

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 16 October 2014

**Public Authority:** Powys County Council  
**Address:** County Hall  
Llandrindod Wells  
Powys  
LD1 5LG

#### Decision (including any steps ordered)

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1. The complainant requested a list of all planning applications between 2005 and 2013 that contained an ecological survey produced by a particular company. Powys County Council initially refused the request under section 12 as the cost of compliance would exceed the appropriate limit. In its internal review the Council stated that it considered section 14 to apply as the request was repeated and vexatious. During the course of the Commissioner's investigation, the Council reverted to its original position that compliance with the request would exceed the appropriate limit, and as such, section 12 applied. The Commissioner has investigated and has found that the Council correctly relied on section 12(1) in refusing to provide the requested information. He does not require the Council to take any steps.

#### Request and response

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2. On 15 April 2013, the complainant wrote to the Council and requested information in the following terms:

*"Please provide a list of all planning applications made to Powys County Council between 1<sup>st</sup> January 2005 and 15<sup>th</sup> April 2013 within which ecological reports (e.g. a 'Bat Survey Report') or similar have been produced by:*

*'Ecology Services'*

- *Previously of: Harpton Villa Tremont Road, Llandrindod Wells, Powys, LD1 5BH*
- *Now of: Castle Courtyard, 6b Broad Street, Builth Wells, Powys, LD2 3DT*

*and submitted to inform the planning application(s)".*

3. The Council responded on 31 May 2013 stating that to comply with the request would exceed the appropriate limit, and as such it was refusing the request under section 12 of the FOIA.
4. On 10 June 2013, the complainant wrote to the Council and referred to its acknowledgment of the request dated 26 April 2013. He asked the Council to provide an estimate of the number of hours required to comply with the request, an estimate of the fees that would be payable for compliance with the request and for information about the Council's storage facilities for planning documents.
5. The Council responded on 18 July 2013 and refused to comply with the request and referred to both section 14(1) – vexatious requests and 14(2) – repeated requests.
6. On 30 July 2013 the complainant wrote to the Council and raised concerns relating to the Council's handling of his request. He also raised a number of queries about the Council's response of 18 July 2013.
7. The Council acknowledged the complainant's letter of 30 July 2013 on 2 August 2013. However, it did not provide a substantive response until 14 February 2014. In this letter the Council apologised for its failure to respond earlier and confirmed that it considered section 14 of the FOIA to apply to the request.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 3 March 2014 to complain about the way his request for information had been handled.
9. During the course of the Commissioner's investigation, the Council explained that the request which is the subject of this notice was inadvertently confused with two other requests for information which the complainant submitted to the Council on the same day. The Council acknowledged that its responses had been confusing and wrote to the applicant to confirm its position with regards to all three requests and explained the basis on which it was refusing each of the requests.

10. In respect of the request which is the subject of this notice (as outlined in paragraph 2 of this notice), the Council confirmed that it considered section 12 to apply as the cost of compliance would exceed the appropriate limit.
11. In light of the above, the scope of the Commissioner's investigation into this complaint is to determine whether the Council correctly applied section 12 to the request.

## **Reasons for decision**

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### **Section 12 – cost of complying with the request**

12. Section 12(1) states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate cost limit.
13. The appropriate cost limit is defined in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. Under regulation 3 the appropriate cost limit is set at £450 for a public authority such as the Council. Under regulation 4 the Council may charge up to £25 per hour to determine whether information is held, and then locate, retrieve and extract the information. At that rate, the appropriate cost limit equates to 18 hours – or 1080 minutes – of work.

### **Would compliance with the requests exceed the appropriate limit?**

14. The Commissioner asked the Council to provide a detailed reasonable estimate of the time taken and cost that would be incurred by providing the information falling within the scope of the request. The Commissioner asked that, when the Council provided these calculations, a description of the nature of the type of work involved was also included.
15. The Council confirmed that it does not record instances where ecological reports have been received or requested in a way which would allow for the production of a list of planning applications where such a report has been produced by Ecology Services. The Council advised that ecological reports are predominantly received/produced for planning applications relating to conversions, such as barn or chapel conversions. However, other planning applications could receive or require an ecological report for any number of reasons such as demolition of buildings, distance from protected hedgerows, distance from watercourses, where protected species reside etc.

16. The Council stated that ecological reports can be submitted at the point a planning application is submitted or during the planning process. It is also possible for an applicant to submit an ecological report as well a consultee/objector to a planning application. In light of this, the Council confirmed that the only way to locate information relevant to the request would be to examine each individual planning application received during the period to establish whether an ecological report had been submitted, and if so, whether the report had been produced by Ecology Services.
17. During the period covered by the request (1 January 2005 to 15 April 2013), the Council confirmed it received a total of 16,375 planning applications, 637 of which refer to applications for conversions. The Council advise that all 16,375 applications would need to be checked to locate information relevant to the request.
18. The Council confirmed that the majority of planning applications before 2011 are now held electronically as an exercise was undertaken to transfer the information onto the Council's servers. These planning files have been produced by scanning each individual page of documentation, such as faxes, typed memos, handwritten letters, photographs, maps etc. Very little metadata is included other than in relation to maps and as such the Council advise that the only way to search the files is to scroll through each page of information relating to each application. There is functionality to view a number of pages at one time, but the size and quality makes it difficult to identify the document type. In addition, if scrolling is undertaken too fast, then the system freezes. The Council advised that its system providing access to electronic planning files does allow search criteria such as planning number but for the purpose of this request, all individual applications would need to be manually checked to locate information relevant to the request.
19. The Council advised that some planning files have not been converted to electronic format, for example very large contentious applications or those still awaiting a decision. In addition, planning files from 2012 are held as hard copies and are held in one of two locations – the Council's offices in Llandrindod Wells for the south part of the county or in Neuadd Maldwyn for the north part of the county.
20. The Council has compiled a list of all 16,375 planning applications received in the period and this task took a couple of minutes. In estimating how long it would take to examine each planning file, establish whether an ecological report had been submitted, identify the author of the ecological report and produce a list of those relevant planning applications, the Council undertook a sampling exercise of 10 randomly selected electronic and manual files. The Council provided the

Commissioner with the following tables detailing the results of this sampling exercise (times quoted include any system loading time):

#### Electronic Planning files

Number	Pages	Time taken (minutes / seconds)	Ecological report found	Provided by Ecology Services
1	50	3.30	No	n/a
2	36	1.30	No	n/a
3	52	1.48	No	n/a
4	399	10.04	Yes (2)	No
5	79	1.47	No	n/a
6	46	1.25	No	n/a
7	54	1.15	No	n/a
8	63	1.27	No	n/a
9	217	5.35	Yes	No
10	108	3.52	Yes	No

#### Manual planning files

Number	Pages	Time taken (minutes / seconds)	Ecological report found	Provided by Ecology Services
1	85	3	No	n/a
2	263	7.52	Yes	No
3	33	1	No	n/a
4	44	1.20	No	n/a
5	94	2.56	No	n/a
6	34	0.49	No	n/a
7	29	0.46	No	n/a
8	32	0.47	No	n/a
9	41	1.20	No	n/a
10	204	5.35	Yes	No

21. Based on the above tables, the Council estimates that an electronic planning file will contain an average of 110 pages and take, on average, 3 minutes and 13 seconds to identify whether it contained an ecological report and who submitted it. For manual planning files, the Council estimates that they would contain an average 85.9 pages and would take, on average, 2 minutes and 32 seconds to identify whether it contained an ecological report and who submitted it.
22. Working on the basis that there are 100 months between 1 January 2005 and 15 April 2013 and in this period 16,375 planning applications were received, this averages out at 163.75 applications each month. As planning files up to the end of 2011 are held electronically, this would

equate to 163.75 applications each month for 84 months. Therefore around 13,755 planning files would be held electronically and the remaining 2620 files would be held in manual format.

23. Based on the above, the Council's total estimate for complying with the request is:

13755 electronic planning files X 3 minutes 13 seconds = 44,245.25 minutes = 737 hours

2620 manual planning files X 2 minutes 32 seconds = 6,637 minutes = 110 hours

Total estimate = 737 + 110 = 847 hours. Based on a normal working week of 37 hours, this equates to almost 23 weeks' work.

### **Is the Council's estimate reasonable?**

24. The issue of what constitutes a reasonable estimate was considered in the Tribunal case of Alasdair Roberts v the Information Commissioner [EA/2008/0050] and the Commissioner endorses the following points made by the Tribunal at 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".

25. The request in this case is quite broad and a significant amount of information is caught by the request (contained within 16,375 planning applications). The Commissioner notes that, even if the request was limited to a much shorter period, for example 3 months, compliance would still likely exceed the appropriate limit as around 500 planning applications would need to be manually reviewed to identify information falling within the scope of the request. The Commissioner is not aware of any reasonable alternative mechanism to identify the relevant information other than the processes detailed by the Council. Due to the nature of the information requested by the complainant and the way in which it is recorded and held, it is the Commissioner's view that adequate explanations have been provided to demonstrate that it would

far exceed the appropriate limit of 18 hours to locate, retrieve and extract the requested information. His conclusion is, therefore, that section 12(1) was appropriately applied and that the Council was not obliged to comply with the request.

## **Other matters**

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26. The Commissioner notes that there were delays on the part of the Council in terms of dealing with both the initial request and follow up correspondence from the complainant. There is a context and history to this request which falls outside the scope of this request. However, the Commissioner would expect the Council to adhere to relevant timescales in its handling of future requests.

## Right of appeal

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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: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

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 .....**

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