

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

### **Decision notice**

**Date:** 27 November 2018

**Public Authority:** North Lincolnshire County Council  
**Address:** Civic Centre  
Ashby Road  
Scunthorpe  
South Humberside  
DN16 1AB

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

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1. The complainant requested information about the amount of compensation paid out as a result of damage to vehicles caused by potholes
2. The Commissioner's decision is that the request was not valid for the purposes of the FOIA and therefore North Lincolnshire County Council ("the Council") was under no obligation to provide information. However, it was obliged to provide adequate advice and assistance to help the complainant make a valid request. As it did not provide such advice and assistance, the Commissioner finds that the Council has breached Section 16 of the FOIA.
3. As it did eventually provide most of the requested information, the Commissioner does not require the Council to take any further steps

#### **Request and response**

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4. On 25 May 2018, the complainant wrote to the Council and requested information in the following terms:

*"Please kindly provide the total compensation paid for damage caused to property or person due to poor condition of roads (potholes, etc) for the years you are able to do so starting with 2015 and work backwards until either the data is no longer*

*reasonably accessible or until you reach the beginning of April 1996 (whichever happens sooner).*

*"It is our preference for these figures to include any additional costs (such as legal fees). If this is not possible then please kindly provide the data anyway and state what is included.*

*"In terms of which year to put the compensation figures we shall provide an example. If the damage occurred in the year 1998 we would prefer the amount paid to appear in the 1998 column and so on. If you cannot arrange the data in this way then please kindly base it on the year the claim was made. For instance if the claim was made in the year 1999 then kindly arrange for the amount paid to appear in 1999. If however you are again unable to arrange the data in this way then kindly provide it in any available way stating how it is arranged."*

5. The Council responded on 21 June 2018. It refused the request and cited Section 12 of the FOIA (Cost exceeds appropriate limit).
6. Following an internal review the Council wrote to the complainant on 14 August 2018. It reiterated its belief that complying with the request would exceed the appropriate limit but agreed to provide 18 hours' worth of information.

## **Scope of the case**

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7. The complainant contacted the Commissioner on 21 August 2018 to complain about the Council's failure to provide the requested information.
8. The complainant has now stated that he is happy with the information that has been provided, but requested that the Commissioner issue a decision notice recording the delay in providing him with the information.
9. Since Section 10 of the FOIA can only be engaged once a valid request has been made under the Act, it is first necessary for the Commissioner to determine whether the request was valid before setting out what action the Council was required to take.

## Reasons for decision

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*Was the request valid?*

10. Section 1(1) of the FOIA states that:

*Any person making a request for information to a public authority is entitled –*

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*
- (b) if that is the case, to have that information communicated to him.*

11. Section 8(1) of the FOIA states:

*In this Act any reference to a "request for information" is a reference to such a request which –*

- (a) is in writing,*
- (b) states the name of the applicant and an address for correspondence, and*
- (c) describes the information requested.*

12. The wording of the complainant's request invited the Council to keep searching for information until *"either the data is no longer reasonably accessible or until you reach the beginning of April 1996 (whichever happens sooner)."*

13. The Commissioner considers that a reasonable and objective reading of *"reasonably accessible"* in this context was that the Council should continue its search up until the point at which it would be able to claim that Section 12 would apply.

14. The wording of the complainant's internal review request would support such a reading as, when contesting the application of Section 12 to refuse the request, he commented that *"we specifically allowed for this."*

15. The Commissioner therefore takes the view that the complainant in this case attempted to define his request by reference to the cost limits.

16. The Commissioner's guidance on such requests is that:

*"Requests defined by the Section 12 cost limits are invalid under Section 8(1)(c) because their scope is determined by the extent of the record search the authority can carry out within those limits,*

*rather than the distinguishing characteristics of the information itself.”<sup>1</sup>*

17. The Commissioner therefore takes the view that the complainant's request was not valid and therefore the Council was not obliged to provide any information.
18. As the request was not valid, the Commissioner cannot find any breach of Section 10 of the FOIA.

#### *Section 16 – Advice & Assistance*

19. Whilst the Commissioner considers that requests defined by the cost limit are invalid, she does expect a public authority in receipt of such a request to provide the requestor with adequate advice and assistance to help them to make a valid request.

20. The Council's initial response stated that:

*"The information you have requested is not recorded in a reportable format. It would be recorded on each individual claim. Since 1996 there have been approximately 445 claims, we would need to go through each one (3 minutes each) to extract the payment details. We expect that this would take in excess of 22 hours.*

*"You may wish to refine and resubmit your request so that it reduces the cost to within the appropriate limit. For example, agreeing to a shorter time period or reducing the number of questions in your request. Please contact me if you would like advice on how to do this."*

21. It appears to the Commissioner that the Council did not correctly interpret the request. The complainant did not ask for data going back to 1996, he asked for as much data as could be accessed *within the cost limit* going back to 1996. Whilst the advice and assistance offered would have been adequate had the request been defined by a specific timeframe, as the request was defined by the cost limit, the advice and assistance was not adequate.
22. Had the Council interpreted the request correctly, it could have informed the complainant that his request was not valid and given an indication of

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<sup>1</sup> <https://ico.org.uk/media/for-organisations/documents/1164/recognising-a-request-made-under-the-foia.pdf>

how many years' worth of data it might have been able to provide within the cost limit.

23. The Council could have rectified this at the internal review stage, but it maintained its view that the request could not be answered within the cost limit.
24. The Commissioner therefore finds that the Council did not provide adequate advice and assistance and it thus breached Section 16 of the FOIA.

## Right of appeal

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25. 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](mailto:GRC@hmcts.gsi.gov.uk)

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

26. 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.
27. 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 .....**

**Ben Tomes**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**