

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 16 December 2009

Public Authority: Derby City Council
Address: PO Box 6291
The Council House
Corporation Street
Derby
DE1 2YL

Summary

The complainant made a request for information for a large amount of pay and grading information. The public authority informed the complainant that it held the information but was applying section 12(1) because the costs limit applied. The complainant requested an internal review and was informed that the Council maintained its position and also felt that sections 22(1) and 36 applied to the relevant information in any event. The Commissioner has considered the public authority's application of section 12(1) and is satisfied that it could be applied correctly by the Council to the whole request. He has also found that the public authority has complied with its obligations under section 16(1) in providing all the advice and assistance that could be reasonably expected of it when processing the request. The Commissioner requires no remedial steps to be taken in this case.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

Background

2. The Job Evaluation process was a project which resulted from a national agreement between the national employers' side for local government and representatives of the recognised local government trade unions, and as such all local government bodies will have to complete this project within the next few

- years. Each Council however undertakes its own job evaluation exercise and develops its own new grading structure.
3. The complainant is representing a Trade Union. The public authority is yet to undertake its own complete job evaluation exercise. The process is normally called a Single Status review, and when implemented it will be a comprehensive pay and grading review of all posts.
 4. In relation to the reading of the word 'posts' within the request, the Commissioner appreciates that the total number of posts, jobs and employees within the authority may be different from each other, and the difference has a direct relevance to the complainant's request. More specifically, people with the same job title can have different salaries and different levels of salary protection, and each of these must be considered as a different post in order to answer the request with set figures. The Commissioner has discussed this issue with the complainant and he has confirmed that he regards posts with the same post title but different salaries (and/or salary protection) as different posts, and he has progressed this case on that understanding. The complainant has also indicated that he is interested in posts which are not filled, and that they should be included. So the definition of 'posts' in this case comprises every individual position that has been filled by the Council and every post that has been advertised but remains unfilled. For clarity the Commissioner has decided this case on the complainant's definition of 'posts'. The public authority's arguments are also assessed on that basis.
 5. The reference to 'job evaluation points' (request number 5 below) is the assessment of job value which establishes where in the pay structure the individual post falls.

The Request

6. On 23 April 2009 the complainant made a request for information in accordance with section 1 of the Act. He asked for the following recorded information:
'I would request that the Council provides UNISON with pay and grading information for each post. For each post, we would request the following information:
 1. *The current pay grade/scale for that post*
 2. *The approximate gender split of the staff occupying those posts.*
 3. *Details of any bonus scheme and/or allowances that are applicable to that post. Please ensure that you provide full details of how those bonuses/allowances are calculated.*
 4. *The annual leave entitlement for that post*

5. *As a Single Status job evaluation exercise has been carried out, the job evaluation points should be identified for each post.*
6. *Details of all staff employed by the Council, who are currently receiving salary protection of any form. For each post receiving salary protection, please identify the gender, the post title, the substantive grade for the post, the protected grade for the post and precise details of the nature of that protection (e.g. is the protection time limited, how long has the protection gone on for, are increments/annual pay awards payable).*

He indicated that he felt that the task of collecting the above data appears extensive but stated that he believed the Council should have assembled all of this in order to undertake and implement the Single Status reviews. Therefore he did not think that section 12(1) would apply in this case.

He also specifically requested the following:

7. *The post titles of all posts in former manual grades 1 – 6 or craft workers are employed on.*
8. *Details of any bonus payments or allowances that are made posts in manual grades 1 – 6 or craft workers paid since April 2005. Please supply details of how each bonus payment or allowance is calculated, the justification for paying the bonus and to which occupational groups it applies.*

Finally he requested that if the public authority believed that the request exceeded the £450 costs limit then he asked them to consider the request for items 7 and 8 above as *individual* FOI requests for each of the individual former manual grades 1 – 6, i.e. one FOI request for former manual grade 1; one FOI request for former manual grade 2 etc.

7. On 13 May 2009 the public authority wrote to the complainant in order to seek clarification from him. It stated that its preliminary view was that section 12(1) applied as it would take more than 2.5 days to process the information for request 8 alone. It stated that it could provide the information for part 7 as well as a full list of the posts at the Council within the fees limit, however, and asked if he wanted them to provide this.
8. On 13 May 2009 the complainant responded. He said he would take the additional information that was offered but that he also wanted the outstanding information. He said that he believed that the Council had complex payroll systems that can generate the information. He said that he did not believe that section 12(1) could therefore be applied.
9. On 22 May 2009 the public authority provided the complainant with a full response to his request for information. It provided the complainant with the information for part 7 along with a full list of post titles within the Council. It

informed him that it was applying section 12(1) to requests 1-6 and 8 and that to process the information for request 8 alone would exceed the costs limit.

10. Later that day the complainant requested an internal review into the handling of his request. He stated again that he believed that the information was held on computerised databases or in the alternative that it must have been assembled for the Single Status review. He stated that he did not believe that section 12(1) was applied correctly.
11. On 19 June 2009 the public authority responded to the request for an internal review. It said that it was upholding its position in relation to section 12(1). It confirmed that the information had not been collated at that time for the Single Status review. It also went on to apply sections 36 and 22(1) to the information and detailed its public interest tests.

The Investigation

Scope of the case

12. On 22 June 2009 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
 - That the public authority had erred in saying that it could not provide the information within the costs limit and actually holds the information as requested or can generate it from its payroll system and/or staff records.
 - That the public authority provided no evidence for its application of section 12(1).
 - That the public authority's position was inconsistent.
 - That there are legal obligations around both adopting a Single Status Agreement and ensuring gender equality, and the public interest would favour disclosure over the maintenance of the exemption in this case to ensure that the Council is complying with its obligation.
13. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act. These issues include the information that was and should have been made available to the Trade Union as part of the collective bargaining process.

Chronology

14. On 30 June 2009 the Commissioner wrote to the public authority to inform it that he had received this complaint.

15. On 3 August 2009 the Commissioner wrote to the complainant in order to inform him of the Commissioner's remit and to establish the scope of the case. On 18 August 2009 the complainant confirmed the scope of the investigation.
16. Also on 3 August 2009 the Commissioner telephoned the public authority. He explained that he would consider section 12(1) first as if it applied correctly then the application of the other exemptions would not be necessary. He also discussed the nature of the personnel and payroll system and informed the public authority that he would forward questions concerning its position.
17. On 4 August 2009 the Commissioner asked detailed questions about the public authority's position, focussing on its application of section 12(1).
18. On 27 August 2009 he received a detailed response to all of his questions. On 3 September 2009 he sought further clarification from the public authority, which was received on 10 September 2009.

Analysis

Substantive Procedural Matters

Section 12(1)

19. Section 12(1) indicates that the public authority is not required to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.
20. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the "Regulations") provide that the cost limit for non central government public authorities is £450. This must be calculated at the rate of £25 per hour, providing an effective time limit of 18 hours. If a public authority estimates that complying with a request would exceed 18 hours, or £450, section 12(1) provides that the request may be refused.
21. The Commissioner's investigation into the application of section 12(1) has three parts. The first part was to consider whether the requests should be aggregated or considered individually for the purposes of section 12(1). The second part was to consider whether it was reasonable for the public authority to base its estimate on obtaining information from its electronic personnel records. If it was, then the third part was to consider whether the section 12(1) estimate was reasonable, and therefore whether the exclusion was correctly applied.

Should the requests be aggregated or considered individually for the purposes of section 12(1)?

22. When considering whether requests can be aggregated or need to be considered individually the Commissioner is guided by Regulation 5 of the Statutory

Instrument 2004 No. 3244 "The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004" which states that:

'5. - (1) In circumstances in which this regulation applies, where two or more requests for information to which section 1(1) of the 2000 Act would, apart from the appropriate limit, to any extent apply, are made to a public authority -

(a) by one person, or

(b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,

the estimated cost of complying with any of the requests is to be taken to be the total costs which may be taken into account by the authority, under regulation 4, of complying with all of them.

(2) This regulation applies in circumstances in which-

(a) the two or more requests referred to in paragraph (1) relate, to any extent, to the same or similar information, and

(b) those requests are received by the public authority within any period of sixty consecutive working days.'

23. In order to aggregate the requests for the purposes of section 12(1) the Commissioner must determine whether they relate to any extent, to the same or similar information. This has been considered by the Information Tribunal in *Ian Fitzsimmons v Department for Culture, Media and Sport* [EA/2007/0124]. The Tribunal made the following general observation at paragraph 43:
- "The test in Regulation 5 of the Fees Regulations seems to us to be very wide; the requests need only relate *to any extent* to the same or *similar* information [Tribunal emphasis]".
24. The Commissioner invited the public authority to make its submissions concerning this point. It replied that it believed that all the requests were all similar since they all related to pay and grading information.
25. The Commissioner has considered the eight parts of the request in this case. He has concluded that they are similar as they all relate to information about pay and grading associated with payroll information. The complainant's request that the individual parts of his request should be considered separately if the costs limit applies does not alter the fact that it was correct to aggregate the costs in this case.
26. The Commissioner has therefore determined that the public authority is able to aggregate the costs to all eight parts of the request in this case.

Was it reasonable for the public authority to base its estimate on obtaining the information from its electronic HR system?

27. The complainant has argued in his request and subsequently that the costs limits would not have been engaged in this case, because the public authority already held the relevant information in a suitable form, as it must have been considered when carrying out a Single Status review. Alternatively he argued that the information could have been generated using a report function from its payroll system. The Commissioner therefore has considered whether it was reasonable to rely on acquiring the information manually from its electronic HR system in this instance.

28. When considering this issue the Commissioner has received guidance from the Tribunal in the case *Alasdair Roberts v the Information Commissioner* [EA/2008/0050]. In this case, the complainant offered a number of suggestions as to how the requested information could be extracted from the database. The Tribunal concluded that none of the ways suggested would have brought the request under the costs limit. However at paragraph 15, the Tribunal also made the following more general comments on alternative methods of extraction:

“(a)...the complainant set the test at too high a level in requiring the public authority to consider all reasonable methods of extracting data;

(b) that circumstances might exist where a failure to consider a less expensive method would have the effect of preventing a public authority from relying on its estimate... “

29. Those circumstances were set out at paragraph 13 where it was said:

“...it is only if an alternative exists that is so obvious to consider that disregarding it renders the estimate unreasonable that it might be open to attack. And in those circumstances it would not matter whether the public authority already knew of the alternative or had it drawn to its attention by the requestor or any other third party...”

30. The Commissioner has therefore considered whether there is an obvious alternative, the disregard of which would render the estimate unreasonable in this case.

31. The Commissioner first checked what information was held by the Council at the date of the request in relation to the Single Status review. If the information had already all been gathered for this purpose, as stated by the complainant, then this would be an obvious alternative. The public authority confirmed that it had gathered some relevant information but that it had not gathered information about craft workers. The Commissioner is satisfied that the information already gathered did not contain everything and in particular did not contain the bonus and allowance information in the detail that was asked for in the request. Therefore this was not an obvious or appropriate alternative in this case.

32. Next the Commissioner checked what electronic systems the public authority had and whether a report could be written to generate the information requested in this case within the costs limit. The public authority informed the Commissioner that it had two separate modules for its HR and payroll system, 'Dynamic Connect' and 'Vision'. It explained that the systems are not integrated and changes made to Vision do not necessarily automatically update 'Dynamic Connect', while changes made to 'Dynamic Connect' never update 'Vision'. The Commissioner is satisfied that the electronic systems do contain some of the information but that they cannot be used to generate a report that would contain the information that the complainant asked for within the costs limit. This will be discussed in more detail in the analysis below.
33. The Commissioner also enquired whether any further recorded information was held that could satisfy the request. He was informed that it was not. The Commissioner is therefore satisfied that it was reasonable in this case to rely on an estimate based obtaining information through the electronic records. This is because there is no obvious alternative in this case.

Was the estimate reasonable in this case and was section 12(1) therefore applied correctly?

34. The public authority has provided detailed estimates on why it is unable to provide the information requested. It estimated that providing the relevant information for part 8 alone would exceed the costs limit in this case. It is therefore its position that providing the information for all the parts of the request together would also exceed the cost limit.
35. The issue of what constitutes a reasonable estimate was also considered in the Tribunal case *Alasdair Roberts v the Information Commissioner* [EA/2008/0050] and the Commissioner endorses the following points made by the Tribunal at paragraphs 9 -13 of the decision:
- *"Only an estimate is required"* (i.e. not a precise calculation)
 - The costs estimate must be reasonable and only based on those activities described in Regulation 4(3)
 - Time spent considering exemptions or redactions cannot be taken into account.
 - Estimates cannot take into account the costs relating to data validation or communication
 - The determination of a reasonable estimate can only be considered on a case-by-case basis and
 - Any estimate should be *"sensible, realistic and supported by cogent evidence"*
36. The activities referred to in Regulation 4(3) are:
- "(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.”

37. The Commissioner will consider the public authority's estimate of the activities that are allowed for part 8 and consider whether the estimate is reasonable that the processing of the request would exceed £450. If the work required for part 8 would exceed the costs limit, it follows that the work for parts 1-6 and 8 would also do so.
38. Part 8 is a request for a subset of information that would also be included within part 3. It is for details of any bonus payments or allowances that are made posts in manual grades 1 – 6 or craft workers paid since April 2005, including details and justifications.
39. The public authority explained that there are 3,741 employees in total to which this request applies. 3,623 former manual workers (FMWs) and 118 craft workers.
40. The public authority would first be required to identify who these 3,741 employees were from its records. It informed the Commissioner that this process was easy for FMWs who were paid weekly and craft workers, but more complex for those FMWs who were paid monthly. It would be necessary for those paid monthly for two stages of data manipulation to be done and it believed that it would take in total about 3.7 hours to extract and retrieve the information required to identify the relevant people.
41. To find information about current bonuses and allowances the Council would be required to check 'Vision'. As FMWs and craft workers receive pay elements in addition to their basic salary, to extract this information it would require the running of a multi-lined BI query report ('BI query' is the report writing tool used by the Council) against the Council's historical files. The Council estimated that it would take 7.4 hours to prepare and run this report. The Commissioner accepts that this time is time taken to retrieve and extract the relevant information and is an activity described in Regulation 4(3).
42. To find the information for the previous years 2005/2006, 2006/2007, 2007/2008 and 2008/2009 it would be necessary to do the same activity (for the different years) four more times. It pointed out that the request also asks for the amounts paid. It estimated that the time required to retrieve and extract the relevant information would be 37 hours. The Commissioner also accepts that this time is time taken to retrieve and extract the relevant information and is an activity described in Regulation 4(3).
43. To make the information meaningful and accurate the Council also believed it would need to link each year's information together for individual employees, identify starters and leavers who were only in post for part of the period and those who changed job during the period. It said that to extract the information in this way would also take at least 22.2 hours. The Commissioner believes that this would be a necessary process to retrieve and extract the relevant information and

is an activity described in Regulation 4(3). He notes in this case that even it was not done it would not bring the request within the costs limits.

44. The public authority would also need to locate the details of the individual bonus schemes and these are not held centrally or wholly electronically. This is because schemes can date back over 30 years. The Council acknowledge that the bonus earners are concentrated in one department but that it would take a minimum of 7.4 more hours to locate, retrieve and extract the relevant information and ensure that the details of all the schemes operating or formerly operating had been found.
45. Overall the Commissioner is satisfied that the fees limit applies to the aggregated eight requests for information. The total estimate of the time required to process just part 8 of the request was:
$$3.7 + 7.4 + 37 + 22.2 + 7.4 = 77.7 \text{ hours}$$
46. He is satisfied that this estimate is 'sensible, realistic and supported by cogent evidence'. As 77.7 hours (for only request 8) is well beyond the 18 hour limit alone, the public authority can apply the section 12(1) exclusion to the aggregated request and is not required to provide any recorded information at all. The Commissioner therefore upholds the application of section 12(1) in this case.
47. The Commissioner notes that to be helpful the public authority has provided other information for request 7 in any event. It has informed the Commissioner that this took 3.7 hours to extract.
48. As the Commissioner has found that section 12(1) was correctly applied by the public authority to the aggregated request he did not go on to consider the application of the exemptions cited in sections 22(1) or 36(2) in this case.

Procedural Requirements

Section 16(1)

49. Section 16(1) (full text in the legal annex) provides an obligation for a public authority to provide advice and assistance to a person making a request, so far as it would be reasonable to do so. Section 16(2) states that a public authority is to be taken to have complied with its section 16 duty in any particular case if it has conformed with the provisions in the Section 45 Code of Practice in relation to the provision of advice and assistance in that case.
50. The Commissioner is satisfied that the request was clear and further clarification was not needed for this request. Therefore paragraphs 8 to 11 of the Code did not require additional assistance to be provided in this case.
51. Whenever the cost limit has been applied correctly, the Commissioner must consider whether it would be possible for the public authority to provide advice and assistance to enable the complainant to obtain information without attracting the costs limit in accordance with paragraph 14 of the Code. In this case the

Commissioner has considered whether it would have been reasonable for the public authority to have advised the complainant to reduce the scope of his request.

52. The public authority has provided the Commissioner with detailed records of the advice and assistance provided in this case. The Commissioner notes that the information in the electronic case management system for request 7 and a complete list of posts was provided as it could be done within the costs limit. It also informed the complainant that it was applying the costs limits and asked if he was prepared to narrow his request. Therefore the Commissioner has found that the public authority has not breached section 16(1) of the Act as it has provided the advice and assistance that could be reasonably expected of it when processing the request.

The Decision

53. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:
- Section 12(1) has been applied correctly when aggregating the costs of the work required to process the eight requests for information.
 - Section 16(1). The Council provided reasonable advice and assistance when it considered what information could be offered that would not have engaged section 12(1).

Steps Required

54. The Commissioner requires no steps to be taken.

Right of Appeal

55. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

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.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 16th day of December 2009

Signed

**Anne Jones
Assistant Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

The Freedom of Information Act 2000

Section 1 - General right of access to information held by public authorities

(1) Any person making a request for information to a public authority is entitled—

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.

(2) Subsection (1) has effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.

(3) Where a public authority—

(a) reasonably requires further information in order to identify and locate the information requested, and

(b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.

...

Section 12 – Exemption where cost for compliance exceeds the appropriate limit

(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.

(4) The Secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority—

(a) by one person, or

(b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,

the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them.

(5) The Secretary of State may by regulations make provision for the purposes of this section as to the costs to be estimated and as to the manner in which they are to be estimated.

Section 16 – Duty to provide advice and assistance

(1) It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.

(2) Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case.