

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 October 2022

Public Authority: Suffolk County Council
Address: Endeavour House
8 Russell Road
Ipswich
Suffolk
IP2 2BX

Decision (including any steps ordered)

1. The complainant requested information from Suffolk County Council ("the Council") relating to the classification of information in reference to a catalogue listing for a set of local records.
2. The Commissioner's decision is that the Council has failed to demonstrate that section 12(2) is engaged.
3. The Commissioner requires the Council to take the following steps:
 - Issue a fresh response to the request that does not rely upon section 12(2) of FOIA.
4. The Council 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 FOIA and may be dealt with as contempt of court.

Request and response

5. On 6 September 2021, the complainant made the following request for information under FOIA:

"Therefore, I request here that the following sub-classes be broken down to item level, including for each item their individual 'reference number', 'title', and any 'description' and/or 'covering dates' (where these are present already on the catalogue database):

- A3/2/2/ – WSCC/Committees/Committee papers/ *
 - A3/3/1/4/ – Clerk to the County Council/Miscellaneous/
 - A3/3/2/ – County Secretary/ *
 - A3/3/6/2/ – Agriculture/Estates (Smallholdings/County Farms)
 - A3/3/9/4/ – Planning (Countryside recreation and management)
 - A3/3/10/1/ – Public Protection (ARP/Civil Defence/Emergency Planning)
 - A3/3/11/1/ – Highways (Highways Provision)
 - A3/3/11/2/ – Highways (Highways maintenance and management)
 - A3/3/11/3/ – Highways (Bridges)
 - A3/3/11/6/ – Highways (Miscellaneous".
6. On 15 September 2021, the Council provided the complainant with some information and stated that it held the remaining information but that it is exempt from disclosure under section 12.
7. The complainant requested an internal review on 12 October 2021 stating that they had requested similar information from other organisations and never had a problem in obtaining it. Furthermore, the complainant believes that the two documents the Council provided proves that it has "software designed specifically to produce and export such information into a downloadable/usable format."
8. On 21 October 2021, the Council provided its internal review response and overturned its original response. It confirmed that the information requested would fall under a paid for service provided by Suffolk Archives and is therefore exempt under section 21 as it is readily accessible by other means.

Scope of the case

9. The complainant contacted the Commissioner on 18 November 2021 to complain about the way their request for information had been handled.
10. The Commissioner wrote to the complainant on 9 June 2022 to offer his preliminary view of their complaint. The Commissioner explained that it was his view that the remaining information requested is reasonably accessible to the complainant, even if a fee is required, and therefore exempt from disclosure under section 21 of FOIA.
11. The complainant requested that the Commissioner issue a decision notice. Whilst in the process of drafting the decision notice, the Commissioner sought clarification, from the Council, regarding its application of section 21.
12. In submissions to the Commissioner, the Council decided to return to its original exemption of section 12 and explained that it would exceed the appropriate cost limit to ascertain whether any information, that fell within the scope of the request, was actually held within the hard copy files. The Council then issued a revised response to the complainant on 14 July 2022.
13. The Council was not specific in its correspondence with the Commissioner nor with the complainant as to which subsection of FOIA section 12 it was relying upon. However as it states that "it is not possible to definitively say that Suffolk Archives has all the information for West Suffolk County Council that falls within scope of this extremely broad request" the Commissioner has taken this as an indication that the Council was relying upon section 12(2).
14. Therefore the Commissioner considers the scope of this case to be to determine if the Council has correctly cited section 12(2) of FOIA in response to the request.

Reasons for decision

Section 12 – cost of compliance exceeds the appropriate limit

15. Section 12(1) of FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate cost limit.

16. Section 12(2) states that if a public authority estimates that it would exceed the appropriate limit to confirm whether or not the requested information is held it does not have to deal with the substance of the request.
17. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations') at £450 for local government public authorities such as the Council.
18. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 18 hours for the Council.
19. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the cost it reasonably expects to incur in carrying out the following permitted activities in complying with the request:
 - determining whether the information is held;
 - 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.
20. Where section 12(2) is relied upon, only the first of these bullet points is held.
21. 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 decision in the case of *Randall v IC & Medicines and Healthcare Products Regulatory Agency*¹, the Commissioner considers that any estimate must be "sensible, realistic and supported by cogent evidence." The task for the Commissioner in a section 12 matter is to determine whether the public authority made a reasonable estimate of the cost of determining whether the requested information is held and complying with the request.

¹ EA/20017/00041

22. Section 12 is not subject to a public interest test; if the public authority estimates reasonably that complying with the request would exceed the cost limit then there is no requirement under FOIA to consider whether there is a public interest in the disclosure of the information.

The Council's position

23. In correspondence to the Commissioner, the Council explained that Suffolk Archives has a classification scheme for cataloguing both East and West Suffolk County Council archives and the catalogue structure therefore has sections, sub sections and series that archives are assigned to with an appropriate reference.
24. It went on to explain that items from West Suffolk County Council came into Suffolk Archives in batches from 1973 to 1993 which was before Suffolk Archives used a computer database for recording and these were initially allocated a Bulk Accession Number with a skeleton summary description of the contents. This information was then typed onto a page that was put into a Bulk Accession Binder, filed in the order they came in and were not structured by department or function.
25. The Council further explained that there are four Bulk Accession Binders covering approximately 700 sides of unstructured information. It calculated that it would take approximately two minutes per side for an experienced Archivist to review the information, break down the page numbers per Bulk Accession, enter these into an electronic spreadsheet and in the process of this identify any Accessions that include sensitive, personal or commercial information and redact any information.

The Commissioner's conclusion

26. Any estimate that a public authority provides must be realistic and based on cogent evidence. As the time taken to ascertain whether all the information is held, is just outside the cost limit, the Commissioner feels that the Council has not explained in detail why it would take an experienced member of staff two minutes to review to a page of information to ascertain whether it holds any information within scope of the request.
27. The Commissioner does acknowledge that the Council states that this two minutes includes the time to type the information into a spreadsheet, but is unsure whether the Council is indicating that it needs to do this in order to establish whether the information is held, or whether this is done in the process of providing the complainant with the requested information.

28. Furthermore, the Commissioner notes that the Council's inclusion of redacting the information is not valid as this cannot be considered when calculating the cost limit.
29. The Commissioner considers that the Council has failed to demonstrate how the cost of determining whether it holds information within the scope of the request would exceed the appropriate limit. Therefore, the Commissioner's decision is that the Council is not entitled to rely on section 12(2) of FOIA to refuse to comply with the request.
30. The Commissioner requires the Council to issue the complainant with a fresh response to their request which does not rely on section 12(2) of FOIA.

Right of appeal

31. 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

32. 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.
33. 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

Phillip Angell
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Wycliffe House
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