

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 8 March 2016

**Public Authority:** City of Bradford Metropolitan District Council  
**Address:** City Hall  
Centenary Square  
Bradford  
BD1 1HY

#### Decision (including any steps ordered)

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1. The complainant has requested information relating to criminal convictions of Hackney Carriage and Private Hire Taxi drivers. The Commissioner's decision is that the City of Bradford Metropolitan District Council has correctly applied the exemption at section 12 of the FOIA where the cost of compliance exceeds the appropriate limit. The Commissioner has also decided that the City of Bradford Metropolitan District Council did not provide adequate advice and assistance under section 16 of the FOIA. However, he does not require the public authority to take any steps to ensure compliance with the legislation.

#### Request and response

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2. On 26 June 2015, the complainant wrote to the City of Bradford Metropolitan District Council ('the council') and requested information in the following terms:

"I am under the impression that safety of public is paramount and is on literature but in 2010 freedom of information it was noted 30 plus Hackney Carriage & Private Hire drivers had serious criminal convictions. One driver had a conviction for rape, others had for grievous and actual bodily harm. Please can you provide an update from 2010 as 5 years have passed. So basically exactly same data from 2010 but current."

3. The council responded on 9 July 2015 and refused to provide the requested information citing section 12 of the FOIA. It said that in order to provide information on the scale requested would require an officer to spend six or seven weeks trawling over 2000 manual paper records. It referred to section 1(3) of the FOIA, stating that a public authority need not comply with a request unless any further information reasonably required to locate the information is supplied, and to section 16 of the FOIA, stating that if a request is too broad or general in nature, then public authorities have a duty to provide advice and assistance to the applicant in order to focus the request. It also provided the following information:

"...the service implemented a new computer system earlier this year, there is no specific requirement to record a persons convictions, some information or all information may be recorded depending on the individual circumstances of that case. The process requires that individual applications are dealt with consistently by way of a decision making process. The process consists of referring to the Law and Council Policy, is approached from many perspectives and uses information that is available, as well as input form [sic] the applicant themselves to inform a reasonable and balanced decision. The decision will always have the safety of the travelling public as its primary focus."

4. On 9 July 2015, the complainant requested an internal review.
5. The council provided its internal review response on 7 August 2015. It maintained its original position stating that the council does not hold the information in a format that can be easily retrievable. It said that it only keeps information that is used to inform a decision, so in the case of a driver with a licence who had old convictions which did not prevent them being licensed then it would not have the information.

### **Scope of the case**

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6. The complainant contacted the Commissioner on 3 November 2015 to complain about the way his request for information had been handled.
7. The Commissioner has considered whether the council was correct to apply the exemption at section 12 of the FOIA to the requested information.
8. He has also considered whether the council was in breach of its obligation under section 16 of the FOIA to provide advice and assistance.

## Reasons for decision

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### Section 12 – Exemption where cost of compliance exceeds appropriate limit

9. Section 12 of FOIA 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 which, in this case, is £450 as laid out in section 3(2) of the fees regulations.
10. Regulation 4(3) of the Fees Regulations states that an authority, when estimating whether complying with a request would exceed the appropriate limit, can only take into account the costs it reasonably expects to incur in:
  - determining whether it holds the information;
  - locating the information, or documents containing it;
  - retrieving the information, or documents containing it; and
  - extracting the information from any documents containing it.
11. As the costs are calculated at £25 per person per hour for all authorities regardless of the actual cost or rate of pay, in this case the limit will be exceeded if the above activities exceed 18 hours.
12. A public authority does not have to make a precise calculation of the costs of complying with a request; instead only an estimate is required. However, it must be a reasonable estimate and what amounts to a reasonable estimate has to be considered on a case by case basis. The Information Tribunal in the case of *Randall v Information Commissioner and Medicines and Healthcare Products Regulatory Agency*<sup>1</sup> said that a reasonable estimate is one that is "...sensible, realistic and supported by cogent evidence".
13. In his guidance on this subject<sup>2</sup>, the Commissioner states that a sensible and realistic estimate is one which is based on the specific

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<sup>1</sup> Appeal number EA/2006/0004, 30 October 2007

<sup>2</sup> [https://ico.org.uk/media/for-organisations/documents/1199/costs\\_of\\_compliance\\_exceeds\\_appropriate\\_limit.pdf](https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf)

circumstances of the case and should not be based on general assumptions.

14. In the aforementioned guidance, the Commissioner also states that;

“A public authority is not obliged to search for, or compile some of the requested information before refusing a request that it estimates will exceed the appropriate limit. Instead, it can rely on having cogent arguments and/or evidence in support of the reasonableness of its estimate. It is good practice to give these arguments or evidence to the requestor at the outset to help them understand why the request has been refused. This reasoning is also likely to be required if a complaint is made to the Information Commissioner.

However, it is likely that a public authority will sometimes carry out some initial searches before deciding to claim section 12. This is because it may only become apparent that section 12 is engaged once some work in attempting to comply with the request has been undertaken.”

15. In its initial response to the complainant, as noted above, the council said that it would take an officer six or seven weeks trawling over 2000 manual paper records to provide the requested information. It did not provide a breakdown of how this estimate was arrived at.

16. The Commissioner sought further information from the council in relation to the costs estimate undertaken in order to assess whether its estimate was reasonable and based on cogent evidence. He specifically asked for an explanation of why the council would need to search over 2000 manual records. He also noted that the council has implemented a new computer system and asked for confirmation of what date records are available from on the computer system, whether the computer system can be searched for convictions, how long such a search would take, and whether such a search has taken place.

17. In addition to the enquiries above, the Commissioner also asked for clarification as to whether a sampling exercise had been undertaken to determine the estimate provided and whether the estimate had been based upon the quickest method of gathering the requested information.

18. The council said several files have been looked through and notes made of the contents and that the time varies for this task depending on the number of applications and amount of information within the file. It explained that in the sample it took between 3 and 8 minutes to review each file and it has approximately 3,600 drivers and if it were to check 15 files per hour that would take 240 hours. It also said that this is the only way that the information can be collected.

19. The Commissioner questioned why all 3600 files would need to be searched given that the request is for information from 2010 onwards. The council explained that the files are stored alphabetically and that there is no way to identify which ones are new since 2010 without actually picking up and looking at each one.
20. In relation to the specific enquiries regarding the computer system, the council said that the reason that the service could provide the conviction details back in 2010 was because the software system being used had a specific place to record convictions, cautions and driving points against an applicant. When the council changed IT systems in February 2015, a discussion took place between the council and the software provider who, when discussing the details of the migration of current records to the new system, asked the council to evaluate the need for some of the data and whether the council was entitled to keep such personal data and the decision was taken that the council should not keep data any longer than what was required to inform a licensing decision.
21. Regarding whether any data is searchable, the council said that there is no reporting facility even to the extent that it cannot report on how many new applications have been made in the last 12 months and that this is due to various errors by the council and the software provider. It explained that the licensing dates are in reportable fields but as there is no specific field for convictions each individual record would need to be accessed to establish whether it contains any conviction data. It also explained that the system creates a new record for each re-licensing application (licences are either for 1 or 3 years); there isn't one record per driver, its one record per application therefore for a driver who has had 20 one year licences there would be 20 records and that because of this, there are over 35000 records on the system.
22. The council's position is that there is no way of being able to provide a full response to this request without manually checking each file. The Commissioner accepts the council's arguments as to why each of its files would need to be manually checked to identify if it contains any information regarding criminal convictions, that being that the current IT system only records criminal convictions until a licensing decision has been made and does so in a unreportable format, and that the manual files which may contain relevant information are stored alphabetically, therefore applications from 2010 onwards cannot be easily identified.
23. The Commissioner notes that for the time of 3 to 8 minutes to check each file to be arrived at, 'several' files had been checked. Given the large number of files, the Commissioner does not consider that checking 'several' files would necessarily produce a realistic estimate. However, even if the council took a conservative time of 1 minute to check each

file, the time taken to comply with the request would equate to 60 hours.

24. The Commissioner therefore finds that the council correctly refused the complainant's request on the grounds of cost for compliance under section 12(1) of FOIA, as complying with the request would exceed the appropriate limit.

### **Section 16 - Duty to provide advice and assistance**

25. Section 16 of the FOIA states that it shall be the duty of a public authority to provide advice and assistance to requesters, so far as is reasonable, and where a public authority conforms with the code of practice under section 45 in relation to the provision of advice and assistance, it will be taken to comply with the duty imposed.
26. Where a public authority cites section 12, paragraph 14 of the section 45 code of practice indicates that the authority should consider providing an indication of what, if any, information could be provided within the costs limit. This allows the applicant to choose how to refine the request to successfully obtain a more limited piece or section of the requested information.
27. The Commissioner asked the council to clarify the nature of any advice and assistance given to the applicant in this case and if no advice and assistance was provided to explain why not. The council said that it did not provide advice under section 16 because to obtain this level of information would require an officer six or seven weeks of trawling over 3000 manual paper records even then it could not guarantee that it would be able to obtain the information.
28. The Commissioner considers this to be a breach of section 16 as the council failed to indicate that it was unable to provide any information within the appropriate limit. This is based on the interpretation of the phrase in paragraph 14 of the section 45 Code of Practice '...should consider providing an indication or what, **if any**, information could be provided within the cost ceiling'.

## Right of appeal

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29. 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)

30. 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.
31. 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** .....

**Deborah Clark**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**