

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 February 2024

Public Authority: Breckland Council

Address: Elizabeth House
Walpole Loke
Dereham
Norfolk
NR19 1EE

Decision (including any steps ordered)

1. The complainant requested a copy of the register of land and building assets. Following a decision notice¹ the Commissioner issued on 7 August 2023, the Council issued a fresh response to the request and disclosed additional information. The complainant considered that the Council held additional information which it had not disclosed. During the course of the Commissioner's investigation, the Council confirmed that it did hold additional information relevant to the request, however, it advised that compliance with the request would exceed the appropriate limit, and as such it was now relying on section 12 (cost limit) of the FOIA to refuse the request. The Commissioner's decision is that the Council was entitled to rely on section 12(1) to refuse the request for that information. The Commissioner also finds that the Council complied with its obligations under section 16 to offer advice and assistance. The Commissioner does not require any steps to be taken.

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2023/4026153/ic-218499-b6r8.pdf>

Request and response

2. On 22 October 2022, the complainant wrote to the Council and requested information in the following terms:

"I would like to request a copy of your register of land and building assets, as you are required to publish annually under paragraphs 35-37 of the Local Government Transparency Code 2015 [1].

I would like to request that the information is provided in an open machine-readable format, such as a CSV file or a spreadsheet, preferably aligned with the standard template / schema recommended by the Local Government Association in Annex 1 of their "publishing land and social housing asset and parking information" guidance [2].

I would also like to request the land area / floor area for each entry in the register. (This corresponds to the "Additional recommended information" fields "Size building" and "Size Land" LGA's schema in Annex 1 of [2].)

Furthermore, under the Re-Use of Public Sector Information regulations, I would also like to request permission to re-use the supplied information under the terms of the Open Government Licence v3, for the purposes of (a) improving the mapping data in OpenStreetMap and (b) making the information available to others in a convenient format and under an open license.

I have searched on your website and have found your "Transparency" page [3], from which is linked a document called "Breckland Council Asset Register 2020" [4]. I assume this is your attempt to comply with the relevant provisions of the Local Government Transparency Code. However, as well as being in a non-machine-readable PDF format, I believe that document fails to meet a number of the requirements, viz:

* You are required to provide UPRNS, which are numbers with up to 12 digits. See e.g. <https://www.geoplace.co.uk/addresses-str...> The "UPRN" column contains reference codes that are not UPRNs. (Presumably they are your own internal reference codes.)

* The required "map references" (OS grid reference or lat/lon coordinates) are missing.

* Apart from the final page, the required freehold/leasehold designation of each asset is missing, as are the other details required for each type.

* The published document [sic] is titled "Breckland Council Asset Register 2020" suggesting it is [sic] more than 18 months out of date. The code requires you to publish updates at least annually. The document may have been updated more recently. If so, you should make sure the date at which it was current is made clear.

* I am suspicious that the published list may not be complete. I was unable to spot entries for a number of parcels of land that I believe that the Council owns in Thetford, including: The water-meadows adjoining the Abbey Farm estate, the open green space on the Abbey Farm Estate, various pieces of open space on the Cloverfields Estate, Trafalgar Wood and the water-meadows between the Cloverfields Estate and the river, the grass land east of Melford Bridge between the river and the roundabout, land to the north-east of The Link car park, the green space on Glebe Close, the Minstergate Car Park, and the adjacent shops (with the exception of the ex-Somerfield building), and Butten Island".

3. As stated earlier in this notice, following a previous decision notice that the Commissioner issued in relation to this request, the Council reconsidered the request and issued a fresh response on 11 September 2023. The Council disclosed some additional information relevant to the request, including the UPRNs held. It also stated that there "may be small parcels of land owned by the Council not listed, but we do not have this data in an extractable format".
4. On 25 September 2023 the complainant requested an internal review of the Council's handling of the request. They provided representations to support their view that additional information was held by the Council which had not been disclosed, nor had the Council stated it was withholding any information under any exemption(s). The complainant also referred to the Council's statement concerning the small parcels of land, and asked the Council to confirm what its position was in relation to this information, meaning that it should either disclose it or confirm which exemption(s) were applicable to it.
5. The Council provided the outcome of its internal review on 16 November 2023. It confirmed that it did not hold any additional information relevant to the request. The Council said that it estimated it would take approximately 230 days to analyse information in respect of the 760 land parcels where ownership is unknown.

Scope of the case

6. The complainant contacted the Commissioner on 28 November 2023 to complain about the way their request for information had been handled.

7. During the course of the Commissioner's investigation, the Council confirmed that it did hold further information falling within the scope of the request. However, it stated that it was now relying on section 12 of the FOIA to refuse the request as compliance would exceed the appropriate limit.
8. In light of the above, the scope of the Commissioner's investigation into this complaint is to determine whether the Council correctly applied section 12 to the request.

Reasons for decision

Section 12 – cost of compliance

9. Section 12(1) of FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the "appropriate limit" as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations").
10. The appropriate limit is set in the Fees Regulations at £600 for central government, legislative bodies and the armed forces and at £450 for all other public authorities. The appropriate limit for the Council is £450.
11. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 18 hours for the Council.
12. 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.
13. 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.
14. However, it must be a reasonable estimate. In accordance with the First-tier Tribunal in the case of *Randall v Information Commissioner & Medicines and Healthcare Products Regulatory Agency* EA/2007/0004,

the Commissioner considers that any estimate must be “sensible, realistic and supported by cogent evidence”. The task for the Commissioner in a section 12 matter is to determine whether the public authority made a reasonable estimate of the cost of complying with the request.

15. Section 12 is not subject to a public interest test; if complying with the request would exceed the cost limit then there is no requirement under FOIA to consider whether there is a public interest in the disclosure of the information.
16. Where a public authority claims that section 12 of FOIA is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit, in line with section 16 of FOIA.

Would the cost of compliance exceed the appropriate limit?

17. The Council advised the Commissioner that the remaining information held relevant to the request is held across several internal systems. The Council holds a working document – “Asset Register”, which was developed after the initial request was received. The starting point for development of the Asset Register was the Finance Asset Register, which is published on the Council’s website. Information was then obtained from various systems and manually added for each entry into the Asset Register. This work was undertaken as the first step in the process to develop an Asset Register as required by the Local Government Transparency Code. The Council stated that it has taken over 20 hours of work to produce the Asset Register in its current form. A copy of the current Asset Register has been disclosed to the complainant.
18. The complainant made a number of representations in relation to missing information, for example Map IDs, geographical co-ordinates and occupancy information. The Council confirmed to the Commissioner that this information is held and that it has taken into account the time it would take to provide this additional information in its application of section 12 to the request, as detailed below.
19. In relation to occupancy information for each entry on the Asset Register, the Council advised that this information is held within the “Estateman” system. The information changes on a regular basis, but the Council is able to identify the occupation status at a particular point in time. However, it is not possible to export the data in this system into Excel. In order to provide the information it would require manual extraction (copying and pasting) each property occupancy across to the address.

20. In respect of geographical co-ordinates, again the Council confirmed that this information is held within its Webmaps system. It advised that officers can locate one co-ordinate point per entry on the Asset Register. The Council stated that "this set of co-ordinates represents one specific point within that area of land that it is representing. The data of Eastings and Northings is not extractable automatically from our Webmaps systems, for instance by exporting an excel report". The Council added that, in respect of the example of how this information was held, as provided by the complainant, the Eastings and Northings shown would depend on where the cursor is on the screen. For example, for larger pieces of land, the Council advised that there are a multiple number of co-ordinates attributable to that one area of land. However, the Council acknowledges that the data does give a good indication of the location of the piece of land.
21. In order to provide the additional information held relevant to the request, the Council explained that a sampling exercise has been undertaken for 10 entries on the Asset Register. This has included using the Council's mapping system to locate Council owned land within 3 parishes. The Council advised that there are 5000 pieces of land where ownership is known, and 760 pieces of land where ownership is unknown.
22. The Council provided the Commissioner and the complainant with a detailed breakdown of the activities and time involved in identifying, locating and retrieving the remaining information held relevant to the request. This includes a step by step guide of the processes involved in determining whether some pieces of land are Council owned. The Commissioner has not included this level of detail in this notice as it runs to 14 pages. He has however, summarised the processes involved below.
23. In relation to the 5000 pieces of land where ownership is known, the Council estimate it will take between three and five minutes per entry to locate information on co-ordinates, occupancy status, UPRN/Map ID, freehold/leasehold status and the size. This information is held within both the Estateman and Webmaps systems. Taking the lower estimate of 3 minutes, this equates to a total of 250 hours' work.
24. In respect of the 760 pieces of land where ownership is not known, the Council would first need to undertake various searches including various Webmaps searches, Land Registry title searches, deed package searches, utilities searches and checking Terriers 'Red Books' – folders containing information recorded manually of council owned land, from day of purchase, any wayleave, lease to final disposal. Once the information is gathered the Council would then need to consider all the evidence to establish whether it owns the land in question. If it does, it would then need to undertake the steps outlined in the paragraph above

to obtain the information held in relation to each piece of land. A sampling exercise has been undertaken in relation to one piece of land falling into this category and it took 1 hour 30 minutes to determine whether the information is held, locate, retrieve and extract it. The Council's total estimate for this process is therefore 1140 hours (1h 30 X 760).

The Commissioner's decision

25. The Commissioner is satisfied that the remaining information held by the Council is not held in a readily retrievable form and considers that the Council's explanations regarding the activities and processes necessary in order to comply with the request appear reasonable. Based on the Council's representations, the number of parcels of land involved and because of the way that the information is recorded, the Commissioner accepts that the work involved in complying with the request would be considerable. The Commissioner also notes that the Council has already spent over 20 hours complying with the request, providing the information it has done to date.
26. Having considered the detailed estimate provided by the Council, the Commissioner finds that it is realistic and reasonable. He therefore accepts that the Council estimated reasonably that to provide the remaining information requested would exceed the appropriate limit and that section 12(1) has been correctly applied in this case.

Section 16 – Advice and Assistance

27. Section 16(1) of FOIA provides that a public authority is required to provide advice and assistance to any individual making an information request, so far as it would be reasonable to expect it to do so.
28. 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, albeit that the Commissioner does recognise that where a request is far in excess of the limit, it may not be practical to provide any useful advice.
29. The Commissioner accepts that the Council has tried to explain how the requested information is held on its systems, and the processes involved in complying with the request. Due to the number of individual pieces of land that would need to be manually reviewed in order to provide the remaining information held and the amount of time required to comply with the request, the Commissioner has concluded that there is no easy way for the Council to suggest how the complainant could refine it such that it would be able to provide the information requested. He notes that the Council has offered to consider whether it is able to provide any additional information in respect of any specific pieces of land that the

complainant has referred to in correspondence or that they are particularly interested in.

30. In light of the above, the Commissioner finds that the Council has complied with its obligations under section 16(1) of FOIA in its handling of the request.

Other matters

31. Although they do not form part of this decision notice the Commissioner considers that it appropriate to comment on the Council's handling of the request in this case.
32. In this case the request was submitted to the Council on 22 October 2022. The Commissioner is concerned that it has taken the Council multiple stages, over a lengthy period of time, involving various piecemeal disclosures of information to get to the point where, on 26 January 2024, it applied section 12 of the FOIA to the request. This includes a previous decision notice being issued by the Commissioner about the handling of the request.
33. The Commissioner expects the Council to review its handling of this request to ensure that it handles requests in accordance with the FOIA in the future.
34. The Commissioner will use intelligence gathered from individual cases to inform his insight and compliance function. This will align with the goal in his draft Openness by Design strategy² to improve standards of accountability, openness and transparency in a digital age. The Commissioner aims to increase the impact of FOIA enforcement activity through targeting of systemic non-compliance, consistent with the approaches set out in our Regulatory Action Policy³.

² <https://ico.org.uk/media/about-the-ico/consultations/2614120/foi-strategy-document.pdf>

³ <https://ico.org.uk/media/about-the-ico/documents/2259467/regulatory-action-policy.pdf>

Right of appeal

35. 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: 0203 936 8963
Fax: 0870 739 5836
Email: grc@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

36. 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.

37. 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

Joanne Edwards
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