

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 September 2023

Public Authority: Oxford City Council
Address: St Aldates Chambers
St Aldates
Oxford
OX1 1DS

Decision (including any steps ordered)

1. The complainant requested information relating to costs of staff sickness pay for Oxford City Council (the Council) and Oxford Direct Services (ODS) covering four years. The Council provided the actual costs in respect of ODS and an estimate in respect of its own costs. The Council applied section 12(1) of FOIA (cost limit) to the sickness absence costs for its own staff.
2. The Commissioner's decision is that the Council was entitled to rely on section 12(1) of FOIA. However, the Commissioner finds that the Council did not comply with its obligations under section 16 of FOIA to offer advice and assistance.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Either provide the complainant with advice and assistance to help them refine the request such that it falls within the cost limit; or
 - If the request cannot be meaningfully refined, explain why this is the case.

4. The Council 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 8 May 2022, the complainant wrote to the Council and requested information in the following terms:
 - “1. For each financial year from 2018 to 2022 please provide the total cost (including salary, pension and national insurance contributions) for Oxford City Council employees off work due to sickness. Please also express this value as a percentage of the total salary costs for each corresponding financial year.
 2. For each financial year from 2018 to 2022 please provide the total cost (including salary, pension and national insurance contributions) for Oxford Direct Services employees off work due to sickness. Please also express this value as a percentage of the total salary costs for each corresponding financial year.”
6. The Council responded on 18 July 2022, providing the figures in respect of ODS. It provided an estimate of costs for its own staff, stating that it was unable to calculate the exact costs due to the amount of time it would take to review individual records.
7. In its internal review response dated 22 June 2023, the Council explained why it was able to provide actual costs in respect of ODS and only an estimate in respect of its own costs. The Council confirmed that it was relying on section 12(1) in respect of part one of the request which relates to Council staff.

Scope of the case

8. The complainant contacted the Commissioner on 21 July 2023, to complain about the way their request for information had been handled.
9. Specifically they questioned the application of section 12(1) and why the Council was not able to provide specific figures for both parts of the request.

10. The Commissioner considers that the scope of his investigation is to consider whether the Council was entitled to apply section 12(1) of FOIA to the request.

Reasons for decision

Section 12 - cost of compliance

11. This reasoning covers whether the Council is correct to apply section 12(1) - cost limit, of FOIA to part one of the request. The appropriate limit for the Council in this case is £450, or 18 hours.

Would the cost of compliance exceed the appropriate limit?

12. For the information falling within part one of the request, the Council stated that sickness absences for its own employees are recorded within the 'itrent' system against individual records. In order to provide the information requested for part one of the request, it would have to:
 - a. Identify individuals with sickness absence for each year between 2018 and 2022 from absence reports.
 - b. Find the individual's data for each sickness absence from the system.
 - c. Find individual's salary data for each sickness absence from the system.
 - d. Manually calculate the salary cost, the national insurance cost and pension cost of each period of sickness absence.
 - e. Collate the data and calculate the total cost for each year
13. The Council estimated that it would take five minutes to calculate the figures requested per sickness absence.
14. In its submission to the Commissioner, the Council provided the numbers of instances for sickness for each year falling within part one of the request. Using these figures, and based on the time estimated to interrogate the system, the Council stated that it would not be able to provide the information within the time allowed under FOIA.
15. Using the figures provided by the Council, the time to comply with part one of the request for each year falling within the scope of the request is as follows:
 - 2018/19 – 880 - hours required 73
 - 2019/20 – 839 - hours required 69
 - 2020/21 – 457 - hours required 38
 - 2021/22 – 669 - hours required 55

16. The Commissioner accepts the Council's representations in respect of the processes it states would be required in order to locate, retrieve and extract the information requested. However, the Commissioner considers that not all of the processes would necessarily be required in relation to each individual instance. For example, if one individual was responsible for several absences in a particular year, the Commissioner considers that it is likely that at least some of the processes identified could be done concurrently for those absences.
17. The figures for the period covered in the request, show that there were 2845 instances of absence. Whilst the Commissioner is not satisfied that it would take 5 minutes for each sickness absence, he notes that, in order to extract the relevant data for each record without exceeding the cost limit, the Council would have 38 seconds per sickness absence (18 hours or 1080 minutes ÷ 2845 absences) to identify and extract relevant information (as well as performing any calculations which might be necessary). The Commissioner does not consider that this is feasible.
18. In relation to part two of the request, the Council has confirmed that while both it and ODS record details of staff sickness absence within the 'itrent' system, ODS also deploys an integrated software reporting tool (Power-BI) which enabled ODS to produce actual figures rather than an estimate. This reporting tool is not used by the Council.
19. For the above reasons, the Commissioner is therefore satisfied that the Council has reasonably estimated that the cost of compliance with the request would exceed the appropriate limit and hence it was entitled to rely on section 12(1) of FOIA.

Procedural matters

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

20. Section 16 of FOIA requires a public authority to provide advice and assistance where it is reasonable to do so. The section 45 FOIA Code of Practice states that a public authority's advice and assistance obligation will be triggered when it relies on section 12 to refuse a request. In those circumstances the public authority should either suggest ways in which the requester could refine their request so as to bring it within the cost limit, or explain that the request cannot be meaningfully refined.
21. In its submission to the Commissioner, the Council has argued that, while it has not been able to provide actual costs for part one of the request, it has fulfilled its section 16 requirements by providing an estimate of the costs requested.

22. In this case, the Council did not suggest any way in which the request could be refined – nor did it state that it considered the request could not be refined.
23. Given the large number of sickness absences and the work involved in complying with the request, the Commissioner recognises that it may be difficult for the request to be refined sufficiently to bring it within the appropriate limit.
24. Nevertheless, if the Council was of the view that the request could not be meaningfully refined, it was under an obligation to inform the requester of that fact.
25. The Commissioner therefore considers that the Council failed to discharge its obligation under section 16 of FOIA. It must now either provide advice and assistance or explain why none can be provided.

Section 17 – refusal of request

26. Section 17(5) of FOIA states that if a public authority is relying on a claim that section 12 applies it must, within the time for complying with the request, give the applicant a notice stating that fact.
27. in failing to provide its refusal notice within 20 working days, the Council breached section 17(5) of FOIA.

Other matters

28. The Commissioner notes that the complainant requested an internal review on 18 July 2022, but that the response was not provided until 22 June 2023, almost a year after it had been requested.
29. The [FOIA Code of Practice](#) says that, when an organisation does have an internal review process, it is best practice for this to be carried out within 20 working days.
30. The Council has confirmed that the review request in this case was identified as part of an audit of its backlog of FOIA requests.
31. Therefore, while it is clear that the Council has not followed best practice in this case, it has carried out appropriate measures in order to identify and address any outstanding internal review requests.

Right of appeal

32. 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

33. 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.

34. 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
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