

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 August 2020

Public Authority: Halton Borough Council
Address: Municipal Building
Kingsway
Widnes
WA8 7QF

Decision (including any steps ordered)

1. The complainant has requested information about penalty charge notices for Mersey Tolls.
2. The Commissioner's decision is that Halton Borough Council is entitled to rely upon the exemption at section 12(1) and has, during the course of the investigation, complied with its duty under section 16 of the FOIA. However, it breached section 10(1) in responding to the complainant outside of the statutory time periods.
3. The Commissioner does not require any steps.

Request and response

4. On 5 August 2019 the complainant requested information from Halton Borough Council ('the council') in the following terms:

"Requested information – PCNs

Can we have the cumulative figures (precise not rounded) from when the bridge opened for the categories as set out below. I stress that we want the figures for appeals based on PCNs and not 'cases'.

... if it will speed things up we will accept the sub headings for (2), (3) and (4) being merged. For (5) we would at least like figures for sub headings (a), (c), (e) and (f).

Can we have also a copy of the latest report to management that gives a breakdown of PCN figures.

1. Number of PCNs issued.

2. Number of PCNs for which a payment was received, split between-

a) Received £20 plus the toll,

b) Received £40 plus the toll,

c) Received the toll only,

d) Other.

3. Representations made-

a) Number of PCNs for which a representation was received.

b) Number of PCNs cancelled following a representation.

c) Number of PCNS not cancelled and nothing was paid but a Notice of Rejection has not been issued.

d) Number where the £2 offer was made and it was accepted and the £2 paid.

e) Number of representations where a Notice of Rejection was issued with an offer to accept payment of the toll only.

- f) Number of representations where a Notice of Rejection was issued without any offer to accept payment of the toll only.*
 - g) Number of representations awaiting a decision.*
 - 4. Appeals (PCNs not cases) made to TPT-*
 - a) Number of appeals.*
 - b) Number of appeals not contested by HBC.*
 - c) Number of appeals allowed by TPT.*
 - d) Number of appeals dismissed by TPT.*
 - e) Other appeals settled, including- withdrawn by appellant and registration was rejected.*
 - f) Number of appeals awaiting decision.*
 - 5. Recovery action*
 - a) Number of Charge Certificates issued.*
 - b) Number of Charge Certificates paid in full before a Recovery Order issued.*
 - c) Number of Recovery orders (T3) issued.*
 - d) Number of Recovery orders paid in full before a Warrant of Control issued.*
 - e) Number of Notices of Enforcement issued.*
 - f) Number of Warrants of Control issued.*
 - 6. Number of TE7 out of time applications that have been opposed."*
5. The council responded on 9 December 2019 and refused to provide the requested information. It cited the exemption at section 12, cost of compliance exceeds appropriate limit, as the basis for the refusal. The council also stated "You may wish to refine (change or narrow) your request."
 6. On 6 December 2019 the complainant requested an internal review.
 7. During the course of the investigation and following an internal review the council wrote to the complainant on 3 February 2020 and advised

that it upheld its position. The council also stated *"For the purposes of clarity I would confirm that the information provided to management is structured in terms of cases and not PCN's and as a consequence could not be used to accommodate the request(s) that you have made."*

8. In the internal review response the council also provided a spreadsheet, being a sample of the information it could provide within the cost limit. It stated: *"For purposes of clarity the Council acknowledges that the information I have provided as referenced above does not wholly reflect the actual request that you have made although should you require such information in the future I can confirm it can be collated within the relevant time limits as specified within section 12."* It also stated *"The Council acknowledges that you have suggested that the sub-headings for questions 2, 3, and 4, of your request can be merged. For the purposes of clarity could you please confirm the exact nature of the specific question and I will review this matter further."*

Scope of the case

9. The complainant contacted the Commissioner on 10 December 2019 to complain about the way their request for information had been handled. Specifically, that the council had not provided the requested information, disputing the engagement of section 12(1) and complaining about the lateness of the council's responses.
10. Commissioner considers the scope of the case is to determine whether the council can rely on section 12(1) of the FOIA to refuse the complainant's request. She will also consider whether the council has provided appropriate advice and assistance in accordance with section 16 of the FOIA and whether it has responded within the statutory timeframes.

Reasons for decision

Section 12(1) of the FOIA – Appropriate Limit

11. Section 12(1) of the 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.
12. 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.

13. 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. This equates to 18 hours of office time. 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 of 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.
14. 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 above, to provide a detailed estimate of the time / cost it would take for it to provide the information, and confirm that the estimate has been based upon the quickest method for gathering the information.
15. 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 an estimate for the purposes of section 12 has to be "reasonable". Thus, 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.

The council's position

16. The council has informed the Commissioner that the statistics relating to the Mersey Gateway are electronically recorded in a database by Merseyflow, which is an arm's length body that has been appointed to administer the charging scheme for the Mersey Gateway on behalf of the Council.
17. In answering the request, the council provided the complainant with an analysis of the time required to respond to each question. It provided a description of the work required, for example a bespoke code or report; the time to prepare, execute and output the data; and the time to complete a final validation of all the information. The analysis shows the total overall time to be 1 day, 14 hours and 30 minutes.
18. The council advised that it had provided a response to a similar request for data from the complainant in May 2019, which had exceeded 18

hours to complete. On that occasion it provided the information as the work had been done.

19. As such the council advised that the time analysis provided for responding to the request is based on actual time rather than being an estimate or based on a sample. It confirmed that this is the quickest method available.
20. In the internal review response the council has provided a sample of the information it can supply within the cost limit, shown by each of the complainants questions. The file shows data for questions 1,2 and 5, by quarter.
21. For questions 3 and 4 it provides an extract from a management report for similar data relating to representations and appeals. The council stated that it may be possible to provide information for all quarters from when the Bridge opened but warned that the format of the reports has evolved over time.

The complainants position

22. The complainant advised that in response to similar requests the council previously provided some information , albeit not in the cumulative form requested.
23. The complainant has stated that if the information given in the sample response could be provided for future quarters then that may be helpful. However, it would be advantageous to receive the information in a format which they can extract from rather than a pdf file.
24. The complainant advises that they may be satisfied with a different breakdown of the data requested. However, they state that there is an issue with sample data provided for question's 3 and 4 being that the headings are not understood.
25. The complainant is not satisfied that the figures for questions 3 and 4 are given by quarter rather than being cumulative. Stating that summing all the quarters for some types of information would not provide a true cumulative figure. This is because the data is expressed in percentage terms. The complainant states that the provision of actual numbers, either cumulative or by quarter would address the issue.

Is the exemption engaged?

26. In order to determine whether the council has correctly engaged section 12(1) to refuse the request the Commissioner will assess the council's responses to her questions.

27. The Commissioner notes that other than regards their fundamental concern about the engagement of section 12(1), the issues raised by the complaint are related to the advice and assistance received by the council. The Commissioner will address these issues separately in this decision notice as they relate to the section 16 requirements.
28. The Commissioner notes the complexity of the request made by the complainant, being for various views of the data. The council have provided a comprehensive breakdown of the activities to develop, prepare, extract and validate the data. The council confirmed that it has quoted the actual time required to respond based on a previous response. It has also confirmed that there is no alternative method for obtaining the information.
29. Although section 12(1) is applied to the request as a whole, the council has provided the complainant with a sample of the information that could be provided on request. This includes information for two quarters (rather than cumulative) and covers the information, configured in the categories requested for items 1,2,5 and 6. It has confirmed the information can be provided for other quarters.
30. The Commissioner appreciates that the complainant may remain dissatisfied with the way in which the council states it is able to provide some of the information within the cost limits. However, the question to be addressed in terms of the engagement of section 12(1) is purely whether the time required to respond to the whole request would be excessive.
31. The Commissioner accepts the arguments put forward by the council that complying with the request would be excessively time consuming. She accepts that the time required would be far in excess of the 18 hours limit set by the Fees Regulations.
32. Therefore, the Commissioner finds that the council was entitled to rely on section 12(1) of the FOIA to refuse to comply with the request.

Section 16 – advice and assistance

33. Section 16(1) of the FOIA provides that a public authority should give advice and assistance to any person making an information request, so far as it would be reasonable to do so. In general, where section 12(1) is cited, in order to comply with this duty, a public authority should advise the requester as to how their request could be refined to bring it within the cost limit.
34. The council failed to meet the section 16 requirements in its initial response. The council then latterly provided advice and assistance by

way of a sample data extract which it included as part of the internal review response. The Commissioner notes that this was provided late, being six months after the initial request had been made and only after commencement of her investigation.

35. From the issues raised by the complainant, it is apparent to the Commissioner that there was a lack of understanding regarding the meaning and the purpose of the data extract provided.
36. Through the course of the investigation, the council has confirmed the purpose of the data extract, the meaning of the headers, and the way the information can be provided for future quarters. This information has been relayed to the complainant.
37. The complainant has expressed that it would be better to receive the information in future in an extractable format, rather than as a pdf file. The Commissioner therefore advises the complainant, for future reference, that section 11(1) of the FOIA outlines that an applicant may ask for a copy of the information in the form that they prefer, and that the public authority shall so far as reasonably practicable give effect to that preference.
38. The Commissioner considers that sufficient advice and assistance has now been provided to the complainant, taking account of the explanations of the data extract provided during the course of the investigation.
39. In this case, the council failed to meet its obligations to comply with section 16 in the initial response but rectified this issue in the internal review.
40. The Commissioner notes however that the complainant was not clear about the purpose of the data extract and its meaning. At the same time there were overlapping requests from the complainant to the council, as they attempted to obtain the most up to date cumulative information.
41. There does appear to have been a breakdown in communication on both sides during this time. However, the Commissioner considers that the data extract and the explanation latterly given now provide suitable advice and assistance as required by section 16.
42. The Commissioner does not require further steps.

Section 10 – Time for compliance

43. Section 10(1) specifies that a refusal notice must be provided no later than 20 working days after the date on which the request was received.

44. In this case, the council issued its refusal notice for section 12(1) outside 20 working days, and therefore breached section 10(1).

Right of appeal

45. 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@justice.gov.uk

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

46. 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.
47. 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
Cheshire
SK9 5AF