before (but as one single request for the whole date range, instead of the two requests that were made in this case which split the date range) and that the previous request had been refused under section 12 of the FOIA also.

10. The complainant requested an internal review on the 9 October 2016 which the council undertook on the 18 October 2016 upholding its original response.

Scope of the case

11. The complainant contacted the Commissioner on the 4 November 2016 to complain about his two requests being refused.
12. The Commissioner considers the scope of the case is to determine whether the council is able to rely on section 12 of the FOIA to refuse both requests together.

Reasons for decision

Aggregation of requests

13. As set out in the Commissioner's guidance¹, at paragraph 39, it states that 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. Those conditions require the requests to be:
 - Made by one person, or by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign;
 - Made for the same or similar information; and
 - Received by the public authority within any period of 60 consecutive working days.
14. The Commissioner is satisfied that the two requests in this case satisfy the three points of criteria for aggregating the two requests and will

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

therefore go on to consider the council's application of section 12 of the FOIA to both requests.

Section 12 of the FOIA

15. Section 12 of the FOIA states that a public authority does not have to comply with a request for information if it estimates that the cost of complying with the request would exceed the appropriate limit.
16. The Freedom of Information and Data Protection (Appropriate Limit and Fees) regulations 2004 ("the Fees Regulations") sets the appropriate limit at £450 for the council.
17. A public authority can charge £25 per hour of staff time for work undertaken to comply with a request in accordance with the appropriate limit set out above. If a public authority estimates that complying with a request may cost more than the cost limit, it can consider time taken in:
 - a) Determining whether it holds the information;
 - b) Locating the information, or a document which may contain the information;
 - c) Retrieving the information, or a document which may contain the information; and
 - d) Extracting the information from a document containing it.
18. In determining whether the council has correctly applied section 12 of the FOIA in this case, the Commissioner has considered the council's rationale provided to her during the investigation.
19. The council has explained that there are 1300 emails in the named officer's Outlook account, due to the nature of the officer's role, all of these emails could fall within the scope of the request. This is because one of his primary roles is dealing with roadworks, traffic and congestion. Therefore, the council says that the named officer would need to review all of his emails to ascertain which ones fall within the scope of the request in order for any relevant ones to be extracted.
20. To do this, the council has explained to the Commissioner that it would be necessary to skim read all of the emails in order to determine if they fall within the scope of the request, those which do would then need to be located, retrieved and extracted.
21. The council has estimated it would take approximately two minutes per email, to read and extract the relevant ones. This would equate to over 43 hours of officer time at a cost of over £1075.00

22. The Commissioners guidance² on section 12 at paragraph 21 states:

"A public authority does not have to make a precise calculation of the costs of complying with a request; instead only an estimate is required. However, it must be a reasonable estimate."

23. The council has told the Commissioner that the named officer commenced reviewing his emails from the beginning of the date range as a sampling exercise and this is how the council was able to determine how long it was taking per email.

24. The council has confirmed to the Commissioner that as the request is for unstructured data held within the named officer's Outlook account, that this is the quickest way to undertake searches for this request.

25. It had carried out various keyword searches using terms such as: roadworks/traffic/congestion in Sandbach; roadworks in Sandbach; traffic in Sandbach; congestion in Sandbach; roadworks; traffic; congestion; Sandbach – however there were varying degrees of success depending on which search term was used and that is why it was determined that it would be necessary to manually skim read all the emails in the date range to ensure all relevant emails would be found.

26. To add some further context to the size of the task and to give an idea of the types of emails that the named officer would be reviewing, the council has explained to the Commissioner that in Sandbach, for the time frame of the request, there were a considerable number of new residential developments. This led to a larger than normal number of roadworks in an already busy urban area which will continue to be the case for a considerable period of time. This is primarily due to the installation of various utilities such as water, gas, electricity, drains to the new developments. Some developments also require the erection of traffic calming measures; or alterations to existing road layouts as a condition of the planning permission. In the last 12 months all of the main routes into Sandbach have been subject to roadworks for one reason or another.

² https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

27. Secondly, there is also the "Smart Motorway" project which relates to the M6 between junctions 16 and 19. This is the stretch of motorway through Cheshire. Junction 16 is the junction for Sandbach. This has generated email traffic within Cheshire East Highways.
28. And thirdly, the council hosted Stage 3 of the Tour of Britain in September 2016. The race went through Sandbach. As a consequence there was a considerable amount of works to road surfaces prior to the race which generated additional email traffic in the named officer's account. He was the lead Cheshire East Highways officer for the Tour of Britain.
29. The named officer manages a front line team. The team in turn manages the whole road network in Cheshire East. This involves the team liaising with all utility companies, developers and other third parties about future works which will impact on the road network within the Borough of Cheshire East Council. As a consequence, the named officer is the main point of contact. All of this has generated a great deal of email traffic.
30. On review of the above, the Commissioner considers that a proportion of the emails would take significantly less time than the two minutes, to determine if they fall with the scope of the request, but due to the explanations of the types of emails received, which would invariably vary in size, the Commissioner is satisfied that other emails would take longer to review in order to determine if relevant to the request.
31. Therefore in this case the Commissioner accepts, from the explanations given, the average of two minutes per email. But even if this was able to be reduced to an average of one minute per email, to provide a response would still be over the appropriate limit.
32. On this basis, the Commissioner is satisfied that section 12 of the FOIA is engaged in this case.

Section 16 of the FOIA – Advice and Assistance

33. Section 16 of the FOIA imposes an obligation on public authorities to provide advice and assistance to a person making a request, so far as it is reasonable to do so. Section 16(2) states that a public authority is to be taken to have complied with its section 16 duty in any particular case

if it has conformed with the provisions in section 45 of the Code of Practice³ in relation to the provision of advice and assistance.

34. Paragraph 14 of Section 45 of the Code of Practice states that where a public authority is not obliged to comply with a request because it would exceed the appropriate limit to do so, then it:

"...should consider providing an indication of what, if any, information could be provided within the cost ceiling. The authority should also consider advising the applicant that by reforming or refocusing their request, information may be able to be supplied for a lower, or no, fee."

35. The council has explained to the Commissioner that, as previously mentioned, the complainant had made similar requests prior to this one and on responding to that request (which was also refused on the grounds of it being over the appropriate limit), the council advised the complainant, on the 24 August 2016:

"...to be able to respond to you. Can you please advise what aspect of roadworks/traffic/congestion in Sandbach you are requesting information about please? If you can be more specific about the information you are requesting, the authority will then consider your new request."

36. Following this, the complainant chose to instead make the two requests which have been aggregated for this case and refused under section 12 of the FOIA. In refusing the request in this case, the council further advised the complainant:

"I am aware that these are your fourth and fifth requests relating to roadworks in Sandbach. Your first having been responded to and your second and third also having been over the appropriate limit. Cheshire East Council wishes to be able to respond to you. Can you please advise what aspect of roadworks/traffic/congestion in Sandbach you are requesting information about? Is it a particular highway scheme, or repairs on a specific piece of road? If you can specify this rather than

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/235286/0033.pdf

submit a further request for emails held in one officer's outlook account in the form of unstructured data, the authority will then consider a further request."

37. The council has told the Commissioner that if the complainant is able to clarify which set of roadworks, area of congestion or traffic issue in Sandbach he is concerned about, then the council will consider the request accordingly.
38. On review of the above, the Commissioner is satisfied that the council has provided appropriate advice and assistance to the complainant under section 16 of the FOIA. It would now be for the complainant to refine his request to the council accordingly should he choose.

Right of appeal

39. 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

40. 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.
41. 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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