

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 October 2018

Public Authority: Newcastle City Council
Address: Civic Centre
Newcastle Upon Tyne
NE99 2BN

Decision (including any steps ordered)

1. The complainant has requested from Newcastle City Council (the Council) information in relation to penalty charge notices (PCNs) issued for vehicles in John Dobson Street. The Council provided the complainant with some information. For the remainder the Council applied section 12 of the FOIA on the basis that it had estimated that responding to the request would exceed the appropriate cost limit.
2. The Commissioner's decision is that the Council was correct to apply section 12 of the FOIA and that it was not therefore obliged to comply with the remainder of the request. The Commissioner also considers that the Council provided the complainant with appropriate advice and assistance in accordance with its obligations under section 16 FOIA.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 2 August 2017 the complainant made the following request for information under the FOIA:

"1. How many appeals have been made against penalty charge notices issued for vehicles in John Dobson street."

- 2. How many appeals have been acknowledged.*
 - 3. How many appeals have been completed.*
 - 4. How many appeals have been successful.*
 - 5. How many appeals have been unsuccessful.*
 - 6. How many appeals are in progress.*
 - 7. How many appeals have not yet been started.*
 - 8. The average time it takes an appeal to be completed."*
5. The Council responded on 21 August 2017 and provided a response to questions 2, 4, 5 and 8. It provided some explanations in relation to questions 1, 3, 6 and 7, informing the complainant that it could not respond because of excessive costs to comply with these parts of the request, suggesting that it was relying on section 12 of the FOIA.
 6. Remaining dissatisfied with the Council's response, the complainant requested an internal review. The Council provided the outcome of the internal review on 21 September 2017 in which it maintained its original position.

Scope of the case

7. The complainant initially contacted the Commissioner on 29 September 2017 to complain about the way his request for information had been handled.
8. During the course of correspondence with the Commissioner, the complainant confirmed that he was dissatisfied with the Council's reliance on section 12 when it refused to respond to questions 1, 3, 6 and 7.
9. As part of her investigation, the Commissioner sent a letter to the Council on 1 May 2018, giving the Council 20 working days to respond.
10. The Council sent a response on 1 June 2018, in which it stated that it had decided to issue a fresh response to the complainant with the purpose of resolving the matter informally.
11. The complainant subsequently confirmed that he was not happy with the fresh response issued by the Council. Therefore, the complainant asked the Commissioner to continue her investigation of the complaint.
12. The focus of this notice is to determine whether the Council handled the request in accordance with the FOIA. In particular this notice covers whether the Council has correctly applied section 12 of the FOIA when it claimed that complying with the complainant's request would exceed the appropriate cost limit.

Reasons for decision

Section 12 – Cost of compliance

13. Section 12 of the FOIA states that a public authority is not obliged to comply with a request if it estimates that to do so would exceed the appropriate limit.
14. The regulations which define the appropriate limit for section 12 are The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. These are known as the 'Fees Regulations' for brevity. Regulation 3 of the Fees Regulations states that the appropriate limit is £450.00 for non-central government public authorities and must be calculated at the rate of £25 per hour, giving an effective time limit of 18 hours. The cost estimate must be reasonable in the circumstances of the case.
15. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the cost it reasonably expects to incur in carrying out the following permitted activities in complying with the request:
 - determining whether the information is held;
 - 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.
16. Section 12(1) requires a public authority to estimate the cost of complying with the request, rather than to formulate an exact calculation. The question for the Commissioner here is whether the cost estimate by the Council was reasonable. If it was, then section 12(1) was engaged and the Council was not obliged to comply with the request.

The Council's position

17. The Council argued that due to the form in which the incoming correspondence in relation to PCNs is stored in its system, it is not able to provide the information requested under questions 1, 3, 6 and 7 without examining individually 14,404 items which were recorded prior to the date of the request.
18. In its submission to the Commissioner, the Council explained that "*When a registered keeper receives a PCN in the post, the PCN contains*

information about how to submit representations against the PCN should the registered keeper wish to do so. This can be either via hard copy in the post or via the website where the registered keeper can submit representations directly against their case...These two options enable the registered keeper to either appeal against a PCN, or to submit any other correspondence – such as hire company providing hire details to transfer liability.” The incoming representations are only registered as to whether they were submitted by post or electronically, but are not categorised as appeals or other correspondence.

19. By way of an example, the Council provided a set of screenshots of its computerised database system when searched for incoming correspondence for PCNs for John Dobson Street. For the period between 4 July and 4 October 2018, this search resulted with 2315 items received as incoming emails and 2302 items received as incoming post submitted by 665 people.
20. In its initial response to the complainant, the Council informed him that to the date of the request there were 14,404 incoming representations submitted in total (12,485 for John Dobson Street Northbound and 1,919 for John Dobson Street Southbound).
21. The Council stated that according to its officers, depending on the complexity of the case, it would take five to 25 minutes to examine a case to decide whether the incoming correspondence is submitted as an appeal. As an average, the Council would need to spend about 15 minutes on a case to determine whether a piece of correspondence falls under the category of appeals.
22. At the Commissioner's request the Council conducted a sampling exercise in order to determine approximately how long it would take to respond to the complainant's request in full. The Council provided a brief description of 10 cases that it took as a sample. The minimum time to review a piece of incoming correspondence was three minutes, whilst the maximum was 10 minutes, contingent upon the complexity of the case. The Council further explained that an officer would need approximately two to three minutes to record the necessary information, in addition. Extracting information about 12,485 representations into an Excel spreadsheet would take approximately 20 minutes, due to the number of records.
23. As a conclusion, the Council stated that, even if it would confine itself to ten minutes necessary to reach a determination on the category of a piece of incoming correspondence, when this process would be conducted on 12,485 items, it would require a period of time far in excess of the 18 hour time limit in order to comply with the complainant's requests.

The Commissioner's view

24. The Commissioner considers the Council's position to be both plausible and persuasive.
25. In order to extract and compile the information requested by the complainant, the Commissioner accepts that the Council would need to individually examine more than 14,000 case files.
26. To undertake this activity it would take the Council far in excess of the 18 hours limit set by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.
27. Therefore, it is the Commissioner's view that the Council was entitled to rely on section 12(1) of the FOIA to refuse to comply with the complainant's request.

Section 16 – Duty to advise and assist

28. The Commissioner asked the Council if it had considered its responsibilities under section 16 of the FOIA. Section 16 places a duty on a public authority to provide advice and assistance to someone making an information request, including helping an applicant refine a request so that it can be answered within the appropriate costs limit.
29. The Council explained that in the course of its handling of the complainant's request it advised the complainant that its Bus Lane team *"...can provide from the system the number of Notice of Rejections issued (where appeals were rejected) and the number of cases cancelled, although the number of cases cancelled would also include cases where the authority has cancelled the penalty without the motorist making an appeal, i.e. they cancelled several penalties when they identified an issue with lighting. Understandably this would not give you the exact data you had requested."*
30. The Commissioner notes that, in its attempt to resolve the matter informally, the Council offered additional clarification in its reviewed response to the complainant dated 1 June 2018, in which the Council addressed the outstanding questions submitted by the complainant.
31. Based on the estimates provided above in this decision notice, it is difficult to see how the Council could have provided any further advice and assistance to allow the complainant to narrow his request sufficiently to bring it within the cost limit.
32. In light of the above, the Commissioner has concluded that the Council complied with section 16 of the FOIA in its response to this request for information.

Other matters

33. The Commissioner will also record here her concern at the poor level of engagement she received from Newcastle City Council during the handling of this case.
34. In the very early stage of confirming the scope of the investigation, the Council provided a delayed response to confirm its reliance on section 12 of the FOIA.
35. The Council also failed to respond to the Commissioner's letter of 1 May 2018 within 20 working days. When reminded to do so, the Council responded by stating that it decided to issue a fresh revised response to the complainant.
36. Due to the fact that the complainant was not content with the fresh response from the Council, the Commissioner invited the Council to respond to the letter of 1 May 2018. Unfortunately, the Commissioner did not receive a response within the deadline provided.
37. Thus, the Commissioner was compelled to issue an information notice on 24 July 2018, ordering the Council to provide the information that the Commissioner needs in order to reach a decision.
38. Nevertheless, the Council neither complied with the information notice nor lodged an appeal against it to First-tier Tribunal (Information Rights).
39. Only when the Commissioner warned the Council that she was intending to proceed with the appropriate enforcement action did the Council provide a response on 5 October 2018.
40. The Commissioner considers the above highlighted delays unacceptable and expects a significantly improved level of engagement from the Council in relation to future cases. Failure to do so may result in enforcement proceedings, which were narrowly averted in this case, being commenced.

Right of appeal

41. 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

42. 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.
43. 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

Ben Tomes
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