

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 May 2017

Public Authority: Cardiff Council
Address: County Hall
Atlantic Wharf
Cardiff
CF10 4UW

Decision (including any steps ordered)

1. The complainant has requested information from Cardiff Council ("the Council") about the application of council tax exemptions. The Council refused to comply with part of the request under section 12(1) of the Freedom of Information Act ("the FOIA"). The complainant subsequently contested the Council's refusal to comply with that part.
2. The Commissioner's decision is that the Council has correctly applied section 12(1), and has complied with the requirement of section 16(1) to provide advice and assistance.
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 2 September 2016, the complainant wrote to the Council and requested information in the following terms:
 - 1) *Cardiff Council inspects all vacant properties that have requested council tax exemptions?*
 - 2) *If not, what is the percentage of the properties inspected?*
 - 3) *If this percentage is not 100%, is the percentage not inspected refused council tax exemption?*

- 4) *What is the percentage of properties given council tax exemptions without an inspection?*
 - 5) *What is the percentage of properties given council tax exemptions when an officer has tried to inspect a property but failed to do so?*
 - 6) *How many complaints have you received concerning council tax exemptions for the refusal of a council tax exemption but have then applied council tax exemption after receiving the complaint?*
 - 7) *If the Council does not inspect 100% of vacant properties requesting council tax exemption but council tax exemption is granted without inspection, what is the criteria for this decision and why does not my vacant property fall into that criteria? and how many other property owners been affected by this and made to pay when an exemption has been allowed to other vacant properties that have not been inspected?*
 - 8) *Can you provide the percentage of all appeals that swift have been advised to withhold action whilst an appeal process is in place?*
5. The Council responded on 26 September 2016. It disclosed held information in respect of parts 1, 2, 3, 4, 6 and 8, and refused to comply with parts 5 and 7 under section 12(1).
 6. Following an internal review the Council wrote to the complainant on 28 October 2016. It upheld its original position.

Scope of the case

7. The complainant contacted the Commissioner on 31 October 2016 to complain about the way his request for information had been handled, and specifically the Council's refusal of parts 5 and 7.
8. The Commissioner considers the scope of this case to be the determination of whether the Council has correctly applied the exclusion provided by section 12(1) to parts 5 and 7, and complied with the requirement of section 16(1).

Reasons for decision

Section 12(1) – The cost of compliance

9. Section 12(1) of the FOIA states that:

Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.

10. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004¹ ("the Regulations") sets the appropriate limit at £450 for the public authority in question. Under the Regulations, a public authority may charge a maximum of £25 per hour for work undertaken to comply with a request. This equates to 18 hours work in accordance with the appropriate limit set out above.
11. A public authority is only required to provide a reasonable estimate or breakdown of costs and in putting together its estimate it can take the following processes into consideration:
 - determining whether it holds the information;
 - 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.

Is the exclusion engaged?

The Council's position

12. The Council has confirmed that compliance with parts 5 and 7 would require it to consult 1620 individual inspection memos (and the related council tax accounts) for the 2015-2016 year. This is because the information sought is statistics that are not routinely compiled, and which cannot be automatically retrieved.
13. A sampling exercise has been undertaken which indicated an average of 3 minutes to manually review each inspection memo and consult the relevant council tax account. Based on this sampling exercise, the Council has calculated that it would take 81 hours to search for and compile the information sought by part 5 and part 7.

The Commissioner's analysis

¹ <http://www.legislation.gov.uk/uksi/2004/3244/contents/made>

14. The Commissioner has considered the Council's submissions and recognises that the information sought by parts 5 and 7 is not already compiled, and would require the manual review of records. A sampling exercise has already been undertaken which has indicated a total time of 81 hours.
15. The estimated total time is significantly in excess of the 18 hour limit provided by the FOIA, and there is no evidence available to the Commissioner that indicates the Council's calculations are in error or otherwise invalid. On this basis the Commissioner is satisfied that the Council has correctly applied section 12(1).

Section 16(1) – The duty to provide advice and assistance

16. Section 16(1) of the FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the Section 45 Code of Practice² ("the Code") issued by the Secretary of State, it will have complied with section 16(1).
17. The Code advises that, where an authority is not obliged to comply with a request for information because, under section 12(1) and the Regulations made for that section, the cost of complying would exceed the appropriate limit, it should provide the requestor with reasonable advice and assistance.
18. The Commissioner's guidance³ states that the minimum a public authority should do in order to satisfy section 16(1) is indicate if it is able to provide any information at all within the appropriate limit. Communicating this to a complainant may avoid further and futile attempts to refine the request to bring it under the appropriate limit. If the requestor understands the way in which the estimate has been calculated to exceed the appropriate limit, it should help them decide what to do next.
19. In this case the Council has informed the Commissioner that it did not provide advice and assistance as there is no practical way in which the

² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/235286/0033.pdf

³ https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

request can be meaningfully refined, such as postcode or specific date-range. This is because the inspection memos are not organised and searchable by those parameters.

20. The complainant has informed the Commissioner that he considers the Council should seek to compile the sought statistics up to the 18 hour limit.
21. In the circumstances of this case, the Commissioner understands that the inspection memos are not held in a manner that allows their retrieval by set parameters, and that there is no practical way for the Council to offer advice and assistance. As confirmed in the Commissioner's guidance, there is also no requirement upon the Council for it to search for, and compile information, up to the 18 hour limit. On this basis the Commissioner finds that the Council has complied with section 16(1).

Right of appeal

22. 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

23. 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.
24. 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
Wilmslow
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SK9 5AF