

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 19 June 2024

**Public Authority:** Isle of Wight Council  
**Address:** County Hall  
Newport  
Isle of Wight  
PO30 1UD

#### **Decision (including any steps ordered)**

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1. The complainant has requested information about the number of employees working from home or another area, and the number of employees who have secondary employment. The Isle of Wight Council ("the council") refused to comply with the request under section 12(1) of FOIA (cost of compliance).
2. The Commissioner's decision is that the council has correctly applied section 12(1).
3. The Commissioner does not require further steps.

#### **Request and response**

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4. On 9 December 2023, the complainant wrote to the council and requested information in the following terms:  
  
"...how many staff and paid by the I.O.W council, and paid for the Tax payers, and just how many of these employed ARE WORKING FROM HOME or another area.  
  
Of these that are employed by The I.O.W council and paid by the taxpayers, DO THE EMPLOYED HAVE A SECOND EMPLOYMENT WITH ANOTHER COMPANY."

5. The council responded on 10 January 2024. It disclosed some information (being the total number of employees) but advised that to provide the specific information sought by the request would engage section 12 of FOIA.
6. Following an internal review the council wrote to the complainant on 29 February 2024. It stated that no information was held.

## Reasons for decision

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7. During the Commissioner's investigation, the council confirmed that, notwithstanding its internal review response, it wished to rely on section 12(1) to refuse the request. This is because it considered that collating the information would exceed the appropriate limit in costs set for FOIA.
8. 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").
9. The Fees Regulations specify that the appropriate limit is set at £600 for central government and £450 for non-central government public authorities. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour.
10. This means that a central government department may refuse the request for information under consideration if it estimates that it will take longer than 24 hours to comply with it. For non-central government public authorities the limit is 18 hours.
11. 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.
12. 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. 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".

13. The task for the Commissioner when considering section 12 is to reach a conclusion as to whether the cost estimate made by the public authority was reasonable; in other words, whether it estimated reasonably that the cost of compliance with the request would exceed the limit of £600 or £450. If it did then section 12(1) applied and it was not obliged to comply with the request.

#### The Commissioner's investigation

14. The council has informed the Commissioner that it does not have a centralised system that records if employees are currently working at home, or from another area. Instead, any decision to allow an employee to do so would be made by managers at a team level, with any recording of this (if recorded at all) only made in within each manager's records. Consequently, compliance with the request would require the council to contact each of its managers and ask them to search for and compile the information for its 1751 employees.
15. The council has informed the Commissioner that it also does not have a centralised system that records if employees have secondary employment. Any record of this information would be contained in the council's personnel records. Consequently, compliance with the request would require the council to manually review each personnel file for its 1751 employees.
16. It is not clear to the Commissioner whether the council has undertaken a sampling exercise to estimate how long searching and compiling the information would take. However, the Commissioner notes that even allowing two to three minutes for each line manager to perform a cursory review of their records, this would still represent 58 to 87 hours of officer time. For that information about secondary employment, the Commissioner notes that a comparable amount of time would be needed.
17. The Commissioner has considered this and is satisfied that compliance with the request would exceed the appropriate limit of £450, or 18 hours of staff time.
18. Therefore, the Commissioner's decision is that the council was correct to apply section 12(1) of FOIA to the request.
19. When section 12(1) is engaged the Commissioner will typically consider whether a public authority can provide appropriate advice and assistance to the requester (under the duty to do so at section 16 of

FOIA), so that they may refine the request to within the appropriate limit.

20. However, in this case the Commissioner recognises that there is no feasible way to refine the request. The request seeks statistical information that can only be collated through the steps noted above. In these circumstances, the Commissioner recognises that there is no meaningful advice and assistance that the council can offer to refine the request.
21. Therefore, the Commissioner has not found a breach of section 16.

## Right of appeal

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22. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

23. 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.
24. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Daniel Perry**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**