

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 December 2012

Public Authority: Leeds City Council

Address: Civic Hall
Leeds
LS1 1UR

Decision (including any steps ordered)

1. The complainant requested all information held by the Council on a database. Leeds City Council (the Council) refused this request and cited section 12 of the FOIA as it estimated that the cost of compliance with this request would exceed the limit of £450.
2. The Commissioner's decision is that the Council's estimate of the cost of the request was reasonable and so section 12 provided that it was not obliged to comply with it.

Request and response

3. The complainant made the following information request on 8 March 2012:

"I refer to the Information Commissioner's Case Reference Number FS50326588 (Decision Notice issued 12 September 2011).

At paragraph 72 of the Decision Notice, the Commissioner states that he 'notes that it is open to the complainant to request everything after considering this Notice.' The 'everything' refers to all the electronic information held by the Council on its Lotus Notes database(s) that comprised the Council's intranet over a number of years, and more particularly including the years 2003 and 2004.

Accordingly, having now considered the Notice, I now request 'everything' held by the Council on its Lotus Notes system. I believe this request ought to be self-explanatory having regard to the discussion contained in the Decision Notice."

4. The Council responded by letter dated 20 April 2012, although the complainant did not receive this response until later. It stated that the request was refused on cost grounds and cited section 12 of the FOIA.
5. Following an internal review the Council wrote to the complainant on 4 July 2012. It stated that the refusal of the request under section 12 was upheld, and also at this stage introduced section 14 and stated that it believed that the request was vexatious.

Scope of the case

6. The complainant contacted the Commissioner on 6 April 2012 to complain about the way his request for information had been handled. At this stage the complainant stated that he had not received any response to his request.
7. Later, after the complainant had received the response to his request, the Council contacted the ICO and stated that the complainant had requested an internal review. At this stage the complainant was contacted and asked whether he wished to proceed with his complaint about the delay in responding to his request, or wait until the outcome of the internal review at which stage he may have wished to make a substantive complaint.
8. The complainant responded to this on 31 July 2012 and stated that he had by then received the outcome of the internal review. The complainant indicated that he wished to complain about the refusal of his request under sections 12 and 14.

Reasons for decision

Time limits

9. Section 10(1) and 17(1) of the FOIA require that when a request is refused a refusal notice should be provided within 20 working days of receipt of the request for information. In failing to meet this requirement in relation to the complainant's request the Council breached section 17(1).

Section 12

10. Section 12(1) provides that a non-central government public authority is not obliged to comply with an information request where the cost of doing so would exceed £450. The Freedom of Information (Appropriate Limit and Fees) Regulations 2004 (the fees regulations) provide that,

where this estimate is based on staff time spent on dealing with the request, it must be calculated at the rate of £25 per hour. The fees regulations also specify the tasks that can be taken into account when forming a cost estimate as follows:

- determining whether the information is held;
- locating the information;
- retrieving the information;
- extracting the information.

11. The task for the Commissioner here is to consider whether the estimate of cost made by the Council for complying with this request was reasonable. In forming a conclusion on this point he has taken into account the reasoning provided by the Council for its estimate, as well as counterarguments advanced by the complainant.
12. The argument of the Council as to why it would exceed the cost limit to supply the information requested by the complainant centred around the technical demands of doing so. Its estimate mainly concerned the costs of equipment that it believed would be required to enable it to comply with the request. Specifically, it stated that it would be necessary for it to purchase hardware to enable it to replicate the Lotus Notes database that forms the information falling within the scope of the request. It estimated the cost of doing so to be £10,000.
13. The Commissioner's published guidance on section 12¹ notes that costs other than staff time can be taken into account when forming a cost estimate, if it is reasonable to do so. The Commissioner has, therefore, considered whether it was reasonable for the Council to take into account this £10,000 estimated cost in this case.
14. The Council has described two steps that it would be necessary for it to carry out, the cost of which would amount to approximately £10,000:

"Convert the physical Lotus Notes infrastructure into virtual using a process called Physical 2 Virtual (PAVE)."

1

http://www.ico.gov.uk/for_organisations/guidance_index/~/_media/documents/library/Freedom_of_Information/Detailed_specialist_guides/costs_of_compliance_exceeds_appropriate_limit.ashx

"Copy the virtual image onto independent hardware, then configure to replicate the current network setup that Lotus Notes exists in."

15. In explanation as to why it would be necessary for it to take these steps, the Council stated that converting the physical server into a virtual server is the quickest and easiest way to comply with the request, whilst preserving the integrity of this information. However, it also stated that *"it could not be certain"* that it would be possible for it to provide the requested information through this method.
16. The Council also referred to an alternative means of providing the requested information. This was that the information could be copied onto external media. It stated that this process would have to be carried out manually and that this would be extremely time consuming as it would be necessary to copy each document to external media individually. The estimate for providing the information through this method was that it would take 15 seconds per document to copy these to external media. This would give a total estimate of 6,000 hours to comply with the request.
17. The complainant has suggested that it would not be particularly difficult or time consuming for the Council to provide a copy of this database. He has advanced his own technical arguments setting out how he believes that this would be possible.
18. In relation to the first part of the estimate, that relating to the cost of buying equipment to enable the information to be copied and provided to the complainant, the Commissioner accepts on the basis of the representations provided by the Council that it would be a necessity for the Council to buy this equipment. As to the estimate of £10,000 to buy this equipment, clearly this is far in excess of the cost limit. Even were it the case that this estimate could be reduced somewhat, the Commissioner accepts that it is unlikely that this cost estimate could be so errant that the actual cost of procuring this equipment would be less than the limit of £450.
19. In response to further inquiry by the ICO, the Council provided more information about an alternative method of extracting this information via copying this to external media. The estimate of 15 seconds per entry given above stems from a previous decision notice concerning a related information request made by the complainant so the Commissioner accepts that this is reasonable, as, therefore, is the overall estimate of 6,000 hours to comply with the request, or £150,000.
20. As to whether it would be necessary to copy each database entry individually, the complainant disputes that this would be necessary and

has suggested that it would be possible to simply transfer the data electronically instead.

21. As found by the Information Tribunal in the case of Alasdair Roberts v the Information Commissioner [EA/2008/0042], the Commissioner considers that

" ..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"

22. In this case the Commissioner does not consider that the complainant has drawn to the Council's attention an alternative method of providing the requested information that is so obvious it renders the Council's own estimate unreasonable. The Commissioner considers that the alternative method would not provide the complainant with the "everything" that he has requested.
23. The Council has suggested two possibilities through which it may be possible to supply the requested information to the complainant. For both of these methods of complying with the request, the estimate of the cost of doing so would be far in excess of the appropriate limit and the Commissioner has found on the basis of the descriptions given by the Council that these estimates are reasonable. The conclusion of the Commissioner is, therefore, that section 12(1) applies in relation to this request and so the Council was not obliged to comply with it.

Section 16

24. Section 16(1) provides that public authorities are obliged to provide advice and assistance to any person making a request. Where section 12 is cited, this should mean that, where it is reasonable to do so, the requester is provided with advice and assistance as to how their request could be refined in order to bring the cost of it within the appropriate limit.
25. In this case the Commissioner is aware that this request followed an earlier one, more limited in scope, which the complainant made for similar information to that requested in this case. As that earlier request had been for information that formed a subset of the information requested in this case, any advice and assistance would likely have entailed directing the complainant to make a new request similar to that earlier request, which itself had been found by the Commissioner to be in excess of the cost limit. Such an exercise would, therefore, have been academic.

26. He also takes into account that the estimates he has accepted as reasonable were far in excess of the appropriate limit, so it is unlikely that the request could have been refined in such a way that compliance was possible within the cost limit, whilst still resembling the original request. For these reasons, the Commissioner accepts that it was reasonable for the Council to have provided no further advice and assistance in this case.

Right of appeal

27. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

28. 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.
29. 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

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