

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 May 2020

Public Authority: Bristol City Council
Address: City Hall
PO Box 3399
Bristol BS1 9NE

Decision (including any steps ordered)

1. The complainant has requested all of the information held by Bristol City Council (the council) that relates to a dispute over a particular barge, and also the council's proposed purchase of that barge.
2. The council refused to comply with the request on the grounds that it would exceed the cost of compliance to do so (section 12 of the FOIA).
3. The Commissioner's decision is that the council is entitled to rely on section 12(1) as its basis for refusing to comply with the request. She is also satisfied that the council has met its obligations under section 16 of the FOIA by offering advice and assistance to the complainant.
4. However, the Commissioner has found that the council has breached section 17(1) of the FOIA as it failed to issue a refusal notice within the prescribed 20 working days.
5. The Commissioner does not require the council to take any steps as a result of this decision notice.

Request and response

6. On 24 September 2019, the complainant wrote to the council and requested information in the following terms:

'I hereby make a formal request, under the Freedom of Information Act rules, for all documentation relating to the dispute over, and purchase of, the Ebenhaezer Barge at Welsh Back Bristol.'

7. The council responded to the complainant on 25 October 2019. It advised that it was refusing the request under section 12 of the FOI because the costs of complying with the request *'would exceed the limit provided under the FOI Act'*.

8. The council went on to explain the reasoning for its decision as follows:

The council holds over 3,000 documents in relation to your request about the Ebenhaezer Barge at Welsh Back Bristol. We estimate that it would take 3 minutes to review each document and correspondence to consider whether it falls within the scope of your request and to identify duplications. The time required to collate the information would therefore be more than the 18 hours threshold (3,000 documents x 3 mins = 150 hours or 20 working days).

As we estimate it would take well over the 18 hour limit provided in the FOIA Act to retrieve and extract the information requested, we consider that section 12 applies and are refusing your request.'

9. The council suggested to the complainant that he might wish to consider narrowing the scope of his request by *'focussing on the information and timescale which is most important to you.'* It also stated that a relevant exemption might apply to information held that was pertinent to any new refined request that he made.
10. On 7 November 2019, the complainant requested an internal review. Following the Commissioner's intervention, the council provided its internal review response to the complainant on 20 February 2020.
11. The council advised the complainant that negotiations with the owners of Ebenhaezer Barge had been ongoing since 2003 and that during this time period there had been a considerable amount of discussion between various parties about related issues, including planning permissions, condition surveys, temporary uses and licences. It stated that a lot of information and documents had been generated as a result.

12. The council went on to say that a number of officers had dealt with matters relating to the request in the last seven years, and that it may be the case that they all hold some information pertaining to the request.
13. The council also confirmed that a search of the file '*Ebenhaezer barge*' held by the Legal Department had already identified 1,439 documents and that its Property Team had also confirmed that it held approximately 1,500 documents that may contain information relevant to the request.
14. The council advised the complainant that each of the documents identified would need to be reviewed to determine if they contained information that fell within the scope of the request. It maintained its previous estimate that it would take at least 3 minutes to review each document, or email, and any associated attachments, and that this would equate to 150 hours/20 working days of work.
15. The council went on to say that, under section 12 of the FOIA, it would not be obliged to comply with the request, if it had estimated that the cost of determining whether it holds the information, locating and retrieving it and extracting it from other information would exceed the appropriate limit, which would currently be £450 for the council. It confirmed that this is calculated at £25 per hour for every hour which was spent on the activities it had described, and is the equivalent of 18 hours, or approximately 3 working days.
16. The council advised the complainant that as it would take over 150 hours, or approximately 20 working days (at 7.5 hours per day), to gather the information which had been requested, the reviewing officer was to uphold the original decision to refuse the request.
17. The council again advised the complainant that he might wish to narrow the terms of his request by choosing the information which '*is most important*' to him. It suggested that he could consider limiting the time frame, or provide further clarification on the information that he was looking for.
18. The council also confirmed that as negotiations were, at the time of the request, still ongoing, there was likely to be information held that was relevant to the request that would be commercially sensitive, or advice that would be regarded to hold legal professional privilege. It stated that, given this, should the complainant decide to make a new request, there may be certain information that would be exempt from disclosure.

Scope of the case

19. The complainant initially contacted the Commissioner on 12 February 2020 to complain about the council's failure to respond to his request for an internal review. He then contacted the Commissioner again on 15 March 2020 to complain about the council's decision to refuse his request under section 12 of the FOIA.
20. The Commissioner considers the scope of her investigation to be to determine whether a reasonable estimate of the cost of complying with the complainant's request would exceed the appropriate limit in this instance. She also intends to consider the timeliness of the council's responses to the complainant.

Reasons for decision

21. Section 12 (1) of the FOIA states that a public authority does not need to comply with a request for information, if it estimates that the cost of complying with the request would exceed the appropriate limit.
22. The 'Appropriate Limit' is defined in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the Regulations) and is currently set at £600 for central government departments, and £450 for all other public authorities (which would include the council). A maximum of £25 per hour can be charged to undertake the work required to comply with the request and for 'other public authorities', such as the council, this equates to 18 hours work.
23. In estimating whether complying with a request would exceed the appropriate limit, regulation 4(3) of the Fees Regulations states that an authority can only take into account the costs it reasonably expects to incur in:
 - determining whether it holds the information;
 - locating the information, or a document containing it;
 - retrieving the information, or a document containing it; and
 - extracting the information from a document containing it.
24. The four activities are sequential, covering the retrieval process of the information from the public authority's information store.
25. 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. In accordance with the First-Tier Tribunal in the case of *Randall v Information Commissioner &*

Medicines and Healthcare Products Regulatory Agency EA/2007/0004¹, the Commissioner considers that any estimate must be '*sensible, realistic and supported by cogent evidence*'.

26. The complainant has argued that his request '*is not a particularly wide enquiry*' and that it is '*probably exactly the type of enquiry that the FOI Act is intended to serve.*' He states that if a public authority can refuse to give information in a case like this on the grounds that it will take too long, that means the public can only access information on the smallest and simplest of matters, thereby rendering the FOI system '*useless and pointless*'.
27. The Commissioner appreciates that the actual matter is restricted to one issue, that being the dispute about, and purchase of, the Ebenhaezer Barge. In addition, as the complainant suggests, the principle behind the FOIA is to allow people to have the right to know about the activities of a public authority. It promotes transparency and openness and allows for public authorities to be more accountable for their activities.
28. However, the FOIA also recognises that freedom of information requests are not the only demand of the resources of a public authority. They should not be allowed to cause a drain on the public authority's time, energy and finances to the extent that they negatively affect the public authority's normal public functions.
29. The Commissioner is aware from the information that is already in the public domain² about the planned harbourside development at Welsh Back, and the council's proposal to purchase the Ebenhaezer barge, that the request relates to a complex matter which had been ongoing for a considerable period of time; it is therefore likely to be the case that a significant amount of recorded information would have been generated by the council in the 12 years prior to the complainant's request about this matter.
30. The council has explained that 2,939 documents held in total by its Legal and Property Departments had been identified as being potentially relevant to the request. It has referred by way of an example to one file that is held by the Legal Department which is titled '*Ebenhaezer barge*' that contained 1,439 documents. Given the terms of the request, it is not unreasonable for the council to have considered that all the

¹ <http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i136/Randall.pdf>

² <https://www.bristolpost.co.uk/news/bristol-news/council-spends-14m-barge-way-3061689>

documentation within this file would need to be reviewed to establish what is directly relevant to the request. The Commissioner acknowledges that this is likely to be the same for those documents which the council referred to that is held by the Property Department.

31. The Commissioner therefore accepts the council's assertion that it would be required to review approximately 3,000 documents in response to the request.
32. The council advised the complainant that it would take 3 minutes to review each of the 2939 documents it had already identified as being potentially relevant to the request. However, it did not explicitly confirm to the complainant that this 3 minute timescale had been deduced following a sampling exercise. Given this, the council has not provided cogent evidence in support of its claim that it would take 150 hours of work to review all the information held by the two departments cited.
33. However, the Commissioner notes that in order for the council to review all of the 2939 documents within the relevant 18 hours specified by the Regulations, it would be required to review each document within a 22.05 second time period– which she considers would not be feasible.
34. Therefore, in this instance, the Commissioner is satisfied that the request made by the complainant could not be answered within the cost limit and thus the council was entitled to rely on section 12(1) to refuse it.

Section 16 Advice and Assistance

35. 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) says that a public authority is taken to have complied with its section 16 duty in any particular case if it has conformed with the provisions in the section 45 Code of Practice³ in relation to the provision of advice and assistance.
36. Paragraph 14 of the section 45 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:

³https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/235286/0033.pdf

".....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 re-focussing their request, information may be able to be supplied for a lower, or no, fee."

37. In this instance, the complainant has requested all the information held about the Ebenhaezer Barge. The council advised him in its original response that he might wish to refine his request, either by narrowing the time period, or its terms. However, the complainant chose not to refine the request as he considered the original request did not engage the cost limit.
38. The council's internal review response repeated the same advice as that set out in its original refusal notice, stating that the complainant might want to consider refining his request to that information which was '*most important*' to him, or by narrowing the time frame of his request. The council also added that he might also wish to provide clarification on what information he wanted the council to provide.
39. Since the council had identified a way that the request could potentially be refined within the cost limit and communicated this to the complainant, the Commissioner is satisfied that the council provided adequate advice and assistance to the complainant, and therefore complied with section 16 of the FOIA.

Section 17(1)-Refusal of request

40. Section 17(1) specifies that a refusal notice must be provided no later than 20 working days after the date on which the request was received.
41. In this case, the council issued its refusal notice for section 12(1) outside 20 working days, and therefore breached section 17(1).

Other matters

42. The provision of an internal review is not a requirement of the FOIA, but it is a matter of good practice. In this instance the council offered the complainant an internal review but then only provided its decision following the intervention of the Commissioner.
43. Where a review is carried out, the Commissioner would remind the council that this should be provided within 20 working days of receipt of such a request (or, in the most exceptional circumstances, a further additional 20 working days). It has been noted that council has failed to meet these timescales in this instance.

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@justice.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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