

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 February 2024

Public Authority: Royal Borough of Greenwich
Address: The Woolwich Centre
35 Wellington Street
Woolwich
SE18 6HQ

Decision (including any steps ordered)

1. The complainant requested information from Royal Borough of Greenwich ("the Council") relating to payments to and correspondence with, a particular company ("the Company"). The Council refused to comply with the request citing section 12 (cost limit) of FOIA.
2. The Commissioner's decision is that the Council was not entitled to rely on section 12(1) of FOIA to refuse to comply with the request.
3. The Commissioner requires the Council to take the following steps:
 - Issue a fresh response to the request that does not rely upon section 12 of FOIA.
4. The Council 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 FOIA and may be dealt with as a contempt of court.

Request and response

5. On 11 July 2023, the complainant made the following two requests for information to the Council:

"Please provide me with a breakdown of costs in relation to the amount of £35,339.65 made payable to [the Company] between 1/6/22 and 1/6/23.

In the breakdown, please include how many separate payments were made, which date period the costs were in conjunction with, and what the cost was for - preferably with more of a detailed description other than 'consultancy fees'.

Please also provide me with all correspondence between the council and [the Company] for the same period he request"

and:

"Please provide me with a breakdown of costs fees made payable to [the Company] between 1/6/21 and 31/5/22.

In the breakdown, please include how many separate payments were made, which date period the costs were in conjunction with, and what the cost was for - preferably with more of a detailed description other than 'consultancy fees'.

Please also provide me with all correspondence between the council and [the Company] for the same period."

6. The Council aggregated the two requests and responded on 25 August 2023. It stated that it held information within the scope of the request, but that the cost of complying with the request would exceed the cost threshold of £450 for local authorities. The Council did not offer advice and assistance on refining the request.
7. The Council upheld its initial application of section 12 of FOIA via internal review on 4 October 2023.

Scope of the case

8. The complainant contacted the Commissioner on 7 October 2023 to complain about the way their request for information had been handled. The complainant disagrees with the Council's application of section 12 of FOIA.

10. The Commissioner considers the scope of this case to be to determine if the Council has correctly cited section 12(1) of FOIA in response to the request.

Reasons for decision

Section 12 – cost of compliance

11. Section 12(1) of the 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”).
12. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 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.
13. 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.
14. 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.
15. 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. The Commissioner considers that any estimate must be sensible, realistic and supported by 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.

16. 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.
17. 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?

18. As is the practice in a case in which the public authority has informed the complainant that it holds the information, the Commissioner asked the Council to provide a detailed estimate of the time or cost required to provide the information falling within the scope of this request.
19. In its submission to the Commissioner, the Council stated that its search strategy focussed on keywords which included variations of the Company's name. The Council advised there were 892 records held electronically within scope of the request and it would take 4460 minutes to extract and retrieve the information which would exceed the cost limits. However, no sampling exercise was carried out to justify these calculations.
20. The Commissioner notes that the search was not narrowed by using other strategies such as searching only for emails sent to, or from, email addresses that included the Company's domain name. By not restricting its search in this way, the Council all but guaranteed that its initial search would identify irrelevant material. Only searching by the Company's name would have identified internal Council correspondence – when the request specifically sought external correspondence only.
21. Additionally, the Council confirmed that the information requested "would be held by our finance teams on their bespoke systems" but did not confine its searches to those systems.
22. The Commissioner finds that the Council has not employed a reasonable search strategy and therefore it follows that its estimate is also not reasonable.
23. The Commissioner determines that section 12(1) has been applied incorrectly by the Council.

Procedural matters

Section 10 – time for response

24. Section 10(1) of FOIA states that a public authority must respond to a request promptly and in any event not later than the twentieth working day following the date of receipt.
25. The request for information was made on 11 July 2023 and the Council provided a response on 25 August 2023. As this was more than 20 working days after the request was made, the Commissioner finds that the Council breached section 10(1) of FOIA.

Other matters

Section 16(1) – The duty to provide advice and assistance

26. Section 16(1) of FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45 code of practice¹ in providing advice and assistance, it will have complied with section 16(1).
27. The Commissioner notes that, had he upheld section 12, he would have found an section 16 breach because no advice and assistance was provided to the complainant to help them narrow their request so that it fell within the cost limit.
28. The Council should be mindful of its section 16 obligations when responding to requests.

¹ <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

Right of appeal

29. 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@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

30. 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.
31. 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

Roger Cawthorne
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Wycliffe House
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