

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 December 2020

Public Authority: Berwick-upon-Tweed Town Council

Address: town.clerk@berwick-tc.gov.uk

Decision (including any steps ordered)

1. The complainant has requested information regarding complaints to the council.
2. The Commissioner's decision is that Berwick-upon-Tweed Town Council has reasonably estimated that the cost of compliance would exceed the appropriate limit and was therefore entitled to rely upon section 12 of the FOIA to refuse the request.
3. The Commissioner does not require any steps.

Request and response

4. On 6 December 2019 the complainant requested information from Berwick-upon-Tweed Town Council ('the council') in the following terms:

"all complaints the Council has received from 1st January 2019 to 30th November 2019 with the following details –

description of the complaint, date of complaint, date received, date acknowledged, date of final response and to confirm of the complaint was upheld, part upheld, dismissed, referred to Committee, referred to the Ombudsman."

5. The council responded on 23 December 2019, advising that the council does not maintain a complaints log. It also cited section 12 (the cost of compliance exceeds the appropriate limit) in terms of locating any other information within scope of the request. Specifically, the council:
- denied holding any information regarding the Ombudsman and explained that *"the Local Government Ombudsman has no involvement in the work of this council, and as such, no records can be held relating to that part of your request"*;
 - advised that it keeps a correspondence log which is published. The log contains the following information about correspondence: description, date, date received;
 - advised that it does not collect information on the outcome of complaints, other than information contained within the details of committee and council working papers and its responses to complainants.
 - Stated that the cost of researching all held items to answer the request would be prohibitive and cited the exemption at section 12.
6. The complainant requested an internal review on 14 January 2020.
7. The council wrote to the complainant with the outcome of the internal review on 17 April 2020. It upheld its original position.

Scope of the case

8. The complainant contacted the Commissioner on 27 February 2020 to complain about the way their request for information had been handled. Specifically, that an internal review had not been undertaken and disputing the grounds cited by the council for not providing the

requested information. Following the internal review, the complainant confirmed that they remained dissatisfied with the council's refusal on the basis of section 12.

9. Commissioner considers the scope of the case is to determine whether the council can rely on section 12(1) of the FOIA to refuse the complainant's request. She will also consider whether the council has provided appropriate advice and assistance in accordance with section 16 of the FOIA.

Reasons for decision

Section 12(1) of the FOIA – Appropriate Limit

10. Section 12(1) 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.
11. 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.
12. 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. This equates to 18 hours of office time. 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 of 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.
13. In determining whether the council has correctly applied section 12 of the FOIA in this case, the Commissioner asked the council, with reference to the four activities above, to provide a detailed estimate of the time / cost it would take for it to provide the information, and confirm that the estimate has been based upon the quickest method for gathering the information.

14. The Commissioner also asked the Council, when providing these calculations, to include a description of the nature of work that would need to be undertaken, explaining that an estimate for the purposes of section 12 has to be "reasonable". Thus, it is not sufficient for a public authority to simply assert that the appropriate limit has been met; rather the estimate should be realistic, sensible and supported by cogent evidence.

The council's position

15. The council advised that Parish and Town Councils are outside of the remit of the Local Government Ombudsman and therefore no information would be held in regard to this aspect of the request.
16. The council does not hold a log of complaints, nor any other document detailing the information requested. It explained this was a policy decision of the council.
17. The council publishes details of all correspondence received in a log that appears with the papers for each meeting of council. The log sets out what correspondence has been received, and gives an indication of its subject with these headings: description; date; and date received.
18. The council explained that it doesn't collect information on the outcome of complaints other than within the applicable working papers for the council and committees, or within the actual responses sent to complainants.
19. In order to answer the information request (*description of the complaint, date of complaint, date received, date acknowledged, date of final response and to confirm of the complaint was upheld, part upheld, dismissed, referred to Committee*) the council would need to research all of its correspondence to identify information within scope of the request.
20. It would be necessary to scrutinize each item of correspondence to determine whether or not it could be deemed to be a complaint. Then the council would need to carry out further research into the outcome for each complaint in order to identify the specific categories of information that are outlined in the request.
21. The council explained that on average it receives 70 pieces of correspondence per month, which over a year amounts to 840 items.
22. The council explained that the correspondence is manually stored and are not all filed in the same place. It estimated that two minutes per item would be required to locate then read each correspondence in order to sift out those that may relate to a complaint. On this basis, it estimated 28 hours of staff time, not including the further research time

that would be required to investigate the outcome information for each complaint.

23. The council further explained that because the request was for all complaints, a judgement call would be required on each correspondence as to whether it was, or could constitute, a complaint. The council stated that it had not considered the time taken for any kind of process for reviewing those items where there was doubt about whether it did or did not constitute a complaint, however this would undoubtedly add to the time to respond to the request.
24. Regarding the Commissioners request to provide cogent evidence of the time estimated, the council referred back to its estimate of the number of items of correspondence received and also stated *"If I believe it would take me two minutes to read each email and make an initial judgement as to whether it constitutes a complaint, why would you distrust me?"*
25. The council advised that it needed to apply a degree of proportionality. It stated that where a larger authority may have standard templates for a sample search, and a process for reviewing their outcomes, it simply had the clerk looking at the online and paper files. It felt it would be a disproportionate use of the limited time available in order to compile further evidence, such as screenshots of each step in the process, to justify the two minute estimate.
26. Regarding the Commissioners request for details of the costs to retrieve and extract information, the council stated *"Our argument would be that, if the first stage of assessment is likely to take more than the time limit, why should we go further to then analyze the time and resource costs of the second or third stages of a process?"*
27. The council contested that a search taking just less than 18 hours (to bring it within the £450 limit) would take up half of the available working hours in a week with the impact of losing at least 50% of the governance and finance capacity for one week, or 25% for two weeks, or 12.5% for four weeks. It stated that the council is working to full capacity already.
28. The council concluded that *"We have considered whether, by changing our working practices or by investing in either CRM or archiving software, we might prevent such an inquiry being refused in future. At present we have not identified a solution that is cheap enough, or efficient enough, to represent a proportionate response, since [the complainant's] inquiry is the only one of its kind that has given rise to these concerns."*

The complainants position

29. The complainant expected that the information request would have been answered quickly without much effort and at little cost via an electronic search using a search term such as "complaint".
30. The complainant considers that it is reasonable to expect that the council would vet all emails such that they can be categorised as a complaint.
31. The complainant is not convinced that the councils costings fully consider the most time efficient way to collect the requested information nor that the estimate provided is reasonable.
32. As such the complainant contends that the council has not given sufficient evidence to demonstrate that responding to the request would exceed the limit.
33. The complainant states that the council have not proffered any advice on what could be done to refine the information request to bring it within the limit

Is the exemption engaged?

34. The Commissioner notes that the Local Government and Social Care Ombudsman website¹ states that it does not get involved in complaints regarding town and parish councils: "*The Local Government Act 1974 (S34(1)) defines the authorities that we may investigate. Parish and town councils are not included in this definition...*". Therefore, it is logical that information would not be held in this regard.
35. The Commissioner is sympathetic with the council's arguments regarding proportionality and the impact of dealing with the request on its limited resources. However, the appropriate limit for the section 12 exemption is set by the Fees Regulations. As such there are no other factors available for the Commissioner to consider in this regard.
36. The Commissioners guidance² states that a realistic estimate is one based on the time it would take to obtain the requested information from the relevant records or files as they existed at the time of the

¹ <https://www.lgo.org.uk/make-a-complaint/fact-sheets/other-topics/parish-councils>

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

request. For example, if the requested information is only contained within paper files, then it is realistic to accept that it would take longer to search paper files than to search the same information if it were stored electronically. Similarly, it is realistic to accept that it will take longer to find the requested information where the relevant records are poorly organised or filed.

37. The guidance also states that a public authority is not obliged to search for, or compile, some of the requested information before refusing a request that it estimates will exceed the appropriate limit. Instead, it can rely on having cogent arguments and/or evidence in support of the reasonableness of its estimate.
38. The Commissioner accepts the councils explanation that because it does not hold a log of complaints, the source of the information that may fall within the scope of the request would be individual correspondence, complaint responses and working papers for council meetings.
39. The Commissioner has no reason to doubt that the council receives the volume of correspondence it states and that the information is held in different locations and not entirely electronically. Furthermore, the council has advised that it has not organised such information into complaint files. Therefore, as outlined in her own guidance, the Commissioner finds it realistic to consider that such records will take longer to interrogate.
40. It is also reasonable to assume that letters and correspondences may refer to complaints without actually being obviously labelled or titled in this way. As such she accepts that all correspondences would need to be read in order to assess whether or not they fall within the scope of the request.
41. It is difficult for the Commissioner to either categorically accept or dispute the councils advise that locating and reading each correspondence would take an average of two minutes. Presumably some correspondences will lengthy and others may be short or can be grouped as linking to the same issue.
42. The Commissioner has however, accepted that, considering the size of the town council and it available resources, its claim of two minutes per correspondence is likely to be a reasonable claim given that a reading of each document would be required.
43. Furthermore, the Commissioner is cognisant that reading the correspondences to identify complaints is the first stage in locating the information requested and may only provide the description and date of

the complaint. Clearly, more time would be required to further investigate council files in order to locate, retrieve and extract the remaining information regarding the outcome of each identified complaint.

44. The Commissioner has considered the arguments offered by the complainant. However, she finds that, on balance, the councils estimate is reasonable. This is based upon the lack of a complaint log and the way the council organises its information, the large volume of correspondence that would need to be examined and the work to identify complaint outcomes.
45. The Commissioner accepts the arguments put forward by the council that complying with the request would be excessively time consuming. She accepts that the time required would be in excess of the 18 hours limit set by the Fees Regulations.
46. Therefore, the Commissioner finds that the council was entitled to rely on section 12(1) of the FOIA to refuse to comply with the request.

Section 16 – advice and assistance

47. Section 16(1) of the FOIA provides that a public authority should give advice and assistance to any person making an information request, so far as it would be reasonable to do so. 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.
48. On 9 December 2019 the council stated *"We don't hold the information you're asking for in an easily accessible format; as the policy makes clear, we don't have a complaints log, so we would have to go through every item of correspondence to decide if it's a complaint, and then process it further to make the information fit the categories you've stipulated. I'm not sure that's ever going to fall within the stipulated time / cost parameters laid down within the act. If you press me I'll do the calculations and issue with the necessary notice, but I was wondering if there were specific issues you wanted to know about?"*
49. On 23 December 2019, in its response to the request the council clarified again *"I am under a duty to seek to help you with your inquiry; I believe I have done so by asking if you were seeking specific information, or simply engaged in a general request?"*
50. The Commissioners guidance on section 16(1) outlines that public authority should inform the requestor of what information can be

provided within the appropriate limit. This is important for two reasons: firstly, because a failure to do so may result in a breach of section 16. Secondly, because doing so is more useful than just advising the requestor to 'narrow' the request or be more specific in focus.

51. The Commissioner guidance also outlines the minimum that a public authority should do in order to satisfy section 16 as being:

- 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 requestor to make a refined request.

52. The Commissioner considers that the council has, in its responses to the complainant, adequately explained why it is not able to provide the information within the appropriate limit. The council has stated that it doesn't hold a log of complaints and would have to process information from a number of sources in order to answer the request. It has also advised the complainant of the correspondence log, although the Commissioner appreciates that this does not provide the complainant with the information requested, it has offered a pathway to explore if a refinement might be of interest.

53. The Commissioner therefore finds that the council has met its section 16 duty to provide reasonable advice and assistance.

54. The Commissioner does not require any steps.

Other matters

Section 45 – Internal Review

55. The complainant requested an internal review on 14 January 2020. The council reported the outcome of its review, during the course of the investigation, on 17 April 2020, which is three months later.

56. There is no obligation under FOIA for a public authority to provide an internal review process. However, it is good practice to do so, and where an authority chooses to offer one, the code of practice established under section 45 FOIA sets out, in general terms, the procedure that should be

followed. The code says that reviews should be conducted within reasonable timescales.

57. While no explicit timescale is laid down by the FOIA, the Commissioner considers that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days.
58. The Commissioner asks the council to ensure that future requests for internal reviews are handled appropriately and in accordance with her guidance.

Right of appeal

59. 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

60. 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.
61. 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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