

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 February 2023

Public Authority: Sandwell Metropolitan Borough Council

Address: Sandwell Council House
Oldbury
Sandwell
B69 3DE

Decision (including any steps ordered)

1. The complainant requested information from Sandwell Metropolitan Borough Council ("the public authority"). The Commissioner's decision is that the public authority was entitled to refuse to comply with the request in accordance with section 12(1) (cost limit) of FOIA. The Commissioner also finds that the public authority complied with its obligations under section 16 of FOIA to offer advice and assistance.
2. The Commissioner does not require the public authority to take any steps.

Request and response

3. On 19 December 2021, the complainant made the following request for information to the public authority:

"Sandwell MBC has unlawfully sought to keep secret details of alleged breaches of the Code of Conduct for Councillors since [NAME REDACTED] was employed by the Council. This is not only unlawful but directly contrary to the approach of other local authorities such as Waltham Forest BC.

In the circumstances, please state which Councillors have been investigated for alleged breaches of the Code of Conduct since the date

[NAME REDACTED] [POTENTIALLY IDENTIFIABLE INFORMATION REDACTED].

The response should include - in each and every case - the name of the Councillor, the date of the complaint, a brief description of the nature of the complaint, the date of the decision, who made the decision and a brief description of the outcome. Where the independent person has allegedly been consulted please name the relevant one.

By way of a template here is an example from a recent Waltham Forest response:

Cllr [named]

Date of complaint - May 2021

Allegation - Failed to declare interests

Outcome - Not upheld

Investigator - xxxxxxxxxxxxxxxxxxxxxxx in consultation with the statutory independent person.”

4. The public authority refused to provide the requested information originally citing section 21 (information available by other means) of FOIA as its basis for doing so. In its internal review response the public authority changed its position and advised it was instead relying on section 12 (cost limit).

Reasons for decision

Section 12 – cost of compliance

5. This reasoning covers whether the public authority is correct to apply section 12(1) (cost limit) of FOIA to the request.¹ The appropriate limit² for the public authority in this case is £450.
6. The public authority considers that the cost of complying with this request would exceed the appropriate limit under FOIA. It has explained that it does not hold the requested information in the format specified

¹ <https://www.legislation.gov.uk/ukpga/2000/36/section/12>

² <https://www.legislation.gov.uk/uksi/2004/3244/regulation/4/made>

by the complainant and compiling the information in the requested format would exceed the cost limit.

7. The public authority explained that information requested for the time period of 2017-2022 was not held in an easily accessible format as it existed in both electronic and paper files. The public authority originally attempted to collate the information for its own records, and it had been hoped that as a result of that process it might have been able to provide further information in response to the request. In practice, the public authority found that it has been unable to collate the stated information as hoped.
8. From its work carried out so far to attempt to collate the information for its own purposes, the public authority has identified 74 applicable cases and estimated that to collate and extract the information requested would take in excess of 26 hours. This has involved various electronic searches of emails, review of electronic information, physical file searches and other direct enquiries with officers. This process had already taken in excess of the 18 hour limit under FOIA and remains incomplete.
9. In its submission to the Commissioner, the public authority provided a breakdown of its estimate. This included, amongst other estimates, 6 hours for two members of staff to review the electronic records of the Monitoring Officer and one of the former Deputy Monitoring Officers and extracting the information for the request; 12 hours of two staff members locating and reviewing paper files, cross referencing with electronic records and extracting relevant information and 7 hours attributed to a legal assistant also locating and extracting information.
10. The public authority explained that it has now reached the position that it is not progressing the collation task, even for its own records as the time and resources required outweigh the advantages in collating it. Although the public authority had already decided not to continue to collate the information beyond the 26 hours it had already spent, it estimated that it would require a further 14 hours and two staff members' time to complete the work.
11. The Commissioner is satisfied that the public authority's arguments above are justified because it has explained that the reasonably estimated cost for obtaining the requested information from electronic and manual searches is clearly in excess of the cost limit.
12. The Commissioner's decision is that the public authority was correct to apply section 12(1) of FOIA to the request.

Section 16(1) – The duty to provide advice and assistance

13. Section 16(1) of 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 practice³ in providing advice and assistance, it will have complied with section 16(1).
14. The Commissioner notes that the public authority advised the complainant that if they refined the scope of the request to a shorter time period or more specific topic then it may be able to provide a response within the cost limit. The Commissioner is therefore satisfied that the public authority met its obligations under section 16 of FOIA.

Section 40(2) – personal data

15. In its submissions to the Commissioner, the public authority also cited section 40(2) to withhold some of the requested information. As section 12(1) applies to the entirety of the request, the Commissioner has not gone on to consider the application of section 40(2) of FOIA.

³ <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

Right of appeal

16. 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

17. 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.
18. 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

Michael Lea
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Wycliffe House
Water Lane
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