

Freedom of Information Act 2000

Decision notice

Date: 13 January 2014

Public Authority: Eastleigh Borough Council
Address: Civic Offices
Leigh Road
Eastleigh
SO50 9YN

Decision (including any steps ordered)

1. The complainant requested information relating to Eastleigh Borough Council's (the Council) retention and disposal of records. The Commissioner's decision is that the Council has correctly refused the request under section 12 of the Freedom of Information Act (the Act), as compliance would exceed the appropriate cost limit. However, the Commissioner considers that the Council breached section 16 of the Act in failing to provide reasonable advice and assistance to the complainant.
2. The Commissioner requires the Council to provide advice and assistance to the complainant with a view to helping her refine the request and bring it within the appropriate limit.
3. The public authority 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 the Act and may be dealt with as a contempt of court.

Request and response

4. On 20 March 2013, the complainant wrote to the Council and requested information in the following terms (numbers added by the Commissioner for reference):

"In accordance with Guidance issued in the "RETENTION GUIDELINES FOR LOCAL AUTHORITIES - A Guide produced by the Local Government Group Of The Records Management Society of Great Britain" please supply the following information:

- 1) EBC's [Eastleigh Borough Council] process which records the disposal of records which have been destroyed or transferred to a place of deposit, such as Disposal Certificates which records documents which have been destroyed or transferred to a place of deposit or another Statutory Undertaking for the period 1995 to 2013.*
 - 2) Confirm whether EBC retains a place of deposit for these records, or transfers the documents to the National Archives.*
 - 3) Provide a copy of the "Disposal Certificates" covering the period 1995 to 2013*
 - 4) Provide a copy of the current record of documents listed for disposal*
 - 5) Provide a copy of the record of documents retained by EBC"*
5. The Council responded on 18 April 2013 and refused the request under section 12 of the Act. It stated it would take "in excess of 35 hours" to handle the request within the provisions of the Act but did not provide any further detail.
6. The Council issued its internal review on 24 July 2013. It upheld the original section 12 refusal. However, it also provided answers to items 1 and 2 of the complainant's request as these could be addressed within the appropriate limit. In response to items 3 – 5 the Council stated "information not available", which would indicate that the information is not held. However, during the course of the Commissioner's investigation this was corrected and the Council confirmed that it meant the information could not be provided within the appropriate limit.

Scope of the case

7. The complainant contacted the Commissioner on 29 July 2013 after she had received the internal review to complain about the way her request for information had been handled.
8. The Commissioner considers the scope of the case to be whether the Council correctly refused the request under section 12 of the Act to requests 3 - 5.

Reasons for decision

Section 12

9. Section 12 of the Act allows public authorities to refuse a request if compliance would exceed the appropriate limit. This limit is set at £450 for public authorities such as the Council, and allows it to charge £25 per hour for the following activities:
 - determining whether the information is held;
 - locating the information, or a document which may contain the information;
 - retrieving the information, or a document which may contain the information; and
 - extracting the information from a document containing it.
10. At £25 per hour the appropriate limit equates to 18 hours of work, or 1080 minutes. To demonstrate that complying with the request would exceed the appropriate limit the Council is required to demonstrate that it has compiled a reasonable estimate based on cogent evidence.
11. The Council explained that disposal certificates or documents listed for disposal were carried out by individual business units and not handled by a central department. The Council's submissions to the Commissioner came from the Legal and Democratic Services department, which provided an estimate for finding the disposal certificates held in its records and then demonstrated how this could be applied across the rest of the Council.
12. The Commissioner was provided with a copy of Legal and Democratic Services' retention schemes for key records. This shows the length of time that files are held relating to 24 specific record sets. For instance, key files for both contracts and building contracts are retained for 20 years. The Council explained that it would take approximately 10 minutes to look through each record set to find disposal certificates,

which equates to four hours for all 24 record sets. It stressed that this was a minimum estimate, and that looking through 20 years' worth of contracts would likely take much longer than 10 minutes.

13. The Council supported this by explaining that it had only begun to hold its files in computerised format for the last five to 10 years, and noted that the request asked for information dating back to 1995, so manual records would need to be searched in addition to electronic ones. The Council stated that its disposal certificates would likely be kept as notes on a computer for electronic information, and index cards or hanger files for its manual records, all of which would have to be located to provide the information relevant to the complainant's request.
14. The Council argued that if this estimate is then extended to the remainder of the Council, which comprises of over 20 different business units, then it is clear that identifying the disposal certificates alone would take in excess of the 18 hour appropriate limit. The Commissioner accepts this as a reasonable estimate and agrees that the Council has correctly refused the request under section 12.
15. The complainant has argued to the Commissioner that "I have not requested information covering all of these departments" but the Commissioner disagrees. The request clearly refers to the Council so would encompass all of its records. If a complainant is interested in only a specific department then it is their obligation to stipulate this in the original request.
16. When a public authority produces an estimate for whether complying with a request would exceed the appropriate limit, it is allowed to aggregate other requests providing they come from the same individual within a 60 working day period and concern similar information. In this case, the requests were made by the same individual at the same time and the Commissioner considers that the requests are for similar information, so it is valid for an estimate to encompass items 3 – 5 of the request.
17. As the Council can aggregate its response for items 3 – 5 of the request a reasonable section 12 refusal for one item means the remainder can also be refused. Therefore, the Commissioner does not need to consider the estimate for items 4 and 5 of the request. The Commissioner's decision is therefore that the Council has correctly applied section 12 in its refusal of items 3 – 5.

Section 16 – advice and assistance

18. Section 16(1) of the Act places an obligation on public authorities to provide advice and assistance where reasonably possible to people making requests.

19. The Council acknowledged to the Commissioner that it had failed to meet this obligation in its refusal notice although it considers that it corrected this in its internal review, where it provided a response to two items of the complainant's request and stated that it could not see how the remainder could be limited to come within the appropriate limit.
20. The Commissioner considers that more should have done in order for the council to meet its obligation to provide advice and assistance to the complainant. The Council's own estimate shows that the Legal and Democratic Services department might be able to obtain copies of its disposal certificates from 1995 – 2013 in four hours. This is well within the appropriate limit and could have been provided to the complainant to assist in considering whether they wished to submit a refined request.
21. While it is acknowledged that the council provided responses to requests 1 and 2 in its internal review response to the complainant, the Commissioner considers this to be confirmation that the council was not seeking to rely upon section 12 in relation to those requests. In concluding that section 12 applied to requests 3 – 5 in its internal review, the council should have then gone on to consider whether advice and assistance could be provided in relation to those requests. Instead, the Council simply stated that the information was not available. Therefore, the Commissioner's decision is that the council breached section 16(1) of the Act in failing to provide the complainant with appropriate advice and assistance.
22. The Commissioner requires the council to provide the complainant with appropriate advice and assistance as to how requests 3 - 5 may be refined in order for information to be provided within the appropriate limit.

Other matters

Section 19 – publication scheme

23. Under section 19 of the Act all public authorities have a duty to adopt and maintain a publication scheme. The complainant also asked the Commissioner to look at the Council's publication scheme as it did not have an accessible retention management policy listed.
 24. The Commissioner has inspected the Council's publication scheme¹ and notes that there is a link to the Council's "records management and
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¹ <http://www.eastleigh.gov.uk/pdf/EBCPUBLICATIONSCHEME.pdf>

personal data policies". However, the link is broken, as are a number of other links in the scheme. The Commissioner asks that the Council reviews its publication scheme and ensures that it provides working links to current information.

Right of appeal

25. 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: GRC@hmcts.gsi.gov.uk

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

26. 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.
27. 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

Alexander Ganotis
Group Manager – Complaints Resolution
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