

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** **14 September 2020**

**Public Authority:** **Birmingham City Council**

**Address:** **Victoria Square  
Birmingham  
B1 1BB**

#### **Decision (including any steps ordered)**

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1. The complainant has requested information relating to civil litigation proceedings that have been taken against Birmingham City Council (the council) within a specified time period.
2. The council refused to comply with the request on the grounds that it would exceed the cost limits to do so (section 12(1) of the FOIA).
3. The Commissioner's decision is that the council was entitled to rely on section 12(1) of the FOIA in relation to this request. Nevertheless, by failing to demonstrate that it had properly considered its advice and assistance obligations, the council has breached section 16 of the FOIA.
4. However, due to the circumstances of this case, the Commissioner does not require the council to take any steps.

#### **Request and response**

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5. On 9 January 2020, the complainant wrote to the council and requested information in the following terms:

*Please provide a list of all the civil litigation proceedings that have [sic] issued against Birmingham City Council in the following courts (but not heard or if heard judgement not entered) as at 31 December 2019*

*County Court  
High Court-Queens Bench, Chancery and Family  
Court of Appeal  
Supreme Court*

*The information required is*

- 1) Name of Plaintiff
- 2) Name of Defendant
- 3) Reason for Claim
- 4) Value of Claim in the proceeding
- 5) Hearing Date-when it has been scheduled
- 6) Hearing Venue

6. The council responded to the complainant's request on 10 January 2020. It indicated that the term '*civil litigation proceedings*' was too broad, advising that this was likely to include the '*Civil Litigation team, Personal Injury, Housing and Community Safety and elements of Employment, etc*', as all of this work concerned the Courts and proceedings within a civil jurisdiction.
7. The council went on to refer to the period of time set out within the request, stating that it was unclear from this whether the complainant required information held from 31 December 2019 onwards, or prior to that date. It said that as the complainant had not specified a precise time period, it regarded his request to be '*too wide*'.
8. As a result of the above factors, the council informed the complainant that, due to the size of the council, and its jurisdiction, the request in its current form was likely to exceed the cost limits set out in section 12 of the FOIA. However, it confirmed that it might be possible to answer the request, if he was able to narrow this down, either by a particular service area, or within a specific timeframe. The council went on to confirm to the complainant that his request had been placed '*on hold*' until it heard further from him.
9. On 15 January 2020, the complainant confirmed to the council that he would narrow the time frame of his request to cover the period 1 January 2019 to 31 December 2019. He also asked that the council restrict the search to one of the '*service teams*' referred to by the council in its response to him, that being the civil litigation team, and also the social and healthcare team.
10. The council provided a response to the complainant on 20 January 2020. It advised that from its '*preliminary assessment*' it believed compliance with the request would exceed the appropriate costs, as set out within section 12 of the FOIA.
11. The council explained to the complainant that its case management system does not record information in the way that had been requested, and that it did not record under any '*filter or category*' which would

allow it to search for '*proceedings that have been issued against the Council.*'

12. The council went on to say that, as a result, a manual search would be required, and that it had estimated there to be at least 40 to 100 cases that would fall within the scope of the request. It went on to say that if it used an estimate of 50 cases, with an allocation of 30 minutes to extract answers to each of the six points set out within the complainant's request for each case, this would equate to a total cost of £625 to comply with the request (using a calculation of a charge of £25 per hour). As this amount exceeds the cost limits set out within the FOIA, the council advised that it was satisfied that section 12 was engaged.
13. On 10 February 2020, the complainant requested an internal review. He stated that it was his understanding that the legal department, or the council's monitoring officer, was required to keep a list of litigation cases. In addition, he advised that the council's auditors would require, and be issued with, this list in order for it to audit '*note 37 of the Birmingham City Council Statement of Accounts which relates to contingent liabilities.*'
14. The complainant went on to say that it was '*also a requirement under the Code of Practice on Managing Records issued under section 46 of the Freedom of Information Act 2000 that an authority should know where all its information is located.*'
15. On 6 March 2020, the council notified the complainant of the outcome of the internal review. It maintained its previous decision that section 12 of the FOI was engaged.
16. The council went on to say that the information requested would have to be extracted out of each case file, once it had been identified that any one file contained information that was relevant to the request.
17. With regard to the complainant's point about information held relating to the annual accounts, the council also advised that:

*'The information contained within the council's annual accounts, as allured [sic] to in the submission, contain contingent liabilities (note 33 in 18/19) are high-level descriptions and nothing like the level of detail requested.'*

## Scope of the case

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18. The complainant contacted the Commissioner on 6 March 2020 to complain about the way his request for information had been handled.
19. The Commissioner considers the scope of her investigation to be whether a reasonable estimate of the cost of complying with the complainant's request would exceed the appropriate limit in this instance.
20. The Commissioner has also considered whether the council has fulfilled its obligations under section 16 of the FOIA.

## Reasons for decision

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### Section 12-Cost of compliance exceeds the appropriate limit

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. The Commissioner asked the council to provide more details about how it came to its estimated costs in this case.

26. In response, the council reiterated a point it had already made to the complainant that the council's electronic system for its Legal Services Department does not record cases, or files, in terms of the categories described within the request under consideration.
27. The council then went on to explain how the information is held. It stated that at the point where it receives instructions, a file would be opened, using the information which is available at that time, such as the name(s) of any relevant parties. It said that it is not unusual for the council's legal team to be instructed prior to proceedings being issued; therefore, if proceedings are issued during its instruction, the information will be held on the council's records. However, this information would not be captured in any special category or filter and, given this, the council advised that it would be necessary to look through the file in order to locate this information.
28. The council also confirmed that the same would be true for the information requested relating to court proceedings, and also whether a or not a claim had been heard or, if heard, whether a judgement had been issued as at 31 December 2019.
29. The council stated that, as a result, it is unable to use its case management system to filter cases in order to provide the information which has been set out in the request; the only way it is able to attempt to comply with the request is to carry out a manual review of each file.
30. Whilst the complainant had narrowed his request to cover the time period 1 January 2019 to 31 December 2019, the council confirmed that, when carrying out its test search, it looked at how many files were opened by the Housing Litigation Team, Community Safety Team, Civil Litigation and Personal Injury Team for the period up to 29 February 2020. It explained that its search can only be made by way of reference to when a file is opened, and that extending the period up to the end of February 2020 ensured that the possibility of proceedings that were issued at the end of 2019, but which did not come to the attention of the council until early on in 2020, were still captured.
31. Using the method set out above, the council confirmed that it had identified 1952 files that may contain information relevant to the request.
32. The council went on to say that it then began its test search by taking files relating to the Civil Litigation and Personal Injury Teams, using one council officer to conduct the search. It states that within a 58-minute time period, 18 files had been searched. However, the council officer had not, within that time, identified any claims which matched all the relevant criteria as set out within the request (the council stated that

information was identified that matched part of the criteria set out within the request, but it did not find a complete match within any one file). The council then confirmed that it completed the test search after 62 minutes, having not located any information which would fall within the scope of the request.

33. The council states that, based on the test search, it would take approximately 108 hours to complete a full search. It goes on to say that it would then take a further period of time, once a file that contains information relevant to the request has been identified, to extract that information set out within points 1) to 6) of the complainant's request.
34. The council points out that, having not identified any relevant information in its test search, it is unable to provide an estimate of the additional time required to do this for each file.
35. However, the council has confirmed that it selected a current file (for the year 2020) and that it took approximately 20 minutes to extract that information of the same type that has been requested by the complainant for the year 2019.
36. The council goes on to say that it believes that this test search strengthens its initial view that the scope and parameters of the request are too wide for it to be able to comply within a reasonable time period.
37. The Commissioner notes that there is a significant disparity between the estimated number of files that the council had referred to in its response to the complainant ('*at least 40 to 100 files*'), and that which it has provided in its response to the Commissioner (1952 files).
38. The FOIA does not require a public authority to provide a precise calculation of the costs to comply with a request. It is also not obliged to search for, or compile some of the information before refusing a request under section 12 of the FOIA. However, in accordance with the Information Tribunal in the case of '*Randall v Information Commissioner and Medicines and Healthcare Products Regulatory Agency* (EA/2006/0004, 30 October 2007)<sup>1</sup>' the Commissioner considers that the estimate provided must be '*.....sensible, realistic and supported by cogent evidence*'.
39. Given the detailed information which has been provided by the council in support of its most recent estimate, the Commissioner regards the original figures which it had provided to the complainant in response to

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

his request to have been unrealistic; as far as she can see, these figures could not have been based on any reasonable assumptions, or 'cogent' evidence.

40. In addition, the Commissioner is mindful that it would not have been unreasonable for the complainant to have concluded from the original estimate provided to him that an investigation into the council's handling of the case could potentially result in a slightly revised figure which would fall within the cost limits.
41. It is therefore the Commissioner's view that, had a more realistic estimate been provided from the onset, the complainant may have had a much better understanding of the reasonableness of his request. This may have avoided the subsequent complaint to the Commissioner, as well as concluding matters within a much shorter timeframe.
42. In any event, having considered the detailed information provided by the council during this investigation, the Commissioner is satisfied that the estimate that has now been provided by the council for her consideration is both reasonable and based on 'cogent evidence'; she therefore intends to take this into account when making her decision, and not the original estimate that was given to the complainant.
43. The Commissioner would add at this point that she has noted that the council's search which led to 1952 files being identified does not appear to have been restricted to the two teams which the complainant set out in his new, revised request of 15 January 2020.
44. However, given the details that have been provided by the council, the Commissioner accepts that the terms of the complainant's request are still likely to include a high proportion of those files which were identified. She is therefore satisfied that, had the council's search been restricted to the civil litigation team, and the social and healthcare team only, using the methods of identification described by the council in its search, the number of files that would have been identified would still have been extremely high.
45. Having considered all the relevant factors, the Commissioner accepts that the estimates provided by the council in this instance are still sufficient for her to be able to form a conclusion as to whether the complainant's request would fall within the relevant cost limit set out within paragraph 22 of this decision notice.
46. In this particular instance, the Commissioner is satisfied that the request made by the complainant could not be answered within the cost limit, and that the council was entitled to rely on section 12(1) to refuse it.

## Section 16-Advice and Assistance

47. 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 Practice<sup>2</sup> in relation to the provision of advice and assistance.

48. 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:

*'..... 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 refocussing their request, information may be able to be supplied for a lower, or no, fee.'*

49. In this case, the council responded to the complainant's original request advising that, as its terms were 'too wide', he might wish to consider narrowing its terms, both with regards to the time parameters and 'service area'.

50. On 15 January 2020, the complainant then provided the council with details of a specific time period which he wanted the request to cover, and he also identified what service areas he was most interested in. The Commissioner considers the complainant's submission to be a new request for information.

51. The Commissioner does not consider it to have been unreasonable for the complainant to have assumed that, based on the responses that he received from the council, refining the time period and 'service area' of his request may provide him with access to at least some of the information he required.

52. The Commissioner's guidance states that where it is reasonable to provide advice and assistance in the particular circumstances of the case, the minimum a public authority should do in order to satisfy section 16 is:

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/235286/0033.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/235286/0033.pdf)

- either indicate if it is not able to provide any information at all within the appropriate limit; or
  - provide an indication of what information could be provided within the appropriate limit; and
  - provide advice and assistance to enable the requester to make a refined request.
53. The guidance goes on to say that it is useful to inform the requester of those instances where it is unable to provide information, as it may avoid further and futile attempts to refine the request to bring it under the appropriate limit. Also, if the requester understands the way in which the estimate has been calculated to exceed the appropriate limit, it should help them decide what to do next.
54. Having considered the wording of the request and the way in which the council holds its records, the Commissioner cannot see any easy way in which the complainant's request could be responded to within the cost limit. This is particularly the case given that the council was unable to locate any information that would fall within the specific terms of the request within the test period of just over an hour which was performed.
55. Whilst in this case the council provided the complainant with some detail as to why it was unable to comply with the request it had received, it has only become clear upon details provided to the Commissioner during the investigation that the council would not be able to provide any information to the complainant within the cost limits. The Commissioner is mindful that had the council explained this to the complainant, then this would perhaps have managed his expectations at an earlier stage of the process.
56. In this particular instance, as the council failed to indicate to the complainant whether it would be able to provide any information within the cost limit in its response to his request of 15 January 2020, the Commissioner considers the council to have breached its section 16 obligations.
57. However, as it is now clear that the council would not be able to provide the complainant with any information within the cost limits, the Commissioner has not ordered any steps in this case.

## **Right of appeal**

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58. 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](mailto:grc@justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

59. 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.
60. 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**