

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 February 2019

Public Authority: Surrey County Council
Address: County Hall
Penrhyn Road
Kingston on Thames
Surrey
KT1 2DN

Decision (including any steps ordered)

1. The complainant requested information relating to his concern with the safety of pedestrians crossing a named road at a particular location and his wish to see a crossing for pedestrians installed there.
2. The Commissioner decided that Surrey County Council had complied with its obligations under FOIA sections 12(1) (cost of compliance) and 16(1) (provision of advice and assistance). However Surrey County Council did not respond to the information request promptly and did not comply with its obligation to reply not later than the twentieth working day following the date of receipt as required by section 10(1) FOIA.
3. The Commissioner does not require Surrey County Council to take any steps to ensure compliance with the legislation arising from this decision.

Request and response

4. On 8 April 2018, in a letter dated 9 April 2018, the complainant wrote to Surrey County Council (SCC) and requested information regarding the need for a pedestrian crossing at a named location on a named highway which he regarded as unsafe for pedestrians to cross. The request, the full text of which is set out at the annex to this Notice, was set out in 18 parts, some with lengthy subdivisions; the full request was very wide-ranging in terms of its scale, scope and content.
5. SCC responded on 8 May 2018. It stated that the requested information was held and provided either much or all of the information requested at parts 2, 3, 4, 6-8, 14-16, of the request. SCC said that the information specified at part 10 of the request was not held and asked for clarification for what was being requested at part 1 of the request.
6. For the unanswered parts of the request, SCC estimated that the cost of compliance would exceed the appropriate cost limit and relied on the section 12(1) FOIA exemption to refuse further information. SCC did not offer any advice or assistance that might have enabled the complainant to consider reducing the scope of his request to bring it within the cost of compliance limit.
7. On 23 May 2018 the complainant asked SCC to review its refusal notice. He said that he had received the refusal notice after the twentieth working day. He said that SCC had therefore failed to comply with FOIA and its own policies. He submitted additional fresh information requests asking for a full breakdown of the reasons why the SCC response had failed to meet the required twenty working day deadline and for a breakdown of the work that had been done and which had meant that he had not received the information promptly.
8. Also in his letter of 23 May 2018 the complainant challenged SCC's reliance on section 12(1) FOIA, querying what he saw as the likely costs of compliance. He also questioned whether the SCC refusal notice accorded with some of its own published policies. He offered to narrow the scope of one part of his request in an attempt to reduce the cost to SCC of complying with it and asked SCC for a review.
9. Following an internal review SCC wrote to the complainant again two months later on 31 July 2018. SCC said that the timing of its refusal notice had complied with FOIA. SCC added that the information request

had been for a large amount of information. This was held by a number of departments and services within the council, much of which had been provided in its 8 May 2018 letter. SCC said that the cost of complying with the whole request would exceed the appropriate cost limit. SCC did, however, add that the relevant senior officer had offered to meet with the complainant to discuss the process behind reaching decisions on highways matters and to clarify his request and ascertain what information he believed SCC had still not provided. SCC added a further explanation of some of its relevant processes and procedures.

Scope of the case

10. The complainant contacted the Commissioner on 17 July 2018 about the delay to SCC's internal review and again on 6 August 2018, following the review, to complain about the way his request for information had been handled. He said that SCC had taken 21 working days to respond, more than the 20 days allowed by FOIA, but had still not supplied the full amount of information he had requested.
11. The complainant said that SCC had failed to respond in full to his request. He added that his intention was to ascertain how SCC processed the installation of pedestrian crossings under its jurisdiction.
12. The Commissioner considered SCC's compliance with FOIA sections 12(1) (cost of compliance), 16(1) (advice and assistance) and 10(1) (response time).
13. The Commissioner also took note of the timeliness of the internal review undertaken by SCC.

Reasons for decision

Section 12 - cost of compliance

14. Section 1 FOIA states that:

"(1) 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."

15. Section 12(1) 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".

16. The appropriate limit is set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004, SI 2004 No. 3244 ("the fees regulations"). It is set at £600 for central government departments and £450 for all other public authorities such as SCC. 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 staff hours to be spent by SCC on qualifying compliance activities in this case.

Would complying with the request exceed the appropriate limit?

17. In estimating whether complying with a request would exceed the appropriate limit, regulation 4(3) 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.

18. The four activities are sequential, covering the retrieval process of the information from the public authority's information store.

19. The Commissioner saw that SCC had provided some of the information requested in parts of the complainant's request but refused to provide the remainder relying on section 12(1) FOIA. The Commissioner's guidance¹ states:

"31. A public authority may search up to or even beyond the appropriate limit of its own volition. Also, if a requestor asks a public authority to search up to or beyond the appropriate limit and the public authority is willing, then it can do so.

¹https://ico.org.uk/media/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

32. As a matter of good practice, public authorities should avoid providing the information found as a result of its searching and claiming section 12 for the remainder of the information. It is accepted that this is often done with the intention of being helpful but it ultimately denies the requestor the right to express a preference as to which part or parts of the request they may wish to receive which can be provided under the appropriate limit.

33. In practice, as soon as a public authority becomes aware that it intends to rely on section 12, it makes sense for it to stop searching for the requested information and inform the complainant. This avoids any further and unnecessary work for the public authority as it does not need to provide any information at all if section 12 is engaged”.

20. SCC recognised from the outset, and said in its refusal notice of 8 May 2018, that it could not provide the very substantial volume of information requested within the 18 hour time limit. However, SCC sought to respond positively and answered all except parts 5, 9, and 13 of the request. SCC said that the complainant had already been corresponding with SCC officers on connected matters, so that it did not take as long as it otherwise might have done to research the response as some of the issues had already been raised by him.
21. Following an internal review, SCC maintained its reliance on section 12(1) FOIA. SCC said that the request was for a large amount of information held by a number of departments and confirmed that answering the whole request would exceed the appropriate cost limit.
22. During the Commissioner’s investigation, SCC located some further relevant information which it disclosed on 24 August 2018, again with the intention of being helpful to the complainant.
23. As set out above, the Commissioner’s guidance is that, when a public authority becomes aware that it will need to rely on section 12 FOIA, it should generally stop searching for the requested information and tell the complainant. The Commissioner recognises that – as has happened here - partial disclosures of information are often made with the intention of being helpful. Doing so can ultimately deny a requestor the right to express a preference as to which part or parts of the requested information they may wish to receive and which can be provided under the appropriate cost limit. However, in this case the Commissioner considered it reasonable that SCC gave the complainant the information it has so far provided when seen in the context of the section 16(1) FOIA advice and assistance SCC also offered.

24. SCC has sought to engage with the complainant about how to narrow the scope of his request as it could not comply with the full information request within the cost limit. The fact that SCC was unable to offer advice and assistance in this matter stemmed not from a lack of will or effort on the part of SCC, but rather from a lack of engagement on the part of the complainant. However, in this matter SCC would have been open to the complainant expressing a preference through meeting with officers but he did not accept the SCC offer of a meeting.

Cost estimates

25. SCC told the Commissioner, with regard to its estimates for the time that would be required to answer the request in full, that it had taken SCC six hours to compile the information contained in its original response together with that disclosed in the revised response sent to the complainant on 24 August 2018. SCC said this was a conservative estimate as it had already been in correspondence with the complainant on connected matters before receiving his information request. The time required would have been longer had not some of the research already been done. SCC said it had not counted the time taken up in this.
26. SCC said that its cost estimate was based on the need to search through emails and notebooks for the necessary period of several months including the emails of relevant officers and SCC's Design Team. SCC added that the contributions of a former county councillor, who stood down in 2017 and is now deceased, were also relevant and would need to be researched. These could be hard to find as his email account had now been deleted; it had not made any additional allowance for the time this would take in its time estimates.
27. SCC said that the task was not simply a case of searching emails using likely search terms. SCC would also need to check manually through the emails returned by its searches to determine whether or not they were relevant to the request; this would require them to be read in full. Taken with the six hours already spent, and experience of dealing with other matters, SCC estimated it needed three hours for each of the five email accounts (for three named officers, the committee officer and another highways officer). SCC calculated that a reasonable estimate was 24 hours in total with the other work undertaken.
28. In summary, SCC say that a conservative estimate is that six hours (out of the 18 hour time limit) had been consumed in providing the information supplied so far. SCC also estimated that responding to the remainder of the request, mainly now comprising parts 5 and 13, would still require in excess of a further 18 hours. This would include three

hours to search the email accounts of each of five officers, plus a further hour within the FOI team. In addition, there would be need for a further unknown period of time to research the accounts of the Design Team and investigate the impact of the deceased former county councillor's work.

29. SCC told the complainant, in an email of 24 August 2018, that its offer for him to meet with the relevant SCC highways officer remained open and could be helpful in pinpointing the key parts of the information he was still seeking.
30. The complainant told SCC that he was keen to meet with its officers but needed to have the information he had requested in full before he could prepare for a meeting.
31. The Commissioner is satisfied, from the evidence she has seen during the course of her investigation, that SCC has demonstrated that to comply with the full request would exceed the appropriate cost limit for the time needed to locate, retrieve and extract the requested information. The Commissioner therefore decided that section 12(1) FOIA did apply and that SCC is not required to comply with the request.

Section 16 – duty to provide advice and assistance

32. Section 16 of FOIA states:

"(1) It shall be the duty of a public authority to provide advice and assistance, so far as would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.

(2) Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case."

33. Paragraph 14 of the section 45 FOIA Code of Practice² states:

²https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/235286/00

33.pdf

"Where an authority is not obliged to comply with a request for information because, under section 12(1) and regulations made under section 12, the cost of complying would exceed the 'appropriate limit' (i.e. the cost threshold) the authority 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."

34. The Commissioner's view is that, where a public authority refuses a request under section 12(1) FOIA, then section 16(1) creates an obligation to provide advice and assistance on how the scope of the request could be refined or reduced to avoid exceeding the appropriate limit.
35. 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:
- 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 requestor to make a refined request.
36. SCC told the Commissioner it had hoped that supplying some of the information would be helpful rather than refusing the request in its entirety on the basis that it could aggregate all the parts of it for cost calculation purposes. SCC said it had at least managed to meet some of its duty to advise and assist.
37. By way of narrowing his request, the complainant told SCC that:
- "Assuming you are unable to conduct the full search within the 18 hours, I request all emails, letters, notes and any correspondence, discussion transcripts, records appertaining to the preparation of the response given at the 23rd February 2015 meeting and the actions that were taken post meeting by [named officers and the now deceased former councillor]."*
38. In further correspondence the complainant told SCC that the matter was becoming very tedious. He said he was trying to meet with SCC and said

he had never refused any meeting. He merely did not want to waste his time or that of SCC officers with people in attendance who did not have the necessary information to hand. He added:

"I am seeking the information I am legally entitled to under the FOI request to prepare for that meeting."

39. SCC's highways officer said that it would be necessary to include, as well as the officers named by the complainant, the committee officer, another highways officer and the SCC Design Team, otherwise relevant information would be missed. SCC strongly suggested that the complainant could find the information he wanted much more efficiently if he accepted the offer it had already made, to meet to discuss his concerns and request. SCC would then be able to understand what he was hoping to discover and achieve through his various engagements with it, which could be more productive in the long run.
40. SCC said that the highways officer has offered to meet with the requester and believed that would assist in refining the request. It would also enable SCC to explain the process of decision making to the requester as it did not believe he yet fully understood that process. SCC said that its offer of a meeting remained open.
41. SCC has been willing to meet with the complainant who has so far refused as he does not have the full information he requested. It is impossible for SCC to meet his pre-condition since to do so would exceed the cost limit; he is not entitled to receive it. That pre-condition is a matter for him but not a failing by SCC. In the circumstances of this case, the Commissioner is satisfied that SCC provided the complainant with reasonable advice and assistance and that it complied with section 16(1) FOIA. She does not require SCC to take any steps.

Section 10 – time for compliance with a request

42. Section 10(1) FOIA states:

"Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."

43. The complainant's request, although dated 9 April 2018, was sent to SCC and received by it on Sunday 8 April which was not a working day. The first working day after receipt was Monday 9 April 2018. This means that the SCC response, sent on 8 May 2018, was sent on working day 21 and was therefore sent one day after the twentieth working day following the date of receipt.

44. Because SCC did not respond to the complainant within 20 working days, it breached section 10(1) FOIA. However, as the response was issued no steps are required.
45. The complainant told the Commissioner that SCC had been slow to respond to him both in its initial response and also on other occasions. It had not provided the requested information timeously.
46. Section 10(1) FOIA imposes a duty to respond "*promptly*" as well as not later than the twentieth working day following the request. The Commissioner's guidance on 'Time limits for compliance'³ states that the obligation to respond promptly means that an authority should comply with a request as soon as is reasonably practicable. While this is linked to the obligation to respond within 20 working days, it should be treated as a separate requirement. An authority will therefore need to both respond promptly *and* within 20 working days in order to comply with section 10(1) FOIA.
47. The 20 working day limit should be regarded as a 'long stop', in other words, the latest possible date on which the authority can comply. An authority which complies close to, or on, the final day of the 20 working day limit ought to be able to both account for, and justify, the length of time taken to meet the obligation concerned.
48. In this matter, SCC explained to the Commissioner that its relevant teams had experienced a very heavy workload at relevant times due to an increased number of requests and to its role as the lead within SCC on GDPR implementation; that workload had impacted on its ability to respond promptly and also to action reviews. The Commissioner decided that SCC had not responded promptly but recognised the difficulties it faced in responding to what had been a very wide-ranging request at a time of high workloads.

³ <https://ico.org.uk/media/1165/time-for-compliance-foia-guidance.pdf>

Other matters

Section 45 – internal review

49. The complainant asked SCC for an internal review on 23 May 2018. SCC reported the outcome of its review to him on 31 July 2018 over two months later. He told the Commissioner that he considered the time SCC had taken to conduct the internal review had been excessive.
50. SCC told the Commissioner that there was no statutory requirement regarding the timescale for a review. SCC said that the Commissioner could not consider the time it took a public authority to complete an internal review because it was not a formal FOIA requirement, rather it was a matter of good practice. SCC added that its FOIA team had experienced a very heavy workload at relevant times due to an increase in the numbers of requests and also because it was leading on the implementation of GDPR within SCC. These had impacted on its ability to action reviews.
51. There is no obligation under FOIA for a public authority to provide an internal review process. However, it is good practice to do so, and where an authority chooses to offer one, the code of practice established under section 45 FOIA⁴ (“the code”) sets out, in general terms, the procedure that should be followed. The code says that reviews should be conducted within reasonable timescales.
52. The Commissioner considers that internal reviews should not take longer than 20 working days in most cases, and no more than an additional 20 working days unless, exceptionally, there are legitimate reasons why a longer extension is needed.
53. The Commissioner considers that in failing to conduct an internal review within the timescales set out above, SCC has not acted in accordance with the code. It should adhere to the timescales set out in the code when conducting internal reviews in future.

⁴ <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

Right of appeal

54. 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

55. 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.
56. 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

Dr R Wernham
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

ANNEX – FULL TEXT OF THE 8 APRIL 2018 INFORMATION REQUEST

On 8 April 2018 (in a letter dated 9 April 2018) the complainant made the following request for information under FOIA:

I formally request the following information under the Freedom of Information Act 2000. I respectfully request that the information is emailed to me in electronic format at this stage in any of the commonly used Microsoft formats, PDF, word, outlook, excel etc. to minimise both our costs.

Please feel free to email me at the above email address and from where I will forward a copy of this letter. If any of the information is only available in hard copy format only please can you post that to my home address above.

The information I require is as follows:

- 1. A copy of the original signed petition submitted to SCC local committee in Elmbridge on the 08th December 2014, listed under item 7 in the meeting of the same date and relating to the installation of a Pedestrian Crossing on the [name redacted] Road.*
- 2. A copy of all processes and or procedures that were applicable at that time for any action the SCC local committee and or Surrey County Council would follow when receiving a petition of this nature. Including any Terms of Reference of any committee engaged in this process.*
- 3. A copy of the original meeting minutes from 08th December 2014 that are agreed and published as a record of what was presented, discussed and agreed at that meeting.*
- 4. A copy of any Presentation submitted at the meeting on 08th December 2014 in relation to the Pedestrian Crossing on the [name redacted] Road.*
- 5. A copy of the original evidence of all information you hold in relation to the discussions, planning, management and preparation of the report given at the subsequent meeting on 23rd February 2015 relating to the same petition and crossing installation. [name redacted] (area team manager) submitted a report at this meeting to the Local Committee. For the sake of clarity, I request all emails, letters, notes and any correspondence, discussion transcripts, records appertaining*

to the preparation of the response given at this meeting by any party involved with the planning of the response.

6. A copy of the original papers and any evidence submitted to the meeting of the 23rd February 2015 relating to the same petition and crossing installation.

7. A copy of the original meeting minutes from 23rd February 2015 that are agreed and published as a record of what was presented, discussed and agreed at that meeting.

8. A copy of the original meeting agreed actions/outcomes/decisions from 23rd February 2015 that are agreed and published as a record of what was presented, discussed and agreed at that meeting.

9. All evidence of the Public Consultation that was stated as having to be undertaken in relation to the Petition submitted on 08th December 2014, listed under item 7 in the meeting of the same date and relating to the installation of a Pedestrian Crossing on the [name redacted] Road. For clarity it is likely this will have occurred between 08th December 2014 and to today's date 08th April 2018. Please supply the following:

- a. When the consultation took place (start date and close date)*
- b. What was asked to consult on*
- c. What responses were received*
- d. Where the consultation was conducted, what medium, press, electronically etc.*
- e. Any statistical outcomes that were calculated from this consultation*
- f. What conclusions were drawn from this conclusion*
- g. Any reports that were generated because of this consultation*
- h. Who completed the consultation and authored any reports or outcomes/recommendations*
- i. Who any report or finding as submitted too*
- j. When the outcomes were publicly presented*
- k. The cost of the Public Consultation*
- l. Who paid for the Public Consultation*

10. A copy of the original request to conduct a detailed feasibility study in 2015 following the meeting of the 23rd February 2015.

11. Who the request was issued to regarding the conducting of a detailed feasibility study in 2015 following the meeting of the 23rd February 2015. This should include what was instructed to cover in the feasibility Study and by whom.

12. How much the feasibility study cost, when it was paid, who paid what money to what organisation and for the benefit for doubt what was requested to be covered by the detailed feasibility study.

13. Copies of all correspondence regarding the feasibility study commissioning in or around this time 23rd February 2015 relating to the proposed pedestrian crossing. Between any/all parties. Any reports or decisions taken and any supporting evidence around the determination of any action regarding this.

14. Copies of the original meeting minutes, papers, agendas, decisions or any actions taken in any meeting of Surrey County Council or Elmbridge local committee between 23rd February 2015 and 08th April 2018 where the installation of the crossing point on the [name redacted] road has been mentioned and or discussed including any actions or decisions.

15. Copies of the original feasibility study (or studies) submitted and agreed as a final document to the Surrey County Council or Elmbridge local committee between 23rd February 2015 and 08th April 2018.

16. Any information on when the feasibility study (or studies) was commissioned, who it was sanctioned by, when it was sanctioned, who paid for it, when it was paid for, how much it cost, who paid for it, when it was conducted, who conducted it, how was it conducted, what was requested to be studied, how was it reported, what action was taken following that report, when was any action taken etc. between 23rd February 2015 and 08th April 2018.

17. Copies of all relevant procedures, policies or internal quality management systems relating to what action is required to be followed when determining a crossing point installation. Any information you use to follow the determination of a crossing point or other facility. This should include any external information you rely on or use when determining the type of crossing to be installed. Please include all relevant from December 2014 and today's date with any/all amendments.

18. All relevant information appertaining the current installation of the zebra crossing point being installed in [name redacted] Road, Elmbridge. This should include:

a. How this was determined as being necessary

- b. Copies of all original reports appertaining to this installation, including, minutes of meetings, actions from meetings, feasibility studies, impact assessments, etc.*
- c. The cost of the zebra crossing installation*
- d. Who sanctioned the installation and which committee agreed to this.*
- e. The time frame from the initial concept of this crossing point to the work starting and expected conclusion*
- f. Named individuals on any committee who sanctioned this*
- g. A full breakdown of the numbers of people anticipated to use this, the traffic flow in the area, difficulty to cross assessments, vehicle delay in peak periods, Road capacity, any/all representations, Full installation costs, full operating costs.*
- h. Copies of original documents relating to the crossing installation not otherwise covered above.*