

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 July 2015

Public Authority: West Sussex County Council (the Council)
Address: County Hall
Chichester
West Sussex
PO19 1RQ

Decision (including any steps ordered)

1. The complainant has requested information relating to West Sussex Fire and Rescue Service (WSFRS) pumping appliances (Water Tender Ladders) attending incidents with less than a crew of five. The Council refused to comply the request under section 12 FOIA as it said that it would exceed the cost limit to do so.
2. The Commissioner's decision is that the Council has correctly applied section 12 FOIA in this case.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Provide the complainant with advice and assistance to enable him to refine the request to fall within the cost limit.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 30 March 2015 the complainant requested information of the following description:

"I will be grateful if you will supply copies of all documents

related to WSFRS pumping appliances (Water Tender Ladders) attending incidents with less than a crew of five.

Documents to include risk assessments, service orders, standard operating procedures, safe working practices, mobilising procedures or any other relevant instructions or guidance.

If any of the published documents have been subject to amendment before a formal update, then copies of the amending notes or instructions are also requested.

As I would expect all such documents to be in electronic format I will be content to receive them in that format."

6. On 14 April 2015 the Council responded. It refused to comply with the request as it said it would exceed the cost limit under section 12 FOIA to do so.
7. The complainant requested an internal review on 14 April 2015. The Council sent the outcome of its internal review on 22 April 2015. It upheld its original position.

Scope of the case

8. The complainant contacted the Commissioner on 11 May 2015 to complain about the way his request for information had been handled.
9. The Commissioner has considered whether section 12 was applied correctly in this case and also whether the Council complied with its obligations under section 16 FOIA.

Reasons for decision

10. Section 12(1) FOIA states that, "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."
11. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the "Regulations") sets the appropriate limit at £600 for the public authority in question. A public authority can charge a maximum of £25 per hour for work undertaken to comply with a request which amounts to 24 hours work in accordance with the appropriate limit set out above. If an authority estimates that

complying with a request may cost more than the cost limit, it can consider the time taken 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.
12. The Council explained that "the subject matter is so wide ranging and the scope so broad and generic ('all documents') it would, as has already been indicated [to the complainant], prove almost impossible to comply with this FOI request, let alone provide a 'reasonable' response."
 13. The Council said that the area manager has identified a considerable number of key documents (Policies, Procedures, electronic folders and files, Training and Guidance documents, Aide Memoires, Mobilising instructions, Governance Meeting minutes, decision and action logs etc) relating to crewing and mobilising, which goes beyond an initial search, undertaken when responding to the request, which identified 160 documents, which took a Grade 5 administrator 5 hours to search through using a 'key word search'. It explained that these documents and the remainder would require further work to identify all the relevant parts of the various policies and procedures.
 14. It estimated that there would be several hundred additional records and documents, held by both WSFRS and East Sussex Fire and Rescue Service (ESFRS) who provide a mobilising service for it. The Council considers that there is a significant amount of data and information held, that relates directly and indirectly to the broad scope of the request.
 15. It went on to explain that locating the information or a document which may contain the information, retrieving the information, or a document which may contain the information and extracting the information from a document containing it would require the interrogation of all relevant records, including electronic folders, e-mail accounts etc.
 16. It estimated it would take approximately:
 - 16 days to review all policies relating to mobilising and crewing, working on reviewing 10 policies per day of the 160 policies already identified as having possible relevance to the request.
 - 20 days to review all the additional electronic documents, over 100 electronic folders / files collectively containing several

hundred guidance documents, governance meeting minutes, mobilising instructions etc.

17. It said that there would also be some additional delays built into it providing some of this data, as the mobilising instructions are held by ESFRS and it would have to commission this work through the Sussex Control Centre (SCC) governance board. Such a significant undertaking, would not be seen as business as usual within its service level agreement. This in turn would have business planning resource implications for SCC which WSFRS is not in a position to fully quantify.
18. It estimated there would be 47 e-mail accounts (including archives, some with significantly high memory volume), that would need to be reviewed, interpreted and extracted.
19. The Commissioner considers that the Council's arguments are not definitive in terms of the numbers of documents which need to be searched, and some of the estimates, relating to the number of days work required, lack detail. However due to the wide scope of the request and the clear indication that a very substantial amount of information would need to be searched, the Commissioner does therefore consider that the cost limit in this case would be exceeded to comply with this request in full. Section 12 was therefore correctly engaged in this case. However the Commissioner has gone on to consider whether the Council complied with section 16 FOIA in its handling of this request.

Section 16

20. Under section 16 FOIA, public authorities are obliged to provide complainants with advice and assistance if a request would exceed the cost limit to comply with a request.
21. The Council said that it is aware of the requirement to advise and assist those seeking information, however under the circumstances it argued that it is difficult to see how the complainant could be supported to narrow the request.
22. The Commissioner does not consider that the Council has provided the complainant with appropriate advice and assistance in this case. The Council holds the information and is best placed to advise the complainant how he may be able to refine his request to fall within the cost limit. As no advice and assistance has been provided to the complainant the Commissioner does not consider that the Council has sufficiently complied with its obligations under section 16 FOIA in this case.

Right of appeal

23. 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@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

24. 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.
25. 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

Pamela Clements
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF