

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 03 May 2011

Public Authority: Rhondda Cynon Taf County Borough Council
Address: The Pavilions
Cambrian Park
Clydach Vale
Tonypandy
CF40 2XX

Summary

The complainant requested information relating to expenditure on consultants and non Council staff. The Council refused the request on the basis that the estimated cost of compliance would exceed the appropriate limit as set out at section 12(1) of the Act and the Fees Regulations. The Commissioner's decision in this case is that the Council acted correctly in refusing the request under section 12(1). However the Commissioner also finds that the Council failed to provide adequate advice and assistance, and therefore breached section 16(1). The Commissioner has also identified a number of procedural breaches in relation to the Council's handling of the request. The Commissioner requires the Council to provide advice and assistance to the complainant to clarify what information could be provided under the Act within the cost limits.

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.

The Request

2. On 13 July 2010, the complainant submitted the following request to the Council:

"Please could you provide the following information in relation to the council's spending on consultants/non council staff in 2008-09 and 2009-10:

What was the total spend department by department?

Could you provide the names and payments made to each of the consultants detailed separately?

Was any of work carried out by consultants was advertised competitively and, if not, the reason why that was not done?

Could you state how many days each of the consultants were employed by the authority during the two years?

Could you state whether you are aware if any of the consultants were also employed by other public bodies such as another local authority, South Wales Police, South Wales Fire Brigade and, if so, please provide details of the organisation?"

3. The Council issued a refusal notice on 25 August 2010 stating that to comply with the request would exceed the "appropriate limit" as defined in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Regulations').
4. On 31 August 2010 the complainant contacted the Council and requested an internal review of its decision not to provide the information requested. The complainant also expressed concern that no advice and assistance had been offered by the Council in order to determine whether it could provide any information relevant to the request.
5. The Council provided the outcome of its internal review on 6 October 2010. It upheld its decision that to comply with the request would exceed the cost limit set out in the Regulations. In its internal review the Council stated that:

"As you might imagine the broad spectrum of assistance which is required is extremely varied given the wide remit of the Council's functions. Further the definition of consultant in itself is open to some interpretation as to what could reasonably be included within that categorisation. For example, on the one hand it may be necessary for the Council's lawyers to take specialist advice from Counsel upon a matter whilst the Environmental Group may, from time to time need to engage specialist support to assist with the technical aspects of highway construction. In one sense both these categories of external assistance may be classed as consultants although the amount of work involved in

trawling through the Council's records in order to establish which pieces of work are being done by persons other than those employed directly by the Council would be considerable".

The Investigation

Scope of the case

6. On 26 October 2010 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:
 - The Council wrongly refused to provide the requested information.
 - The Council did not provide any advice and assistance.

Chronology

7. On 10 December 2010, the Commissioner wrote to the Council to confirm that the complaint had been deemed eligible for formal consideration.
8. On 16 December 2010, the Commissioner wrote to the Council and asked for further representations in relation to its application of section 12 of the Act. The Commissioner also asked for details of any advice and assistance which had been provided to the applicant in respect of refining and/or clarifying the request.
9. On 12 January 2011, the Council responded to the Commissioner's letter of 10 December 2010 setting out its position. The Council asked the Commissioner to provide clarification or guidance into the definition of the term 'consultant', as referred to in the request for information.
10. The Commissioner telephoned the Council on 17 January 2011 and requested a response to his letter of 16 December 2010.
11. On 24 January 2011, the Council responded to the Commissioner and provided details of the processes which would be involved in complying with the request.
12. On 28 February 2011 the Commissioner telephoned the complainant to clarify the exact scope of his request. On 1 March 2011 the complainant confirmed that his request of 13 July 2010 related to information regarding "consultants/non Council staff" and that he was referring to:

“any third party company/organisation or individual who had been contracted by the Council to provide a specific service or carry out a particular piece of work or project on behalf of the Council”.

13. The Commissioner wrote a further letter to the Council on 2 March 2011. In this letter, the Commissioner notified the Council of the clarification of the information being sought by the complainant. The Commissioner requested details of how the information was held by the Council and raised additional queries about the processes involved in complying with the request.
14. Following a conversation between the Commissioner and the Council on 10 March 2011 to discuss how the information was held and the processes involved in complying with the request, the Council provided him with a substantive written response on 17 March 2011.

Analysis

Substantive Procedural Matters

15. The first issue the Commissioner will consider is the interpretation and scope of the request. The second issue will be to consider whether the costs limit applies to the request. The third issue will be to consider whether appropriate advice and assistance has been provided. Finally, the Commissioner will consider any procedural matters relating to the Council's handling of the request.

Interpretation of request

16. The Council informed the Commissioner that it initially interpreted the request to cover any party who may provide a service to the Council. This would include advice and support provided to its various departments, including such items as financial advice, legal advice and engineering advice. The complainant clarified the exact scope of the information being sought, as detailed at paragraph 12 above. When this clarification was put to the Council, it considered it would broaden the request even further; for example it said that it could also apply to payments made to individuals such as individual agency workers, sports coaches, decorators, or builders carrying out specific projects.
17. The Commissioner considers the Council's original interpretation of the request to constitute an objective reading of the request. The Council's estimate for the cost of compliance is based on its original interpretation of the request. The Commissioner agrees with the Council that, based on the clarification of the request provided by the complainant it potentially broadens the scope of the request.

Section 12 – cost of compliance exceeds appropriate limit

18. The Council confirmed that it is relying on section 12(1) as the basis for refusing the request. Section 12(1) of the Act provides that public authorities do not have to comply with requests where the estimated cost of complying exceeds the appropriate limit as specified by the Regulations. All sections of the legislation are reproduced in the attached legal annex.

19. Section 4(3) of the Regulations sets out the basis upon which an estimate can be made:

“(3) In a case in which this regulation has effect, a public authority may, for the purpose of its estimate, take account only 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.*

(4) To the extent to which any of the costs which a public authority takes into account are attributable to the time which persons undertaking any of the activities mentioned in paragraph (3) on behalf of the authority are expected to spend on those activities, those costs are to be estimated at a rate of £25 per hour.”

20. The Regulations state that the appropriate cost limit is £600 for central government, legislative bodies and the armed forces and £450 for all other public authorities, which includes the Council. This is equivalent to 18 hours' work.

21. Section 12(4) of the Act provides that in certain cases a public authority can aggregate the cost of complying with requests. As part of the statutory instrument associated with section 12(1) of the Act, section 5 of the Regulations sets out the circumstances in which it may be appropriate to aggregate requests. This states that two or more requests to one public authority can be aggregated for the purposes of calculating costs if they are:

- by one person, or by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign;
- for the same or similar information to any extent; and
- the subsequent request is received by the public authority within 60 working days of the previous request.

Has the complainant made one request with multiple parts or multiple requests in one letter?

22. Given the effect of section 12(4), the Commissioner has first considered whether the complainant's request of 13 July 2010 constituted a single request with multiple elements or multiple requests. The Information Tribunal considered a similar issue in *Fitzsimmons v ICO & Department for Culture Media and Sport* [EA/2007/0124].
23. Taking the Tribunal's decision in the *Fitzsimmons* appeal into consideration, the Commissioner would characterise the complainant's letter of 13 July 2010 as containing more than one request within a single item of correspondence.

Can any or all of the requests be aggregated?

24. Having established that the complainant made multiple requests in a single letter, the Commissioner has gone on to consider whether those requests could be aggregated for the purpose of calculating the cost of compliance.
25. Having considered the wording of the six parts of the request, the Commissioner has concluded that they can be aggregated for the purpose of calculating the cost of compliance. This is because they follow an overarching theme and common thread relating to the public authority's expenditure on consultants/non Council staff.
26. Having reached this conclusion, the Commissioner has gone on to consider the application of section 12(1).

Would compliance with the requests exceed the appropriate limit?

27. The Council's position is that it holds some information of the description specified in the request. However, it does not hold central records relating to the use of consultants and non-Council staff and, as such, significant interrogation of its records would be required in order to process the request. The Council maintains that to process the request in its entirety would involve work beyond the costs limit, and as such section 12(1) applies.
28. The Council advised that as a Unitary Council, responsible for providing many hundreds of discrete services, it is required to hold within its electronic general ledger around 4,498 cost centre codes and over 2,300 detailed cost codes. Each year, the expenditure which flows through the ledger is around £700 million. Expenditure to third parties equates to approximately £150 million, comprising of around 230,000 creditor transactions to third parties. The Council confirmed that payments are made and logged onto its financial system by over 400 employees who

are located at over 88 different office locations. The Council state that it does not have any electronic software for invoices (for example data imaging software) and invoices are retained and stored in the various office locations.

29. To provide the requested information the Council has confirmed that the following processes would need to be undertaken:

- Analyse and review the payments within 56 cost codes which have been identified as potentially containing information falling within the scope of the request.
- Once all relevant payments have been identified, analysis of the Council's creditor payment section of the database would need to be undertaken to ascertain whether information was held relating to the number of days worked.
- Where details of the number of days worked by each consultant/non Council staff are not recorded within the financial database, hard copies of the relevant invoices would need to be retrieved from the relevant office location (of which there are 88) and reviewed.
- For each payment falling within the scope of the request, any corresponding contract would need to be retrieved and reviewed in order to establish whether the contract was officially put out to tender or if it fell within the Council's financial procedures rules that required no formal tender to be undertaken.
- Once all relevant information had been identified, it would then need to be broken down and tabulated into departmental totals.

30. The Council provided the Commissioner with details of the 56 relevant cost codes it had identified as potentially containing information falling within the scope of the request and the number of transactions recorded within each cost code. The number of transactions recorded within the 56 cost codes total 20,868 for one financial year. The Council confirmed that no formal sampling exercise had been undertaken in relation to the cost of complying with the request. This is because the Council is of the view that, taking into account the figure of 20,868 third party payments that could fall within the scope of the request, using an estimated figure of 2.5 minutes per transaction to carry out the relevant processes identified above would require 200 hours (or £5,000) to comply with the request for one financial year. As the request encompasses two years, the Council's total estimate to comply with the request is 400 hours (£10,000).

31. The issue of what constitutes a reasonable estimate in relation to the cost limit was considered by the Information Tribunal in the case of *Roberts v the Information Commissioner*. The Commissioner is assisted by the Tribunal's approach as set out in 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".

32. The Tribunal went on to suggest that producing an estimate requires a process of both investigation and assessment/calculation. At paragraph 12, the Tribunal said:

"...The investigation will need to cover matters such as the amount of information covered by the request, its location, and the hourly rate of those who have the task of extracting it. 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..."

33. The Regulations specify those tasks that may be taken into account when forming a cost estimate. The Commissioner considers it debatable whether some of the tasks specified in paragraph 29 would fall within those tasks specified in the Regulations. However, the Commissioner accepts that enough of the tasks specified by the Council can be taken into account that the possibility that some of the tasks cannot be taken into account will not impact upon the conclusion here.

34. The Commissioner accepts that information relevant to the request could be held within the 56 cost codes identified, however, he does not accept that it would take 2.5 minutes to examine each and every transaction. This is because if the payment does not meet the criteria of the request during the first stage of the review process, no further examination, analysis or tabulation would be required. However, the Commissioner acknowledges that it would be necessary for the Council to undertake all of the tasks described in paragraph 29, above, in relation to some of the third party payments contained within the 56 cost codes.

35. Bearing in mind the fact that the figure of 20,868 transactions only relates to one financial year and the request covers two financial years, the Commissioner considers that even to carry out the initial review of the transactions to determine whether they fall within the scope of the request would exceed the cost limit. This is because it would require over 40,000 payments to be reviewed within 18 hours (1080 minutes) at a rate of 37 transactions per minute (40,000 transactions / 1080 minutes). The Commissioner is satisfied that this work would need to be carried out manually and that this volume of work could not be completed within the appropriate cost limit. The conclusion of the Commissioner is, therefore, that section 12(1) was appropriately applied by the Council and that it was not obliged to comply with the request.

Section 16 – Advice and assistance

36. Section 16(1) of the Act 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 relevant provisions in the Section 45 Code of Practice ('the Code').
37. The Council informed the Commissioner that the member of staff who originally dealt with the request no longer worked for the Council and, as such, it was unable to confirm why no advice or assistance was offered or any clarification sought at the time the refusal notice was issued. The Council stated that its standard paragraph relating to provision of advice and assistance appeared to have been omitted from its refusal notice. The Council offered the following explanation for the apparent lack of provision of advice and assistance in this case:
- "This may however have been because it was considered that the original request was detailed enough for there to be no need to make further enquiries or seek clarification of the requestor at that initial stage due to it being concluded that the information requested would take it well beyond the 'appropriate limit' even if the request was substantially narrowed down."
38. It is clear from the Council's internal review response, as detailed in paragraph 5, above, that it was not clear exactly what information was being sought. The Council has not provided any evidence to suggest that it engaged with the complainant in order to clarify the nature of the information being sought, in accordance with paragraphs 8 to 11 of the Code.

39. 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.
40. The Commissioner is of the view that the Council did not attempt to identify how much, if any, of the information requested it could provide within the appropriate cost limit. Nor did the Council provide any kind of practical assistance or guidance to the complainant as to how he might redefine his request, despite the complainant raising the issue in his internal review request. The approach taken by the Council in this case does not adhere to the Commissioner's published guidance on section 16 of the Act¹. In cases where a public authority has applied section 12(1) with regard to requested information the Commissioner recommends that early contact is made with the applicant to engage with him or her to establish if there is a way in which the request can be brought under the appropriate costs limit. This provides the applicant with the opportunity to be specific about what information he or she is seeking and increases the likelihood that the public authority will be able to disclose the information.
41. The Commissioner has concluded that the Council has breached the requirements of section 16(1) and will require a remedial step to be undertaken to remedy this breach

Procedural Requirements

Section 17

42. Section 17(5) of the Act states that a public authority relying on a claim that section 12 or 14 applies must give the applicant a notice stating that fact within 20 working days of receipt of the request. In its refusal notice of 25 August 2010, the Council advised the complainant that the work involved in complying with the request would exceed the appropriate limit. The Council did not specify its reliance on the application of section 12 of the Act in its refusal notice. This omission was not corrected in the Council's internal review response. The refusal notice was also issued 30 working days after receipt of the request.

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http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/22_06_09_foi_advice_and_assistance_v2.pdf

43. In failing to respond within 20 working days of receipt of the request with a refusal notice stating its reliance on section 12 the Council breached the requirements of section 17(5).
44. Section 17(7)(b) of the Act states that a public authority must provide the applicant with details of his rights under section 50 of the Act. This should include details of how to complain to the Commissioner. In its refusal notice dated 25 August 2010 the Council did not make any reference to the complainant's right to refer the matter to the Commissioner. Accordingly, the Commissioner considers that the Council breached the requirements of section 17(7)(b).

The Decision

45. The Commissioner's decision is that the public authority dealt with the following elements of the request for information in accordance with the Act.
 - It correctly applied section 12(1) to the request for information.
46. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
 - The Council breached section 16(1) by failing to provide appropriate advice and assistance to the complainant after applying section 12(1).
 - The Council breached section 17(5) by failing to state it was relying on section 12(1) within twenty working days.
 - The Council breached section 17(7)(b) for failing to provide the with details in its refusal notice about the complainant's right of appeal under section 50(1).

Steps Required

47. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
 - Contact the complainant and offer appropriate advice and assistance in line with section 16(1) and the Section 45 Code of Practice to determine whether it can provide any relevant information within the costs limit, or if it can provide guidance on how the complainant could refine his request.

48. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

49. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Right of Appeal

50. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

51. 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.

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

Dated the 3rd day of May 2011

Signed

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

Legal Annex

General Right of Access

Section 1(1) provides that -

“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.”

Time for Compliance

Section 10(1) provides that –

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

Exemption where cost of compliance exceeds appropriate limit

Section 12(1) provides 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.”

Section 12(2) provides that –

“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.”

Section 12(3) provides that –

“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.”

Section 12(4) provides that –

“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.”

Section 12(5) – provides that

“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 estimated.”

Duty to provide Advice and Assistance

Section 16(1) provides that -

“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.”

Section 16(2) provides that –

“Any public authority which, in relation to the provision of advice and 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.

Refusal of Request

Section 17(1) provides that -

“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

(c) states that fact,

(d) specifies the exemption in question, and

(e) states (if that would not otherwise be apparent) why the exemption applies."

Section 17(5) provides that –

"A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact."

Section 17(7) provides that –

"A notice under section (1), (3) or (5) must –

(a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and

(b) contain particulars of the right conferred by section 50."