

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 October 2013

Public Authority: London Borough of Havering
Address: Town Hall
Main Road
Romford
RM1 3BB

Decision (including any steps ordered)

1. The complainant requested information about complaints, accidents and enquiries concerning low hanging or dangerous trees or branches within a specified timescale. London Borough of Havering (the Council) said that it could not be provided without exceeding the costs limit under section 12(1) of the Freedom of Information Act 2000 (FOIA).
2. The Commissioner considers that section 12 of FOIA was applied correctly in this case. The Commissioner requires no steps to be taken.

Request and response

3. On 27 February 2013 the complainant requested the following information:

"I would like to know how many complaints, accidents and enquiries concerning low hanging/dangerous trees or branches you have received from 01/03/2008 to the date of this email and how many you have acted upon please".
4. The Council responded on 27 March 2013. It said that it would exceed the appropriate limit to locate and retrieve the requested information. The Council suggested that the complainant might wish to refine and resubmit his request.
5. The complainant requested an internal review on 18 April 2013. The Council sent him the outcome of its internal review on 13 May 2013, upholding its original position.

Scope of the case

6. Following earlier correspondence, the complainant contacted the Commissioner on 21 May 2013 to complain about the way his request for information had been handled. He subsequently told the Commissioner:

"I don't think it's an unreasonable request but it seems their system isn't equipped to sort the information needed in a reasonable timescale".

7. The complainant also told the Commissioner that he was unhappy *"at the time it has taken them to let me know"*.

8. However, he subsequently confirmed:

"The timescale is a secondary issue, I'm more concerned with the fact they are unable to supply the information requested".

9. The Commissioner considers the scope of his investigation to be the Council's application of section 12 of FOIA (cost of compliance exceeds appropriate limit).

Reasons for decision

Section 12 - cost of compliance exceeds appropriate limit

10. Section 12(1) of FOIA states:

"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. In other words, section 12 of FOIA provides an exemption from a public authority's obligation to comply with a request for information where the cost of compliance is estimated to exceed the appropriate limit.
12. This limit is set in the fees regulations at £600 for central government departments and £450 for all other public authorities. 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 in this case.
13. In estimating whether complying with a request would exceed the appropriate limit, Regulation 4(3) states that an authority can only take into account the costs it reasonably expects to incur in:

- determining whether it holds the information;
 - 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.
14. The four activities are sequential, covering the retrieval process of the information from the public authority's information store.

15. In correspondence with the Commissioner, the complainant said:

"They are supposed to have a robust process in place to protect the public from dangerous low hanging branches. How can they measure that process if they do not have the systems in place that quickly provide the information required".

16. The Commissioner, while appreciating the complainant's frustration in this regard, is mindful of the comments made by the Information Tribunal in the case of *Johnson / MoJ* (EA2006/0085) that FOIA:

"does not extend to what information the public authority should be collecting nor how they should be using the technical tools at their disposal, but rather it is concerned with the disclosure of the information they do hold".

Would compliance exceed the appropriate limit?

17. Section 12 explicitly states that public authorities are only required to estimate the cost of compliance with a request, not give a precise calculation. A number of Information Tribunals have made it clear that an estimate for the purposes of section 12 has to be 'reasonable', which means it is not sufficient for a public authority simply to assert that the appropriate costs limit has been met.

18. In this case, the Council told the complainant:

"Street Care have provided the following statement:-

'The information is on the CRM systems, but it is not kept in an easily accessible format. It would require an officer to go through 5 years (1/3/08 to date) of CRM's, to check which ones were raised for trees, then checking whether or not the enquiry relates to the information requested.'

It is estimated that the time it will take for the service to collate information, would be in the region of: 144 Hours".

19. It subsequently told him:

"Records of 'low hanging' branches are not kept and there is not a report to cover this.

Therefore, an officer would be required to go through 5 years of files and records, which would exceed the 18 hour time limit".

20. The Commissioner accepts that the Council provided the complainant with an estimate of the time it considered it would take to comply with his request. However, he does not consider that it provided the complainant with sufficient evidence of the process involved to enable him to conclude that the estimate was both sensible and realistic.

21. As is the practice in a case such as this, during the course of his investigation the Council was asked to provide the Commissioner with:

"a detailed estimate of the time/cost taken to provide the information falling within the scope of this request".

22. In response, the Council explained how it calculated the estimate of the time/cost taken to provide the information falling within the scope of the request. It told the Commissioner:

"The Service liaised with our ICT department who had to set up/write reports to be able to extract the CRM information [from the old system] and the new system they are now using. The Service then undertook a sampling exercise for each system of 100 records each".

23. With respect to the scale of the required investigation, the Commissioner understands from the Council that there are 5,207 records logged on the old system between 01/03/2008 – the start date cited in the request – and the date the Council stopped using the system. With respect to the current system, the Commissioner understands that there are 2,557 relevant records.

24. With respect to enquiries and complaints 'logged under 'trees'' on the old system, the Council provided the Commissioner with a sample report. It explained the additional checks it was required to make where it was not clear from the description on the report if the information fell within the scope of the request.

25. In the case of the system it is using now, the Council explained that records are logged on that system under 'services', for example:

- *Trees: Damage – Branch lying on footway or verge*

- *Trees : Overhanging*
 - *Trees : Pruning*
26. However, it told the Commissioner that, although information within the scope of the request was easier to identify on the new system:
- "as some requests for pruning still fall under the requested information, these records had to be checked as well".*
27. Again, the Council provided the Commissioner with details of the procedure it was required to follow where it was not clear whether the retrieved information fell within the scope of the request.
28. The Council told the Commissioner:
- "Based on the above, which the Service have confirmed is the quickest method they can determine, they have revised their estimated time to comply with the FOI request to 71.25 hours to extract the information".*
29. From the evidence he has seen, the Commissioner is satisfied that the Council has cogent arguments and evidence in support of its search strategy and the reasonableness of its estimate.
30. In reaching a conclusion in this case the Commissioner has taken into account the intention of Parliament in relation to section 12(1) - that a public authority is not obliged to comply with a request if to do so would exceed the appropriate cost limit.
31. In this case, he is satisfied that, as a result of his intervention, the public authority has provided adequate explanations to demonstrate that it would exceed the appropriate limit to locate and retrieve the requested information. Section 12(1) does therefore apply and the Council is not required to comply with the request.

Section 16 advice and assistance

32. Section 16 places a duty on a public authority to provide advice and assistance to someone making an information request, including helping an applicant refine a request so that it can be answered within the appropriate costs limit.
33. In this case, the Council told the complainant:
- "You may wish to refine and resubmit your request so that it reduces the cost to within the 'appropriate limit".*

34. In the Commissioner's view, the Council failed to explain how to refine his request to bring it within the cost limit. Nor did it give the complainant an indication of what, if any, information could be provided within the appropriate limit.
35. Following the Commissioner's intervention, the Commissioner understands that the Council contacted the complainant to explain why, in the circumstances of his request, it was having difficulty ascertaining the requested information within the 18 hour limit. The Commissioner understands that, in the circumstances, the Council asked the complainant if he would be prepared to scale down his request to particular roads and a shorter time span. However, it appears that the complainant did not wish to do so.
36. Having considered the matter, while, in his view the Council initially failed to provide adequate advice and assistance to the complainant, the Commissioner is satisfied that it carried out its duty under section 16 of FOIA during the course of his investigation.

Right of appeal

37. 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

38. 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.
39. 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

Jon Manners
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