



IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
INFORMATION RIGHTS

Case No. EA/2015/0123

ON APPEAL FROM:

The Information Commissioner's Decision Notice No: FS50560364

Dated: 5 May 2015

Appellant: Peter Hoskins

Respondent: Information Commissioner

Public Authority: Carmarthenshire County Council

Heard at: Fox Court London

Date of hearing: 16 September 2015

Date of decision: 23 September 2015

Before

Angus Hamilton
Judge

and

Melanie Howard
and
Henry Fitzhugh

Subject matter: s 12(1) Freedom of Information Act 2000 and the Freedom of Information & Data Protection (Appropriate Limit & Fees) Regulations 2004

Cases considered:

Roberts v Information Commissioner (EA/2008/0050)

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal upholds the decision notice dated 5 May 2015 and dismisses the appeal.

REASONS FOR DECISION

Introduction

1. Under section 1(1) of FOIA (the Act) a person who has made a request to a public authority for information is, subject to other provisions of FOIA:
 - (1) entitled to be informed in writing by the public authority whether it holds information of the description specified in the request (section 1(1)(a)); and
 - (2) if the public authority does hold the information, to have that information communicated to him (section 1(1)(b)).

2. Section 12 of FOIA provides, so far as material, as follows:
 - (1) Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.

 - (2) Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.

(3) In subsections (1) and (2) "the appropriate limit" means such amount as may be prescribed, and different amounts may be prescribed in relation to different cases.

3. The Secretary of State has made regulations which prescribe the appropriate limit for the purposes of section 12 of FOIA, namely the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Regulations').
4. Regulation 3 of the Regulations prescribes that the appropriate limit for public authorities listed in Schedule 1 of the Regulations is £600 and for all other public authorities is £450. In this Appeal the appropriate limit is £450.
5. Regulation 4(3) of the Regulations provides that in estimating the cost of complying with a request to which section 1(1) of FOIA would otherwise apply, a public authority may "take account only of the costs it reasonably expects to incur in relation to the request in-
 - a) determining whether it holds the information,
 - b) locating the information, or 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."
6. Regulation 4(4) of the Regulations provides that where costs are attributable to the time that is expected to be taken by persons undertaking the activities specified in regulation 4(3), "those costs are

to be estimated at a rate of £25 per person per hour". £450 is therefore the equivalent of 18 hours' work.

Request by the Appellant

7. On 10 May 2014 the appellant wrote to Carmarthenshire County Council (CCC) and requested information relating to the 'Bwcabus' scheme in the following terms:

- 1) *For each year of operation kindly state how many journeys have been undertaken by passengers. Kindly distinguish scheduled journeys and booked journeys and by area of operation (four discrete replies to this item).*
- 2) *What is the average number of passengers on scheduled and booked journeys? Kindly distinguish by area. (Four discrete replies).*
- 3) *How many passengers were carried on each scheduled service during the last two complete years of operation? Kindly distinguish by service number.*
- 4) *For each year of operation kindly give the number of cancellations made by users.*
- 5) *For each year of operation kindly give the number of unexpected service failures as revealed by complaints by frustrated users to the call centre to report abandonment.*
- 6) *For each year of operation kindly given number of late arrivals as revealed by complaints by frustrated users to the call centre to report late running.*
- 7) *For each year of operation kindly give the number of missed connections with conventional bus services notified to the call*

centre by frustrated users.

- 8) *For each year of operation kindly give the number of refusals of service to users who have speculatively called the call centre to book a journey only to be informed that none is available.*
- 9) *In your calculation of Bwcabus expenditure and income kindly provide a detailed analysis of item 'other supplies and services' for each year of operation as noted. [Figures provided by appellant] Since the 2012/13 period of operation has now been concluded please substitute final total for this period and detailed analysis if this expenditure has now been reckoned. If it has not please indicate when it will be available. Please provide any revised estimates for 2013/14 and 2014/15.*

8. The Council responded on 5 June 2014 and provided information relating to part nine of the request. In relation to parts 1 to 8 of the request the Council stated that the requests were identical to 8 questions that were included in a previous information requests submitted by the appellant in April 2012. In its response to the earlier requests the Council confirmed that complying with the requests would exceed the appropriate limit. As the requests were identical the Council confirmed that its position was the same and that compliance with parts 1 to 8 of the request of 10th of May 2014 would also exceed the appropriate limit.
9. The complainant wrote back to the Council and requested an internal review of its handling of the request with reference to its reliance on section 12 of FOIA. The appellant pointed out that, in response to the earlier request, the Council had also claimed that it did not hold the information requested.
10. The Council responded on 18th of July 2014. The Council confirmed that it either held information relevant to request or it was held by a

third party on behalf the Council. The Council confirmed that it was relying on section 12 as the basis to refuse the request.

11. The appellant complained to the Commissioner on 2 November 2014. The Tribunal notes that the Commissioner records in his Decision Notice that the appellant raised several issues which fell outside of the Commissioner's remit. The Commissioner responded that his investigation would be limited to checking whether the s.12 was properly relied on by CCC.

The Commissioner's Decision

12. The Commissioner served a Decision Notice dated 5 May 2015 in relation to this matter in accordance with s. 50 of the Act. The Commissioner found that section 12 of the Act was correctly relied on by CCC but that the Council had failed to provide adequate advice and assistance to the appellant under s.16 FOIA.
13. As a result of the Commissioner's investigation the Council conducted a timed sample exercise in relation to answering questions 2 and 3 of the request. The exercise was undertaken for one month's data – December 2013. The Council then estimated that it would take 104-106 hours to answer questions 2 and 3 for a 12-month period and well over 500 hours to answer those questions for the then 5-year period of the operation of Bwcabus (the Tribunal noted that not all the appellant's request were for the full period of operation but none appeared to relate to less than a 12-month period). The Council provided full details of how the requested information was retained and what processes would be involved in retrieving the data to answer the appellant's questions.
14. The Commissioner did question some of the calculations relied on to reach these figures but concluded that the Council's arguments were reasonable and based on cogent evidence.

The Appeal to the Tribunal

15. On 24 May 2015 the Appellant submitted an appeal to the Tribunal (IRT).
16. The Grounds of Appeal are extremely lengthy and, as appears to have been the case with the complaint to the Commissioner, raise several issues which are completely outside the Tribunal's remit. Indeed, the Tribunal struggled to find any valid ground of appeal within the document drafted by the appellant and are surprised that the Commissioner did not ask for the appeal to be struck out on the basis that it stood no reasonable chance of success.
17. The sole point of any possible merit identified by the Commissioner in his response to the appeal is that if the Council had better systems for the retrieval and presentation of data then they might be able to answer his questions within the appropriate costs limit. As the Commissioner rightly points out, although he can issue guidance on records management he cannot compel the Council in this case to adopt specific information management practices under FOIA (p. 11 Commissioner's Response)

The Questions for the Tribunal

18. This matter was considered on the papers only. The Council was not joined as a party to the proceedings and made no formal representations to the Tribunal.
19. The Tribunal judged that the sole question for them was to consider whether the Mr Hoskins was correct to claim that on the balance of probabilities that the work involved in answering his requests for information under FOIA would have involved 18 hours' or less work.

20. The Tribunal considered all the written material before it presented by both the Commissioner and the Appellant.
21. The Tribunal also considered the decision of the IRT in Roberts v Information Commissioner (EA/2008/0050) in relation to the nature and quality of the evidence or information that should be provided by a public authority which is seeking to rely on s12 of the Act.
22. The Roberts case confirms that a public authority is not required to provide a precise calculation of costs, only an estimate: ***That estimate, however, must be a reasonable one and may only be based on the activities covered by Regulation 4(3) It is not sufficient for a public authority simply to assert the appropriate limit has been exceeded. As was made clear in Randall (EA/2007/0004) and estimate has to be 'sensible, realistic and supported by cogent evidence'. The word estimate ... points to something more than a guess or an arbitrarily selected figure. It requires a process to be undertaken which will involve an investigation followed by an exercise of assessment and calculation. The investigation will need to cover matters such as the amount of information covered by the request, its location ... The second stage will involve making an informed and intelligent assessment of how many hours the relevant staff members are likely to take to extract the information. Clearly the whole exercise must be undertaken in good faith and, as the Regulation provides, involve an element of reasonableness.***
23. Although the Roberts case was not binding on the Tribunal we accepted and adopted the comments in that case as being an eminently sensible approach to the requirement placed upon a public authority which seeks to rely on s.12 of the Act.
24. The Tribunal considered that the Council had fully complied with the procedure proposed in Roberts and had presented a compelling and

cogent argument that providing the information sought by the appellant would vastly exceed the appropriate costs limit.

25. Conversely the Tribunal considered that the appellant had failed to provide any evidence at all which would bring into question the Council's calculations. Indeed, the appellant, by complaining that if the Council had better systems for the retrieval and presentation of data then they might be able to answer his questions within the appropriate costs limit, implicitly accepted that the Council's calculations were correct.

Conclusion

26. The Tribunal therefore concludes that the appellant has failed to establish, on the balance of probabilities, that responding to his enquiries enquiry would have involved 18 hours or less work. Consequently, the Tribunal confirms that the Commissioner was correct to conclude that s.12 of the Act was engaged.

27. Our decision to dismiss this appeal is unanimous.

Signed:

Angus Hamilton DJ(MC)

Tribunal Judge

Date: 23 September 2015