

Freedom of Information Act 2000 ('FOIA')

Decision notice

Date: 18 October 2016

Public Authority: Liverpool City Council

Address: Municipal Buildings

Dale Street

Liverpool

L2 2DH

Decision (including any steps ordered)

1. The complainant has requested information regarding Liverpool City Council's Operator Licensing Conditions Consultation relating to Private Hire and/or Uber's operations. The Commissioner's decision is that Liverpool City Council has correctly applied the exemption at section 12 of the FOIA where the cost of compliance exceeds the appropriate limit. However, the Commissioner has also decided that Liverpool City Council did not provide adequate advice and assistance under section 16 of the FOIA.
 2. The Commissioner requires the public authority to take the following step to ensure compliance with the legislation.
 - Provide the complainant with appropriate advice and assistance with regard to the requested information that can be provided, to enable an appropriately refined request to be made if necessary.
 3. The public authority must take this step 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.
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Request and response

4. On 31 December 2015, the complainant wrote to Liverpool City Council ('the council') and requested information in the following terms:

"All information relating to any discussions (including all correspondence, emails and records of telephone conversations) or meetings (including all information in any related agendas and meeting minutes and notes) taking place over the period 1 November 2014 to 31 December 2015

Between

- (a) members of the Liverpool City Council licensing team, licensing committee or any other councillors, members, officers and employees of Liverpool City Council;

And

- (b) any of the following:
- i. members or representatives of any existing or potential taxi or private hire operators (other than Uber), drivers or trade bodies;
 - ii. members or representatives of UNITE, the GMB or other trade unions or similar bodies;
 - iii. representatives from any other existing or potential private hire operators (other than Uber);
 - iv. any individual private hire or taxi drivers;
 - v. any other members of the Liverpool City Council licensing team or any other members, officers and employees of Liverpool City Council; or
 - vi. any other third parties (other than Uber), including without limitation members of parliament or other political figures.

Relating to

- (c) Liverpool City Council's Operator Licensing Conditions Consultation relating to Private Hire (the "Consultation") which is intended to run from 8 January 2016 to 26 February 2016;

- (d) any proposals, in whatever form, resulting from the Consultation; and/or
- (e) Uber's operations.

I should be grateful if you would provide the information electronically to the extent that this is possible. If you require any clarification as to the scope of the request please contact me as soon as possible."

- 5. The council responded on 8 February 2016 and confirmed holding information relevant to the request but said that under section 12 of the FOIA it is not obliged to provide the information as the cost of compliance exceeds the appropriate limit.
- 6. On 19 February 2016, the complainant expressed his dissatisfaction with the response, pointing out that the council failed to provide any guidance as to how might be best to narrow the scope of the request, and made the following refined request:

"Please provide all information relating to any discussions (including all correspondence, emails and records of telephone conversations) or meetings (including all information in any related agendas and meeting minutes and notes) taking place over the period 1 November 2014 to 31 December 2015

Between

- (a) members of the Liverpool City Council licensing team, licensing committee or any other councillors, members, officers and employees of Liverpool City Council;

And

- (b) any of the following:
 - i. members or representatives of any existing or potential taxi or private hire operators (other than Uber), drivers or trade bodies;
 - ii. members or representatives of UNITE, the GMB or other trade unions or similar bodies;
 - iii. other members of the Liverpool City Council licensing team or any other members, officers and employees of Liverpool City Council; or

- iv. any other third parties (other than Uber), including without limitation members of parliament or other political figures.

Relating to

- (c) Liverpool City Council's Operator Licensing Conditions Consultation relating to Private Hire (the "Consultation") which is intended to run from 8 January 2016 to 26 February 2016;

and/or

- (d) Uber's operations."

7. The council responded on 11 April 2016 and confirmed holding information relevant to the request but said that under section 12 of the FOIA it is not obliged to provide the information as the cost of compliance exceeds the appropriate limit. It also applied the exemptions at sections 41 and 42 of the FOIA. In addition, the council said that in accordance with section 16 of the FOIA, it can provide some information relating to the request and provided links to information on its website.
8. On 24 May 2016, the complainant requested an internal review providing reasons why he considers sections 12, 41 and 42 don't apply in this case. He acknowledged that the request for a review was being made more than 28 days after the council's response and explained that the Commissioner had advised him to request an internal review as the refined request of 19 February 2016 is deemed to be a new request.
9. The council replied on 25 May 2016 stating that it will not conduct an internal review as the request for one is outside of the 28 day timeframe identified in its section 17 notice.

Scope of the case

10. The complainant initially contacted the Commissioner on 3 May 2016 to complain about the way the request for information had been handled.
11. The Commissioner has considered the application of the costs limit exemption at section 12 of FOIA in relation to the request made on 19 February 2016.

12. She has also considered whether the council was in breach of its obligation under section 16 of the FOIA to provide advice and assistance.
13. As the Commissioner has decided that section 12 was applied correctly, it has not been necessary to consider the application of the exemptions at section 41 and 42 of the FOIA.

Reasons for decision

Section 12 – Exemption where cost of compliance exceeds appropriate limit

14. 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.
15. 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.
16. 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.
17. 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*¹ said that a

¹ Appeal number EA/2006/0004, 30 October 2007

reasonable estimate is one that is "...sensible, realistic and supported by cogent evidence".

18. In his guidance on this subject², the Commissioner states that a sensible and realistic estimate is one which is based on the specific circumstances of the case and should not be based on general assumptions.

19. 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."

20. In its response, the council said that it estimated that complying with the request would exceed the appropriate limit but did not provide any further details or breakdown.

21. 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. She specifically asked for clarification as to whether a sampling exercise had been undertaken and whether its estimate had been based upon the quickest method of gathering the requested information. She asked the council to note that that even though the number of people referred to in the request is relatively wide, the subject is limited to Liverpool City Council's Operator Licensing Conditions Consultation relating to Private Hire and/or Uber's operations.

² https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

22. The council informed the Commissioner that it has spoken to colleagues within the Licensing Service and examined the approach and methodology undertaken towards retrieving the requested data. It said that the extent of the request covered the following electronic data sources as well as physical records:

"Email System

- (i) 1 Elected Mayor;
- (ii) 90 Elected Councillors;
- (iii) 30 Licensing Officers;
- (iv) 3 Solicitors (internal – Legal Services); and
- (v) 5,000 remaining employees of Liverpool City Council.

Electronic Team Drive

Structured folders contained on partitioned network drive. Each service e.g. Licensing is assigned a relevant partition within which Officers from that Service may place documents and materials for routine business purposes..."

23. In relation to emails, the council said that individual mailboxes of each of the above users would need to be electronically searched in order to retrieve the requested data. It explained that this cannot be undertaken centrally and must therefore be done for each individual account. It also explained that the above email accounts are supported by parallel storage facilities in the form of Personal Email Folders and explained that the email accounts are structured as follows –

- "User email account (Mail Inbox) – capacity up to 150mb, subject to automatic 90 day deletion of emails (once an email is 90 days from date of receipt or send, it is automatically deleted).
- Personal Folders – these are not personal insofar as only official work related content is retained. Emails which an Officer may require retention for future business purposes may be transferred by that Officer from their Inbox to a Personal Folder. Prior to doing so, any attachments are required to be saved in the appropriate network drive and removed from the email to reduce storage requirements. Individual Officers then sub divide their personal folders into subordinate layers reflecting their areas of responsibility and specific activities. This in many instances results in complex file structures. The content of Personal Folders is also regularly reviewed by Officers with data which is no longer required for business purposes regularly deleted to reduce unnecessary storage use. The capacity of Personal Folders is limited to 1GB."

The council said that the Mail Inbox and Personal Folders would both need to be searched using the following terms: 'Uber', 'Private Hire' 'Private Hire Consultation', 'Uber operations', 'taxi licensing', and 'operators licence' . It explained that this results in a minimum of six searches for both the Mail Inbox and Personal Folders and it would take 1 minute per search therefore with a total number of approximately 5,124 accounts to search, to undertake the process would take 30,744 minutes or 512.4 hours. As this would need to be conducted twice, once for the Mail Inbox and once for the Personal Folders, this would be a total search time of 1024.8 hours.

24. The council also said that, in common with all local authorities, it operates a wider system of networked servers for data storage, on which files may be stored by individuals and specific teams with appropriate access restrictions. It explained that there is no global or network wide facility to search all of these Team Drives in one single operation, therefore searches must be initiated from within the relevant Service Areas. It said that the following Team Drives would need to be searched:

- Licensing
- Committee Services
- Community Services (Public Protection)
- Legal Services (Licensing Team) (Litigation Team)
- Democratic Services (Committee Services), (Member Services) (Member Support)

The council explained that, utilising the same criteria and phrases as in detailed in paragraph 23, given that the capacity of Team Drives is substantially greater than Mail Inboxes and utilises more complex folder structures, this would typically take 5 minutes per Team Drive. Therefore, to search the 8 drives would take 40 minutes.

25. In relation to physical records, the council explained that public consultation events generate substantial physical responses as well as related correspondence on the wider issues. It said that a total of 20 physical folders of data were identified which may contain information relevant to the terms of the request and assuming 10 minutes to précis each folder to initially determine if data relevant to the terms was actually contained within, then it would require 200 minutes of Officer time (3.33 hours).

26. In total, in order to fulfil the terms of the request, the council summarised that the following hours of officer time would be required –

Mail Inboxes - 512.4 hours
Personal Folders - 512.4 hours

Team Drives (electronic) 0.6 hours
Physical Records - 3.3 hours
Overall Total - 1,028.7 hours

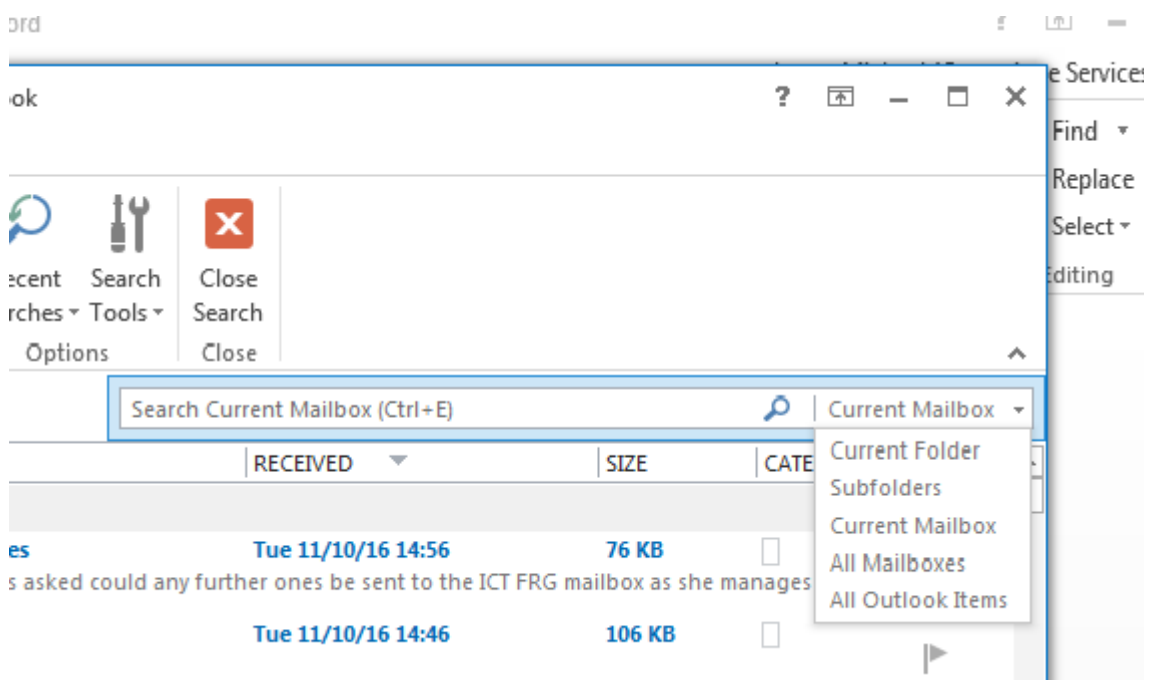
27. The council confirmed that in seeking to establish accurate estimates to undertake the above process, it completed initial searches using the identified parameters of both electronic and physical records, commencing specifically with the Licensing Service and 3 solicitors mailboxes.
28. The Commissioner has considered this estimate. He notes that there is a 90 day automatic deletion on the Mail Inbox and that the request is restricted to the time period of 1 November 2014 to 31 December 2015. Given that the request was made on 19 February 2016, which is within 90 days from 31 December 2015, she accepts that the Mail Inbox's would need to be searched.
29. However, although the request specifically includes '...any...officers and employees of Liverpool City Council...', given that the subject is limited to Liverpool City Council's Operator Licensing Conditions Consultation relating to Private Hire and/or Uber's operations, the Commissioner was sceptical that the council would need to search the email accounts of '5000 remaining employees of Liverpool City Council'. She therefore contacted the council to seek clarification on this point. Given the limited subject of the request, the council then conceded that not all remaining 5000 employees emails would need to be searched and instead said that it could limit the search to the 1 Elected Mayor, the 90 Elected Councillors, the 30 Licensing Officers, and 90 Legal staff. It said that the justification for the inclusion of 90 Elected Councillors and the Elected Mayor are that these individuals may have received and made representations as part of the public consultation process in their role as elected representatives of the community. It also explained that whilst there are 3 Solicitors within Legal Services who would ordinarily deal with Licensing matters of this nature, there are times when other members of staff and solicitors within Legal Services will be involved therefore for purposes of completeness these are also included within the extent of any searches. The Commissioner considers this to be a more sensible and realistic estimate.
30. The Commissioner also considered whether the time of 1 minute per search term is reasonable and whether separate searches would need to be conducted for both the Mail Inbox and the Personal Folders.
31. Based on the Commissioner's experience of Microsoft office, which the council confirmed is the email system it uses, she considers 1 minute per search term to be an overestimate. However, in its clarification, the council said that each search will typically take 20 seconds. With a total

number of 211 Mail Inboxes to search, and 6 search terms, to undertake this process would take a total 2 minutes per mailbox giving an overall total for all searches of 422 minutes or 7.03 hours. The Commissioner considers this to be a more sensible and realistic estimate.

32. It was not obvious to the Commissioner why separate searches would need to be conducted for both the Mail Inbox and the Personal Folders. She therefore sought clarification from the council. It provided the following detailed explanation:

“The City Council at present does not operate Exchange 2013 systems for email and Personal Folders but will shortly be introducing this capability. A key distinction between Exchange 2013 servers and earlier versions is that the 2013 server version allows for the search function used for Inboxes to also search all Personal Folders and the Sub-Folders contained within these and indeed for such searches to be performed centrally.

By way of example searches currently are conducted using the search function in the upper right of an Outlook screen. Using the ‘drop down arrow’ this allows All Mailbox Items’ to be searched (as indicated below) –



However, the City Council at this point does not have Exchange 2013 servers but will shortly introduce them, until this occurs the effectiveness of the above search is limited by current technology.

With an Exchange 2013 server, the above 'All Outlook Items' searches all emails within an Inbox and Personal Folders – including subordinate files and can also be done centrally.

For email Servers of an earlier build and specification, the effectiveness of a search is limited and does not extend to cover all Folders and Sub Folders within a Personal Folders, and more specifically those retained on a network or server of a file type '.pst'. The simplest explanation is that the search function at present is a function of Outlook, rather than Exchange. Issues with searching have been down to inconsistent configuration of Windows 7 and Outlook rather than Exchange which we are presently working to address and which will allow for comprehensive and effective searches without manual electronic searches by individuals.

The effect of this then means that each Personal Folder has to have additional manual electronic searches conducted as well as folders expanded prior to the commencement of searches to offer sufficient assurance as to the effectiveness and accuracy of each search.

Applying the same search methodology as applied above, and to ensure the effectiveness and completeness of a search, then firstly each set of Personal Folders must be 'clicked' on to and all folders expanded. To manually go through and expand all folders will vary for each Officer depending on the hierarchy of folders they have created, however it is estimated this will take approximately 1 minute per set of folders. Note that this would only be that quick if the person who owned the PSTs was doing the search, they knew exactly where all of their PST files were located and those locations were available.

As the majority of Officers and Members now operate two sets of parallel personal folders, then it would take 2 minutes to expand all folders prior to initiating a detailed electronic search. The time taken for this expansion process would be 2 minutes x 211 users which is equivalent to 422 minutes or 7.03 hours.

Now utilising the search facility within Outlook as before but with all items within the Personal Folders available to search, the same approach and calculation as applied before – to that of searching the Inbox – is repeated. For purposes of this process, the following search methodology were applied –
'Uber', 'Private Hire' 'Private Hire Consultation', 'Uber operations', 'taxi licensing', 'operators licence' (six search terms)

The above searches are required to be conducted individually for each phrase or term. This results in a minimum of six searches against each Mail Inbox account. This will typically take 20 seconds per search to conclude this process. With a total number of approximately 211 Mail Inboxes to search, to undertake this process would take a total 2 minutes per mailbox giving an overall total for all searches of 422 minutes or 7.03 hours."

33. The council confirmed that the reference to 'Mail Inbox' in the above paragraph should have read 'Personal Folders'.
34. The council's clarification stated that the overall total for searching email records is 21.09 hours. The Commissioner notes this is made up of 7.03 to conduct the Inbox search, 7.03 hours to expand all personal folders, and 7.03 hours to then conduct the searches of the personal folders. Given the above explanation of the technical limitations it is currently subject to, the Commissioner considers this to be reasonable.
35. The Commissioner considers that the estimates in relation to electronic Team Drives and physical records are also reasonable.
36. She 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

37. 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.
38. 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.
39. As noted in paragraph 7, in its response to the complainant, the council said that in accordance with section 16 of the FOIA, it can provide some information relating to the request and provided links to information on its website.
40. As part of her enquiries, 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 or assistance was provided to explain why not. The council did not respond to this specific enquiry.

41. The Commissioner considers that the council did not fulfil its duty to provide advice and assistance by disclosing certain information in response to the request. The council had, in effect, removed the choice from the complainant as to what information was of most interest and the Commissioner considers that the choice of where to direct limited resources should always be made by the requester.
42. The Commissioner considered that it would have been reasonable for the council to explain to the complainant that the search for information could be limited to, for example, just the licensing officers or legal staff emails, and therefore the request could be refined to enable the council to provide information held within the appropriate limit.
43. By not sufficiently indicating what information could be provided within the appropriate limit, the Commissioner considers that the council breached section 16 of the FOIA.

Right of appeal

44. 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

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

45. 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.
46. 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

Andrew White
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