

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 July 2016

Public Authority: Blackpool Council
Address: PO Box 4
Blackpool
FY1 1NA

Decision (including any steps ordered)

1. The complainant has requested a breakdown of accounts for two Selective Licensing schemes. The Commissioner's decision is that Blackpool Council has correctly applied the exemption at section 12 of the FOIA where the cost of compliance exceeds the appropriate limit.

Request and response

2. On 23 January 2016, the complainant wrote to Blackpool Council ('the council') and requested information in the following terms:

"Under a previous FOI I received this information:

Accounts South Beach as at September 2015 (scheme April 2012 – March 2017)

Income received to date £550,024

Expenditure (total)- £728,930

Staff costs (total) £606,618 includes (ASB Officer £30,000 x 21% x 5 years- £181,500) Selective Licensing Officers – to administer, monitor scheme, inspect licence compliance with conditions = £425,118)

Premises costs £964

Car allowance £17, 024

Supplies and services - £104,224

Please could I have further breakdowns of each item.
E.g. A full set of accounts that breaks down all supplies and services and the same for each point."

and

"Under a previous FOI I received this information:

Accounts Claremont as at September 2015 (scheme April 2014 – March 2019

Income received to date £529,292

Expenditure- £387.033

Staff costs £247,228 (includes costs for ASB Officer £27,000 x 21% x 5 years = £163,350 – to administer, monitor scheme and inspect compliance with licence conditions £83, 878)

Premises costs £18,539

Car allowances £6,730

Supplies and services £24,547

Depreciation £90,953

Please could I have further breakdowns of each item.
E.g. A full set of accounts that breaks down all supplies and services and the same for each point."

3. Following the Commissioner's intervention, the council responded on 18 March 2016. It said that whilst this work has exceeded the appropriate limit, it has decided to provide information. A breakdown of requested costs was provided and the exemption at section 40(2) of the FOIA was applied to a breakdown of car allowances.
4. The complainant expressed his dissatisfaction with the responses on 22 March 2016 and asked a number of questions. He pointed out that the information provided is different to the first set of accounts previously provided.
5. On 20 April 2016 the council provided an internal review response. It acknowledged the delay in responding to the requests, upheld the application of the exemption at section 40(2) and said that in terms of the information provided, the complaint is not successful. The council acknowledged that the breakdown figures sent in October 2015 in response to the initial requests for costs were not correct and said that the breakdown later supplied in March 2016 comprised of the correct figures and that an explanation was provided regarding the reason for the corrected figures.

Scope of the case

6. The complainant initially contacted the Commissioner on 1 March 2016 to complain that his request for information had not been responded to. Following the provision of the internal review response, the complainant expressed his dissatisfaction to the Commissioner stating that the council is deliberately withholding information and not being clear with its answers.
7. The Commissioner informed the complainant that the FOIA is solely concerned with access to information and does not address the issue of the accuracy of any information provided in response to a request for information and that a public authority will have complied with their obligations under the FOIA where they have provided the recorded information that they hold in relation to a request irrespective of whether this information is accurate or not. He explained that therefore he cannot assess the accuracy of information disclosed in response to a request but can look into whether the council has provided all the information it holds within the scope of a request.
8. During a telephone conversation with the complainant on 28 April 2016, the Commissioner agreed that the scope of the case would be to establish if the council holds further information within the scope of the request such as a full set of actual accounts. He informed the complainant that it may also be necessary to look at whether the council is entitled to rely on the costs limit exemption at section 12 of the FOIA as a basis for refusing to provide further information.
9. On 5 May 2016, the Commissioner wrote to the council. He informed it that because the complainant does not consider that the 'full set of accounts' has been provided, he requires the council to confirm whether further information is held (i.e. a more detailed, 'full' set of actual accounts) and if so, to provide it to the complainant or provide full and final arguments to the Commissioner as to which exemption of the FOIA applies. He also informed the council that the complainant is not disputing the application of section 40(2) to the car allowance information therefore such information does not need to be supplied.
10. The council's response to the Commissioner stated that further information is held as it can produce a transaction list that details expenditure. However, it reiterated that it does not hold a more detailed 'full set of accounts' for the schemes. It explained that a full set of accounts is not required to be held during or at the end of the schemes as the Selective Licensing schemes fall within wider departments or directorates. It said that the financial records for the schemes form part of the wider department or directorate accounts and that these are

published in the council's statement of accounts and the complainant has been provided with a link to these. It explained that at the date of response, the council had already exceeded the 'appropriate limit' and to undertake any further work on the accounts would further exceed the appropriate limit and therefore it relies on section 12 of the FOIA.

11. The Commissioner has therefore considered the council's application of the exemption where the cost of compliance exceeds the appropriate limit at section 12 of the FOIA.
12. The complainant made a related request on 25 March 2016 to which the council applied the provision for vexatious requests at section 14 of the FOIA. The Commissioner is dealing with the complaint in relation to the application of section 14 of the FOIA separately from this decision notice in case reference FS50629495.

Reasons for decision

Section 12 – Exemption where cost of compliance exceeds appropriate limit

13. 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 which, in this case, is £450 as laid out in section 3(2) of the fees regulations.
14. Regulation 4(3) of the Fees Regulations states that an authority, when estimating whether complying with a request would exceed the appropriate limit, can only take into account the costs it reasonably expects to incur in:
 - determining whether it holds the information;
 - locating the information, or documents containing it;
 - retrieving the information, or documents containing it; and
 - extracting the information from any documents containing it.
15. As the costs are calculated at £25 per person per hour for all authorities regardless of the actual cost or rate of pay, in this case the limit will be exceeded if the above activities exceed 18 hours.
16. 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 and what amounts to a reasonable estimate has to be considered on a case by case basis. The Information Tribunal in the case of *Randall v Information Commissioner and Medicines and Healthcare Products Regulatory Agency*¹ said that a reasonable estimate is one that is “....sensible, realistic and supported by cogent evidence”.

17. In his guidance on this subject², the Commissioner states that a sensible and realistic estimate is one which is based on the specific circumstances of the case and should not be based on general assumptions.

18. In the aforementioned guidance, the Commissioner also states that;

“A public authority is not obliged to search for, or compile some of the requested information before refusing a request that it estimates will exceed the appropriate limit. Instead, it can rely on having cogent arguments and/or evidence in support of the reasonableness of its estimate. It is good practice to give these arguments or evidence to the requestor at the outset to help them understand why the request has been refused. This reasoning is also likely to be required if a complaint is made to the Information Commissioner.

However, it is likely that a public authority will sometimes carry out some initial searches before deciding to claim section 12. This is because it may only become apparent that section 12 is engaged once some work in attempting to comply with the request has been undertaken.”

19. In this case, although not explicitly stated, the council appears to have aggregated the two requests detailed at paragraph. When a public authority is estimating whether the appropriate limit is likely to be exceeded, it can include the costs of complying with two or more requests if the conditions laid out in regulation 5 of the Fees Regulations³ can be satisfied. Those conditions require the requests to be:

¹ Appeal number EA/2006/0004, 30 October 2007

² https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

³ <http://www.legislation.gov.uk/ukxi/2004/3244/made>

- made by one person, or by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign;
 - made for the same or similar information; and
 - received by the public authority within any period of 60 consecutive working days.
20. The Commissioner considers that as the requests are clearly from the same person, relate to similar information and were received on the same day, the council is entitled to aggregate the requests in considering if compliance would exceed the appropriate cost limit.
21. In its initial responses, the council said that work to establish the information requested has exceeded the appropriate limit but did not provide any further details or breakdown.
22. The Commissioner sought further information from the council in relation to the costs estimate undertaken, in order to assess whether its estimate was reasonable and based on cogent evidence. He specifically asked for clarification as to whether a sampling exercise had been undertaken, to provide further details as to how the accounts are held, and whether its estimate had been based upon the quickest method of gathering the requested information.
23. The council provided the following table of time spent to date on the requests under consideration. It said that in making these calculations, it has taken 'Retrieve' to be searching the database systems and 'Extract' to be running reports or extracting and collating information from these databases.

To Date	Determine	Locate	Retrieve	Extract
Senior Accountant	2.25	1.5	0	28.5
Finance Manager (1) – job share	0	0	0	4
Finance Manager (2) – job share	0	0	0	1.25
Housing Enforcement Manager	6	2.5	2	2.75

Service Manager - Public Protection	4.5	2	1	1.75
Head of Housing	2.5	1	0.5	0.25
Director of Community and Environmental Services	4	0	0	0
Other Officers incl. Chief Executive	3	1	1	0.25
Information Governance Manager	2	0	0	1.5
	24.25 hours	8 hours	4.5 hours	40.25 hours
Total Hours	77 hours			

24. It then said to provide further information falling within the scope of the request, it estimates that the following time would be required going forward. It explained that this is necessary as the requests require more detailed information.

Going Forward	Determine	Locate	Retrieve	Extract
Senior Accountant	2	2	1	12
Finance Manager (1)	1	0	0	3
Housing Enforcement Manager	2.5	4	4	2.5
Service Manager - Public Protection	3	2	1	1.25
Head of Housing	1	0.5	0.5	0.25
Director of Community and Environmental Services	2	0	0	0
Other Officers incl. Chief	2	1	1	1

Executive				
Information Governance Manager	0.5	0	0	0.5
Total Hours	14 Hours	9.5 hours	7.5 Hours	20.5 hours
Total Hours	51.5 hours			

25. The council said that the information that would form the accounts is held in two main databases and that subsidiary databases such as payroll contain information about staff (i.e. payroll and mileage) and would need to be searched. It said that it also uses a product called Live Office to provide extract reports from the main financial database system. It explained that some information, such as orders and invoices (required to verify certain expenditure) are held on as electronic and manual records and would require a manual search of both record sets.
26. It also provided the following table of the type of work required going forward. It said that the hours are across the different services and various staff that would be involved.

Description	Hours
Determine what detailed information is relevant through meetings and email discussions (Public Protection, Finance, and Housing).	6
Determine in which financial years (or to pro-rata therein) the available detailed information is in across the schemes.	3.5
Search databases to locate detailed income information against the relevant cost codes.	3.5
Search databases to locate detailed expenditure information against relevant cost codes.	3.5
Run reports to excel then use Pivot Tables to achieve accumulated figures.	4.5
Run reports against payroll (for staff costs) and pro-rate against the schemes where necessary.	3
Balance financial journals to the cost codes.	4
Undertake detailed subjective analysis by scheme and financial year where necessary.	12
Determine and agree that income and expenditure are correctly allocated based on outputs.	4.5
Search any subsidiary systems for verification of information.	2.5
Prepare reports for information and summaries for response.	4.5
Total	51.5 hours

27. The council confirmed that it has not undertaken a sampling exercise but said that the calculation for the estimate going forward has been based on the work undertaken to date, and the combined experience of the Financial Services team in using and searching the relevant financial systems and the Public Protection Team and Housing Team in operating the schemes.
28. The council did confirm that it has based the estimate on the quickest search methods available and said that this is highlighted by its use of a reporting tool (Live Office) where possible.
29. Given that the council has stated that it has already spent over the cost limit in answering the requests in this case, the Commissioner has first considered whether the time spent to date is in accordance with what the Fees Regulations state can be taken into account.
30. The Commissioner noted that the council had explained that 'Retrieve' related to searching the database systems and 'Extract' related to running reports or extracting and collating information from these databases. He made further enquiries as to what 'Determine' and 'Locate' related to and was informed that these categories are tied in together and relate to officers establishing what information is held within the scope of the specific requests. The council gave the example of travel costs and said that staff who work on the Selective Licensing schemes also work in other areas so not all travel costs for a member of staff that works on Selective Licensing will relate to those schemes therefore the information needs to be examined to determine whether it is relevant. It was explained that it was necessary to spend time establishing what information was relevant to the request because the information isn't held by either Selective Licensing scheme or by the time frames requested. The council confirmed that none of the time spent on the activities has been double counted.
31. The Commissioner also made further enquiries as to when the calculation of 77 hours was made. The council explained that it has a 'chronology' relating to the complainants requests and that some of the time was already recorded on that chronology before the Commissioner made enquiries on this case and that some of the time was calculated after enquiries were made because not all entries on the chronology included the time spent.
32. The council also explained that the time for 'Other Officers incl. Chief Executive' was necessary because officers up to and including the Chief Executive have been involved in responding to the requests made by the complainant in this case and numerous other requests from the complainant. It said that more information has been provided in response to these requests than for any other council accounts because

the complainant has made it known to the council that he is part of a campaign and the council were trying to provide as much information as possible.

33. The Commissioner accepts the council's arguments as to why it was necessary for various officers to spend time responding to these requests, that being that the information isn't held by Selective Licensing schemes and therefore it was necessary to examine information to ascertain whether it falls within the scope of the request. He accepts that the time quoted relates to activities that can be taken into account when considering whether the cost of compliance exceeds the appropriate limit. He notes that the recorded time of 77 hours already spent on responding to the requests is more than four times over the appropriate limit of 18 hours. Given that responding to these requests has already exceed the appropriate limit, the Commissioner has not found it necessary to also consider whether the further estimate of 51.5 hours is reasonable and based on cogent evidence.
34. The Commissioner finds that the council correctly refused to provide any further information on the grounds of cost for compliance under section 12(1) of FOIA, as complying with the request would exceed the appropriate limit.

Right of appeal

35. 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

36. 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.
37. 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