

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 July 2016

Public Authority: Gravesham Borough Council
Address: Civic Centre
Windmill Street
Gravesend
Kent
DA12 1AU

Decision (including any steps ordered)

1. The complainant has requested various items of information in respect of summonses to the Magistrates Court in relation to Council Tax over a specified period. Gravesham Borough Council refused item three of the request on the basis of section 12 of the FOIA. The Commissioner's decision is that Gravesham Borough Council has correctly relied on section 12 of the FOIA. The Commissioner does not require the public authority to take any steps.

Request and response

2. On 28 August 2014 the complainant wrote to the Council and requested the following information:

"Under the auspices of the FOI Act please could you supply the following information.

In the financial accounting year 2007/2008 and subsequent years up to 28/08/13.

1 The names, dates and property addresses of summonses at the Magistrates Court instituted by the Gravesham Borough Council for Council Tax where statutory written procedures under S1 613 to ascertain liability had been followed.

2 The names, dates and property addresses of summonses at the Magistrates Court instituted by the Gravesham Borough Council for Council Tax where there was no accepted liability and neither statutory written procedures under S1 613 nor any other written ascribable evidence was obtained by the Council to first ascertain liability.

3 The number of cases in which owners were billed for Council Tax where liability had previously not been with the owner and no statutory requisitions for information had been sent to them nor any written ascribable evidence obtained to legally determine the owner's liability before bills were sent to them...."

3. The Council originally refused the request under section 14(1) of the FOIA on the basis that the request was vexatious and following a complaint to the Commissioner, a decision notice was issued in respect of complaint reference number FS505665446 which stated that section 14(1) was not engaged, and that the Council must either provide the requested information or issue a valid refusal notice under section 17 of the FOIA.
4. The Council subsequently issued a fresh response to the complainant on 1 September 2015. It confirmed that it was relying on section 12 of the FOIA in respect of item one, with section 40 also cited, and that it did not hold relevant information in respect of items two and three.

Scope of the case

5. The complainant contacted the Commissioner on 13 November 2015 to complain about the Council's post decision notice response to his request for information.
6. During the course of the Commissioner's investigation, the Council confirmed that it was solely relying on section 40(2) in respect of item one of the request, and that it does not hold relevant information in respect of item two. The complainant has subsequently accepted the findings of the Commissioner's investigation into items one and two, however, does not accept his finding in respect of item three of his request.
7. The scope of the Commissioner's investigation is therefore to determine whether the Council correctly relied on section 12 of the FOIA in respect of item three of the request.

Reasons for decision

Section 12 – cost of compliance exceeds the appropriate limit

8. Section 12 of the FOIA states that:

“Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.”

9. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the ‘Regulations’) sets the appropriate limit at £450 for the public authority in question. Under these Regulations, a public authority can charge a maximum of £25 per hour for work undertaken to comply with a request. This equates to 18 hours work in accordance with the appropriate limit set out above.

10. A public authority is only required to provide a reasonable estimate or breakdown of costs and in putting together its estimate it can take the following processes into consideration:

- (a) determining whether it holds the information,
- (b) locating the information, or 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.

11. The Council has stated that this information is not recorded on case files, however a manual interrogation of each case file following the process outlined below may reveal the information.

12. The Council has informed the Commissioner that the first step is to identify the type of owner as there are two types of owners than can be held liable to pay Council Tax; an owner occupier or a non-resident owner. On its system, the Council therefore has two types of liability, ‘named occupant’ and ‘responsible party’.

13. To do this it must start by interrogating every Council Tax account on its Northgate system created within the time frame of the request. It would attempt to establish if they are an owner or a tenant by checking property notebooks, account notebooks, person notebooks and then interrogating relevant documents on its Anite system. Once an account is identified as an ‘owner’ it could then follow the process outlined below.

14. The Council confirmed to the Commissioner that it conducted a sample of 20 cases in total, consisting of a random sample of 10 cases from June 2009 and 10 from July 2013 respectively. The sample identified seven steps necessary to determine if relevant information is held, and provided relevant screen prints of each step and an estimate of how long it would take to complete each step.
15. Firstly it would be necessary to call the account up on Northgate. To do this, the Council has estimated that to open the relevant folder and document on its shared drive would take 05 seconds, and a further 10 seconds to open the actual account.
16. Following this, it is necessary to look at the notepads for the property, person, and the account. The Council has estimated that opening the notepads and reading the notes takes approximately 24 seconds, whilst considering the property details would take a further 30 seconds, plus two seconds to consider the person and property notepads.
17. Step three requires the Council to look for any earlier accounts which may contain information regarding liability. It has explained that if a customer is a Landlord the procedure for establishing liability may be on an earlier account so all notepads on all accounts relating to the property must be considered. It has estimated that this step would take 14 seconds.
18. The Council has informed the Commissioner that step four necessitates checking the 'Correspondence' field on Northgate to see if there have been any system generated letters such as review forms sent, with an estimated average time of 08 seconds.
19. Following this, step five would necessitate a search for documents in relation to the account on its Anite system. To call up documents on this system, the Council estimates would take 33 seconds.
20. Step six, involves searching for documents on its Anite system in relation to the property and checking all correspondence, which it has estimated would take 35 seconds.
21. Finally, step seven requires the Council to interrogate all documents in relation to both the account and the property to establish what documents have been sent or received on the account which it estimates would take 57 minutes.
22. The combined sum of each of these processes is one hour for each Council Tax account with the total number of accounts estimated at 42,000 giving an estimate of 42,000 hours to comply with the request.

23. The Commissioner has considered each of the seven steps identified by the Council in its sample, with its estimate of timings and the relevant screen prints. Whilst he is reasonably satisfied with the estimate of steps one to six, he considers that item seven may in fact be an over-estimate of the required time. However, even if it were to be half of the estimated 57 minutes (28.5 minutes) plus the three minutes for steps one to six, this would be in excess of 21,000 hours and well in excess of the appropriate limit outlined in paragraph 8 of this notice. The Commissioner is therefore satisfied that the Council appropriately relied on section 12 of the FOIA in respect of item three of this request.
24. The Commissioner notes that the Council did consider an alternative to the method outlined in paragraphs 12 to 22 of this notice. This involved a consideration of whether it could obtain the information by interrogating cases that reached the Valuation Tribunal (VT). The Council pointed out however, that this method only covers that particular tranche of cases, as opposed to all 42,000.
25. The Council ran a sample for the five months between 1 April 2014 to 31 August 2014. The first step was to determine whether there were any cases with a liability issue, with three cases out of the sample revealed. The time taken per case to follow the process outlined in paragraphs 12 to 22 of this notice, was as follows:
 - 1. 15 minutes
 - 2. 23 minutes
 - 3. 80 minutes
26. The total time to carry out the five months sample therefore consisted of 90 minutes to identify cases with liability, plus the 118 minutes for the three cases. This gave a total of 3 hours and 29 minutes, with an average monthly figure of 42 minutes. The Council confirmed that the timescale requested by the complainant was for a period of 77 months, which therefore equates to a total estimate of 54 hours, also in excess of the appropriate limit as outlined in paragraph 8 of this notice.

Other matters

Section 16 – Advice and assistance

27. The Commissioner would point out that following receipt of the Council's estimate as outlined in paragraphs 23 to 25 of this notice, that she asked the Council if it would consider disclosing the information relating solely to the Valuation Tribunals up to the appropriate limit by

way of an informal resolution to item three. Whilst the Council initially agreed, the Commissioner notes that the complainant refused this as an acceptable compromise. However, as the Commissioner's investigation progressed and the outcome became clear, the complainant subsequently requested this information with certain conditions specified. The Council has since refused to provide this information as it is not obliged to do so under the FOIA.

Right of appeal

28. 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

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

29. 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.
30. 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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Wycliffe House
Water Lane
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