

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 July 2019

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

Decision (including any steps ordered)

1. The complainant requested from West Sussex County Council (the Council) information in relation to all previous information requests received by the Council. The Council released some information and refused to comply with other parts of the request under section 12(1) of the FOIA (cost exceeds the appropriate limit).
2. The Commissioner's decision is as follows:
 - The Council was entitled to rely on section 12(1) to refuse to comply with the remaining parts of the complainant's request.
 - The Council breached section 16(1) of the FOIA as it did not consider whether it would be possible for the complainant to refine his request to bring it within the cost limit, at the time of the request.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Provide adequate advice and assistance to help the complainant refine his request within the cost limit.

4. The Council 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 23 October 2019, the complainant wrote to the Council and requested information in the following terms:

"Under FOI please give me an excel (NOT as a pdf) list of all FOI requests you have had since it became law. For each FOI request, please list:

date of request

date of reply

reference number/ID

Subject of each request received

status [whether information was fully released, partially released or withheld]

Please email your reply back to the above email address. If you have any questions about this please email me."

6. The Council acknowledged receipt of the information request on 25 October 2018 and provided the complainant with a response on 1 November 2018. The Council's response consisted of an excel spreadsheet containing information on FOI requests received by the Council since 4 April 2013 to the date of the request. The spreadsheet table provided dates of requests, dates of responses to the requests received, reference numbers and the service area they applied to. However it did not contain information on the subject of the requests received nor on the status of those requests, as sought by the complainant.
7. The Council explained that it did not hold the requested information recorded in the form of an Excel table in relation to FOI requests received prior to 1 April 2013. The Council claimed that in order to compile a table as per the complainant's request, it would require a search of records of the entire organisation covering a period of 13 years and that would exceed the appropriate costs limit. Therefore, it refused to do it citing section 12 of the FOIA. Similarly, regarding the information requested in relation to the subject of each request received and whether information was fully released, partially released or withheld in response to each request received, the Council relied on section 12, stating that it would need to examine 6378 records individually.

8. Remaining dissatisfied with the response received, on 8 November 2018 the complainant requested the Council to conduct an internal review.
9. The Council provided him with the outcome of its internal review on 12 November 2018. It upheld its original position.

Scope of the case

10. The complainant contacted the Commissioner on 13 November 2019 to complain about the way his request for information had been handled, specifically as he was not satisfied with the Council refusing the request under section 12 of the FOIA.
11. 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 correctly applied section 12 of the FOIA when it claimed that complying with the complainant's request would exceed the appropriate cost limit.
12. This notice will also consider whether the Council complied with its duty under section 16(1) to provide advice and assistance.

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.
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. In its response to the Commissioner's enquiries, the Council confirmed that its position in relation to the application of section 12 to the complainant's request remained unchanged.
18. The Council asserted that it did not hold the requested information recorded in the form of an Excel table in relation to FOI requests received prior to 1 April 2013. The Council claimed that in order to compile a table as per the complainant's request, it would require a *"search of databases of those who remain at the authority dating back to 2000"*.
19. The Council went on to provide a detailed clarification for the other period starting from 1 April 2013 to the date of the complainant's request.
20. The Council explained that at this time there was a new system of managing information requests put in place, named *Corporate Tracker*. However, this database does not record some of the categories which the complainant requested information about, such as *"whether the request has been fully or partially responded to, or whether a nil response has been provided."* The database does not record information in relation to the subject of information requests either.
21. The Council asserted that in order *"to fully comply with the post 2013 part of the request, the Corporate Tracker would need scrutinising to the extent that a member of staff would need to examine each response individually. It is acknowledged time for redaction is not included in the appropriate limit."*
22. The Council confirmed that it *"has scrutinised the first 10 requests logged on the Corporate Tracker. This took 5 minutes 20 seconds to complete the necessary checks and to record the category of response, an average of 32 seconds per record."* The Council went on to explain that *"there are now nearly 7,000 requests logged post 2013. To give a*

reasonable estimate of time using the last whole thousand figure, if 6,000 requests were scrutinised within the appropriate limit, then each request would attract an 11 second time allocation, whereas the sampling exercise indicates an average estimated time of 32 seconds per record, nearly three times the available time within the appropriate limit."

The Commissioner's view

23. Firstly, the Commissioner wishes to address the Council's claim that in order to address the complainant's request regarding its records about information requests received prior to 1 April 2013. She does not accept the Council's argument that it would have to examine data covering more than 13 years is valid because section 1 of the FOIA only entered into force on 1 January 2005.
24. Nevertheless, the Commissioner considers the Council's detailed explanation about the actions it would have to take in order to comply with the present request for the period after 1 April 2013, 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 6,000 case files, and that the tasks that it would be necessary for it to undertake in order to do so would be amongst those specified in the Fees Regulations.
26. To undertake this activity it would take the Council far in excess of the 18 hours limit set by the Fees Regulations. As the Commissioner accepts that section 12(1) applies on the basis of the estimate relating to the period post-1 April 2013 alone, this is sufficient to engage section 12(1) without also considering in detail the time required to collate the information relating to the period prior to 1 April 2013.
27. Therefore, it is the Commissioner's view that the Council estimated reasonably that the cost of complying with the request would be in excess of the appropriate limit. The Council was, therefore, 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. Section 16(1) of the FOIA provides that a public authority should give advice and assistance to any person making an information request.

Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45 code of practice¹ in providing advice and assistance, it will have complied with section 16(1).

29. The Commissioner noted that the Council neither in its initial response nor in the outcome of its internal review offered the complainant advice and assistance to refine the request so that it could be answered within the appropriate costs limit.
30. During the course of her investigation the Commissioner also asked the Council if it had considered its responsibilities under section 16 of the FOIA. She did not, however, receive a satisfactory response on this point.
31. Therefore the Commissioner considers that the Council failed to comply with its obligation stemming from section 16 of the FOIA and she has ordered the Council to rectify it as described in paragraph 3 of this notice.

Other matters

32. The Commissioner notes that the complainant made his information request using a pseudonym. As the Council in any event processed the request and the complainant used his real name when contacting the ICO, the Commissioner chose in this case to accept the complaint.
33. The complainant should note, however, that an information request should be made in the real name of the requester. Should the Commissioner receive any future complaints where this complainant has made an information request using a pseudonym, she may decline to investigate them.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf

Right of appeal

34. 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@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

35. 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.
36. 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
Team Manager
Information Commissioner's Office
Wycliffe House
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SK9 5AF