

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 September 2023

Public Authority: Cotswold District Council
Address: Trinity Road
Cirencester
GL7 1PX

Decision (including any steps ordered)

1. The complainant has requested information from Cotswold District Council ("the Council") regarding signs in car parks referring to government cuts. The Council refused to provide the requested information, citing section 12 of FOIA – cost of compliance exceeds the appropriate limit.
2. The Commissioner's decision is that the Council was not entitled to rely on section 12(1) when refusing this request.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Provide a fresh response to the request that does not rely on section 12 of FOIA.
4. The public authority 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 the Act and may be dealt with as a contempt of court.

Request and response

5. On 4 April 2023, the complainant wrote to the Council and requested information in the following terms:

"Recently Cotswold District Council has posted signs in car parks referring to government funding cuts. Can I request copies of all correspondence in CDC's possession with regards to these signs, including any emails."

6. The Council responded on 25 May 2023. It stated that it was withholding the requested information, citing section 12 of FOIA – cost of compliance exceeds the appropriate limit.
7. Following an internal review the Council wrote to the complainant on 20 June 2023. It stated that it was maintaining its position.

Scope of the case

8. The complainant contacted the Commissioner on 7 July 2023, to complain about the way their request for information had been handled.
9. The Commissioner considers that the scope of this case is to determine whether the Council is entitled to rely on section 12 of FOIA. He will also consider if the Council met its obligations under section 16(1) of FOIA to provide advice and assistance.
10. The Council has not stated if it is relying on section 12(1) or section 12(2). However, the Commissioner is satisfied from its responses that it is relying on section 12(1) of FOIA.

Reasons for decision

Section 12 – cost of compliance

11. Section 12(1) of the 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 limit" as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations").
12. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 at £600 for central government, legislative bodies and the armed forces and at £450 for all other public authorities. The appropriate limit for the Council is £450.
13. 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.

14. 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.
15. 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 in the case of *Randall v Information Commissioner & Medicines and Healthcare Products Regulatory Agency EA/2007/0004*, 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 complying with the request.
16. Section 12 is not subject to a public interest test; if 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.
17. Where a public authority claims that section 12 of FOIA is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit, in line with section 16 of FOIA.

Would the cost of compliance exceed the appropriate limit?

18. In the circumstances of this case, the Council explained that there are more than 1000 documents and pieces of correspondence, which include both electronic and paper records.
19. The Council advised that if the responses were to be disclosed, each one would need to be redacted to remove personal data. It estimated that between 10-20 documents per hour could be redacted, which would lead to more than 190 hours of staff time. It added that the cost for redactions would be at least £4,750.

20. The Council is not entitled to consider the amount of time to redact information under section 12. As such, the Commissioner is not satisfied that this request would breach section 12 of FOIA.
21. The Commissioner therefore requires the Council to disclose the information to the complainant or to provide an appropriate refusal notice which does not rely on section 12 of FOIA.

Section 16(1) – The duty to provide advice and assistance

22. Section 16(1) of FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45 code of practice¹ in providing advice and assistance, it will have complied with section 16(1).
23. In this case, the Council did advise the complainant that if they refined their request, it may fall within the cost limits.

Other matters

24. The Commissioner reminds the Council that when he contacts them to ask questions regarding the complaint, they respond promptly and within the deadlines set. He acknowledges that the Council did not receive the first email, but he is aware they received the second email. He should not have to chase the Council via telephone and email to get a response.

¹ <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

Right of appeal

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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: 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

Michael Lea
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