

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 October 2013

Public Authority: Westminster City Council
Address: City Hall
64 Victoria Street
London
SW1E 6QP

Decision (including any steps ordered)

1. The complainant requested information about the nationality or ethnicity of housing benefit claimants in the borough of the City of Westminster. Westminster City Council (the Council) initially denied holding the information. It subsequently confirmed that it held the requested information but said that the cost of compliance with the request would exceed the appropriate limit (section 12 of the FOIA).
2. The Commissioner's decision is that the Council was entitled to rely on section 12. He requires no steps to be taken.

Request and response

3. On 22 April 2013 the complainant made the following request for information to the Council:

"Under the FOI act I would like to know the nationality or ethnicity (it depends which one is available) of the housing benefit claimants in this borough.

Of course I understand that claimants are not obliged to give this information when they fill the housing benefit form and this is why you can reply to me by looking at the ones who did".

4. The Council responded on 1 May 2013. It denied holding the requested information.

5. The complainant requested an internal review on 2 May 2013. He told the Council :

"I don't believe for a second that you don't hold this information..."

6. The Council sent him the outcome of its internal review on 17 May 2013, revising its position. It confirmed that it held the requested information but said that the cost of compliance with the request would exceed the appropriate limit (section 12 of the FOIA).
7. However, it told the complainant that it may be able to provide him with some relevant information within the cost limit. It advised him about the amount, and type, of information that it may be able to provide. It also invited him to contact the Council if he would like any assistance on how to narrow the scope of his request.

Scope of the case

8. On 18 June 2013 the complainant provided the Commissioner with the relevant documentation to complain about the way his request for information had been handled.
9. In bringing his complaint to the Commissioner's attention, he explained why he disputes the Council's application of section 12 of FOIA:

"Many other councils replied to me without any problem so I believe Westminster council could do the same without any problem.

....

Also I ask you to force Westminster council to change the way it collects information so that from now on anytime someone ask for housing benefits any details about ethnicity can put directly into the system:in this way collecting data would be extremely easy and cheap so that anyone making a FOI request can get a reply without any problem [sic]"

10. Although the Commissioner understands from the complainant that some other councils would appear to have complied with similar requests, he does not consider that this sets an automatic precedent for disclosure under the FOIA. In the Commissioner's view, each case must be considered on its own merits.
11. The Commissioner considers the scope of his investigation to be the Council's application of sections 12 (cost of compliance exceeds appropriate limit) and 16 (duty to provide advice and assistance) of FOIA.

Reasons for decision

12. Section 12(1) of 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".

13. 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.

14. 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.

15. 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.

16. The four activities are sequential, covering the retrieval process of the information from the public authority's information store.

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. In the Commissioner's view, an estimate for the purposes of section 12 has to be 'reasonable': he expects it to be sensible, realistic and supported by cogent evidence

18. In this case the Commissioner is satisfied that, in its correspondence with the complainant, the Council explained how it had reached the estimate.

19. The Council told the complainant:

"The Finance department has confirmed that applicants for housing benefit are required to complete a hard copy Housing Benefit Form.

One of the questions on the forms asks them to confirm their nationality in order to verify that they are eligible to claim benefits”.

20. It went on to explain:

“These forms are then scanned as PDF documents and attached to an individual’s claim in the council’s housing Benefit Case Management System. Some of the information is transferred from the forms into searchable fields within the database such as name, address and unique reference number. Whilst information on an individual’s Nationality is collected by way of the form and retained as a document attached to an individual’s claim, this information is not entered into a field within the database. Therefore whilst the information is retained in an electronic format, this is not searchable by the Council other than through a manual check of each form attached to an individual’s record”.

21. With respect to the volume of information within the scope of his request, the Council told the complainant:

“The Council has approximately 27,000 cases on the Housing Benefit Case Management System with an average of 7,000 new claims added per year. It is estimated that it would take between 5 and 20 minutes to locate the Housing Benefit Form and retrieve the requested information for each claim.

It is therefore estimated that to comply with this request would cost between £56,250 and £225,000 for all of the housing benefit cases currently registered with the council (based on a rate of £25 per hour)”.

22. In correspondence with the Commissioner, the Council further explained:

“Forms and case files have also undergone transformation over a period of time. This means that there is no consistency in where the information is located within a particular case”.

23. It also told the Commissioner that, rather than the requested information being held in a searchable database:

“The 27000 cases as cited in the council’s response forms part of a bulk scanned upload of Housing Benefit forms.... As the PDFs are not OCR they are not searchable by content within each document... Officers who are regular and expert users of the system were asked to estimate how long it would take to determine, find/locate and extract this information. In their estimation, and based on their unique knowledge of the imaging system, they concluded anywhere between 5 – 20 minutes, depending on the age of the record. This

is why the council provided a time estimate of anywhere between 5 and 20 minutes”.

24. The Commissioner, while appreciating the complainant’s frustration about the way in which the Council responded to his request for information, 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”.
25. The key question for the Commissioner to determine in this case is whether it would have been necessary, at the time of the request, for the Council to search the individual records of all housing benefit applicants in order to comply with the request.
26. Having considered the wording of the request and the explanation provided by the Council about the way in which the information is stored, the Commissioner accepts that it would have had to conduct a manual search of individual records to provide the information requested by the complainant.
27. Given the estimated number of applicants for housing benefit (27,000), he also accepts that it would have exceeded the appropriate limit to complete the searches.
28. The Commissioner therefore finds that the Council was entitled to rely on section 12(1) FOIA to deny the request of 22 April 2013.

Section 16 advice and assistance

29. Section 16 of FOIA states:

“(1) 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.

(2) Any public authority which, in relation to the provision of advice or 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”.

30. Paragraph 14 of the section 45 Code of Practice states that where a public authority is not obliged to comply with a request because it would exceed the appropriate limit to do so, then it:

"...should consider providing an indication of what, if any, information could be provided within the cost ceiling. The authority should also consider advising the applicant that by reforming or re-focussing their request, information may be able to be supplied for a lower, or no, fee."

31. In this case, the Commissioner notes that the Council told the complainant that, based on the time estimates:

"...the council could provide nationality for between 54 and 216 records. This could therefore equate to all new claims received with a 2 week period (assuming 583 claims a month are received)".

32. However, during the course of the Commissioner's investigation, the Council told the Commissioner:

"upon further discussion and clarification with the department it is clear... that the above offer does not meet his stated criteria, and should not, on that basis, have been offered, as it will not provide a representative snapshot of the nationality of Housing Benefit claimants within Westminster City Council. Rather, the council should have invited [the complainant] to redefine his scope criteria, based on the fact that the time taken to extract information across 27000 cases goes way beyond the appropriate limit".

33. The Commissioner notes that, in the circumstances of this case, it was not until its internal review correspondence that the complainant was invited to contact the Council if he would like any assistance on how to narrow the scope of his request.

34. During the course of the Commissioner's investigation, the complainant confirmed that he had not taken any action to narrow his request *"as it would be pointless"*.

35. Having considered the matter, the Commissioner recognises that the advice and assistance the Council provided to the complainant may have proved to be without foundation. However, the Commissioner is satisfied that the complainant was invited to contact the Council if he would like assistance with how to narrow the scope of his request.

36. Although the complainant chose not to do so, having considered the matter, the Commissioner is satisfied that the Council carried out its duty under section 16 of FOIA in this case.

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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