

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 July 2017

Public Authority: Liverpool City Council
Address: Municipal Buildings
Dale Street
Liverpool
L3 1DS

Decision (including any steps ordered)

1. The complainant has requested information with regards to purchases made by Liverpool City Council (the council). The council refused the request relying on section 12 of the FOIA as it considered that to provide the information would exceed the appropriate limit.
2. The Commissioner's decision is that section 12 of the FOIA is not engaged in this case. She also found that the council has breached section 16 of the FOIA as it provided no advice and assistance.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Clarify with the complainant what time frame was meant for 'past few years'.
 - Issue a fresh response to the complainant in accordance with section 1 of the FOIA without relying on section 12 of the FOIA.
4. 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

5. On 14 August 2016 the complainant wrote to the council regarding several different matters and also made the following information request to the council:

“Purchases of over £200,000 by the council over the past few years - I have asked for a breakdown - again I have been stonewalled re. an FOI request stating that it would be too expensive - you should have this information easily accessible for accounting (management/financial and statutory purposes) and I have had no response from the FOI time [sic] to my challenging their refusal to provide the information.”

The Chief Executive of the council responded on the 1 November 2016 refusing this request under section 12 of the FOIA as it was considered that to respond would exceed the appropriate limit.

Scope of the case

6. The complainant contacted the Commissioner on the 15 November 2016 regarding the refusal of this request. Due to the council's response coming from its Chief Executive, the Commissioner has accepted this case for investigation without requiring an internal review to be undertaken first as there is no one more senior than the Chief Executive to conduct one.
7. The Commissioner therefore considers the scope of the case is to determine whether the council has correctly relied on section 12 of the FOIA to refuse the request.

Reasons for decision

Section 12 of the FOIA – Appropriate Limit

8. Section 12 of FOIA states that a public authority does not have to comply with a request for information if it estimates that the cost of complying with the request would exceed the appropriate limit.
9. The Freedom of Information and Data Protection (Appropriate Limit and Fees) regulations 2004 (“the Fees Regulations”) sets the appropriate limit at £450 for the council.

10. A public authority can charge £25 per hour of staff time for work undertaken to comply with a request in accordance with the appropriate limit set out above. If a public authority estimates that complying with a request may cost more than the cost limit, it can consider time taken in:
 - a) Determining whether it holds the information;
 - b) Locating the information, or a document which may contain the information;
 - c) Retrieving the information, or a document which may contain the information, and
 - d) Extracting the information from a document containing it.
11. In determining whether the council has correctly applied section 12 of the FOIA in this case, the Commissioner asked the council, with reference to the four activities set out above, to provide a detailed estimate of the time/ cost it would take for it to provide the information, to clarify whether a sampling exercise has been undertaken and confirm that the estimate has been based upon the quickest method for gathering the information.
12. The Commissioner also asked the council, when providing these calculations, to include a description of the nature of work that would need to be undertaken, explaining that a number of Information Tribunals have made it clear that an estimate for the purposes of section 12 has to be 'reasonable'. Meaning that it is not sufficient for a public authority to simply assert that the appropriate limit has been met; rather the estimate should be realistic, sensible and supported by cogent evidence.
13. The council has told the Commissioner in its response that details of all expenditure over £500 is published routinely to its website and can be accessed by the following weblink:

<http://councillors.liverpool.gov.uk/ecCatDisplay.aspx?sch=doc&cat=13493&path=0>
14. Also details of any transactions with a value exceeding £500,000 is already in the public domain and readily accessible via the public records of its cabinet meetings, details of which and a search facility may be accessed by the following weblink:

<http://councillors.liverpool.gov.uk/uuCoverPage.aspx?bcr=1>
15. These links were not provided to the complainant by the council in its responses as far as the Commissioner is aware.

16. With regards to other information held by the council, it advised the Commissioner that taking 'the past few years' to mean two financial years, then all relevant records have been searched which identified a total of 317 files relevant to the terms of this request.
17. Allowing a total of five minutes for each file, which typically comprise of hard copies (retained by its finance and legal department), results in it taking 26.41 hours to fulfil this request. The council therefore sees that section 12 is engaged.
18. On review of the council's response to the Commissioner, it is clear that if it would take 5 minutes per file then this would exceed the appropriate limit of 18 hours. However, the council's response to how it arrived at this conclusion is very limited.
19. It has not detailed to the Commissioner how it has come to find that each of the 317 files takes five minutes to gain the information. The council has not provided the Commissioner with any suitable rationale as to what would be required by the council to locate, retrieve or extract the relevant information.
20. The Commissioner has been given no details of what each of these files consist of, how many documents are contained in each file or whether the whole file would need to be reviewed in order to establish information.
21. The council has not indicated whether any sort of sampling exercise has been carried out to determine its calculation of 26.41 hours to respond to the request.
22. The Commissioner's guidance¹ on section 12 of the FOIA at paragraph 28 states:

"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

¹ https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

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."

23. Paragraph 38 of the guidance states:

"It is not a statutory requirement to explain how the estimate has been calculated but it is beneficial to a public authority to do so for the following reasons:

- to enable the requestor to assess the reasonableness of the estimate. This may help to prevent a complaint to the ICO which will avoid further time and costs being expended on the same request;*
- if a complaint is made to the Information Commissioner, then he will expect the level of detail, as set out above, to be provided. This may require the public authority to incur further costs in providing this detail. This task may also be complicated by changes in circumstances between the time of the request and the time of the ICO investigation;*
- in any event, providing a suitable breakdown is likely to be required as part of a public authority's statutory obligations under section 16 to provide advice and assistance (for more detail see the relevant content below)."*

24. £200,000 is a significant sum of money, so it is not difficult to see why a member of public might expect the council to be able to easily access details of purchases it has made over this amount, especially within recent years.
25. As the council has only provided the Commissioner with minimal, if any, detail as to how it concluded it would take 26.41 hours to respond to the request, the Commissioner has no solid basis on which to support the council's assertion that responding would take it over the appropriate limit.
26. The Commissioner also had to follow up with the council on several occasions in an attempt to get it to respond to her enquiries and considers that it has had sufficient time to provide a more detailed rationale but has failed to do so in this case.
27. Therefore the Commissioner finds that section 12 of the FOIA is not engaged.

Section 16 of the FOIA – Advice and Assistance

28. Section 16 of the FOIA imposes an obligation on public authorities to provide advice and assistance to a person making a request, so far as it is reasonable to do so. Section 16(2) states that a public authority is to be taken to have complied with its section 16 duty in any particular case if it has conformed to the provisions in section 45 of the Code of Practice² in relation to the provision of advice and assistance.

29. Paragraph 14 of section 45 of the 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 refocusing their request, information may be able to be supplied for a lower, or no, fee.”

30. In this case the Commissioner has not been provided with any correspondence to show the council has ever offered the complainant any indication of what it could have provided within the cost limit to the complainant in order for a possible refinement of the request.

31. The Commissioner also notes that the council has never confirmed with the complainant that the two year period it has chosen to use to define ‘past few years’ is actually appropriate for the complainant’s needs.

32. Therefore the Commissioner finds that the council breached section 16 of the FOIA.

33. The council must carry out the steps stated in paragraph 3 of this decision notice.

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/235286/0033.pdf

Right of appeal

34. 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

35. 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.
36. 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
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
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SK9 5AF