

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 May 2012

Public Authority: Cambridgeshire County Council

Address: Shire Hall
Castle Hill
Cambridge
CB3 0AP

Decision (including any steps ordered)

1. The complainant requested information relating to all court and tribunal cases that Cambridgeshire County Council ("the council") had been involved in since January 2007. The council refused to comply with the request on the basis of an exclusion relating to costs under section 12(1) of the Freedom of Information Act 2000 ("the FOIA"). The complainant did not dispute the application of section 12(1) but he did ask the Commissioner to consider whether the council had breached its obligation under section 16(1) to provide reasonable advice and assistance
2. The Commissioner's decision is that the council breached its obligation under section 16(1) of the FOIA to offer reasonable advice and assistance. However, he does not require any steps to be taken in light of the explanation provided in this notice and the offer to search up to the appropriate limit.

Request and response

3. On 2 November 2011, the complainant requested information from Cambridgeshire County Council ("the council") in the following terms:

"Please give me a list of all the court or tribunal cases which the council has been involved in since 1st January 2007.

By "case" I mean to include every claim, counterclaim, application, etc. By "involved in" I mean any situation where the Council is or was a

party, has filed or served any court papers or had any papers served on it. By the time limit I mean to include (without limitation) any case of which any part was still ongoing at 1st January 2007, even if it was started before then.

For each case I would like to know:

The names of the parties

The court(s) in which the case(s) or application(s) are being or were heard

All relevant court reference numbers such as case numbers, application numbers, etc

If readily available, a very brief summary, title or case heading which will give me a rough idea of what the case is about; a suitable description may be found in the headings of pre-action protocol letters etc.

For the avoidance of doubt 'court' should be read in this request to refer to any court, tribunal or arbitrator".

4. The council responded on 30 November 2011. It confirmed that it held the information requested. However, it said that it considered that to respond to the request would exceed the appropriate limit of £450 (or 18 hours work) under the FOIA and therefore section 12 was engaged.
5. On 30 November 2011, the complainant wrote to the council to request an internal review. He said that he would be happy to narrow the scope of his request if that made it feasible to answer. He said that he was primarily interested in "high value" or important cases. He also said that he could narrow the request to include only cases which were started very recently or are still ongoing and he made comments designed to help him to understand more about how the council records information about legal cases.
6. The council replied on 22 December 2011 and reiterated its refusal. It did not engage with the requester to respond to the points raised in his email of 30 November 2011.

Scope of the case

7. The complainant specifically asked the Commissioner to consider whether the council had breached its obligation under section 16(1) of the FOIA to offer reasonable advice and assistance.

Reasons for decision

Section 16(1) – Duty to provide advice and assistance

8. Section 16(1) of the FOIA states the following:

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

9. The provisions of the Code of Practice under section 45 (“the code”) of the FOIA relate to this obligation. In relation to cases where the estimate of costs exceeds the “appropriate limit” under the FOIA, the code states the following:

“Where an authority is not obliged to comply with a request for information because, under section 12, the cost of complying would exceed the ‘appropriate limit’ (i.e. 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”.

10. In its initial response, the council said that it could not offer any advice and assistance because the request was too broad and the requester had not given any specific details that would guide the council in suggesting ways in which the request could be narrowed. Following this, the complainant wrote to the council and indicated that he would be happy to engage further with the council to explore whether there was any useful way in which his request could be narrowed. The council told the Commissioner that the complainant subsequently requested an internal review, complaining that the council should have specifically invited him to narrow the request. The council told the Commissioner that it had interpreted this to mean that the previous offer to narrow the request in the ways described had been “withdrawn”. During the Commissioner’s investigation, the council accepted that it had not been the complainant’s intention to withdraw the offer to narrow his request.
11. The Commissioner invited the council to provide some more information about its cost estimate and the activity involved to the requester. Once this had been provided, the Commissioner asked the complainant to explain whether he could provide any more information to help narrow the request. The complainant confirmed that it was the case that he was interested in a broad area, however, he considered that the council should have provided more information about the way it keeps records about legal cases to him so that he could fully consider whether there was any information that could be provided in the cost limit. In

particular, he noted that some reference had been made in the information provided to him about electronic information but he was not clear about what information was held electronically. He also suggested that information about the process of "management oversight" involved in legal cases may be of assistance in identifying cases that may be of interest to him. The complainant indicated in particular that he was interested in "high-value" or important cases rather than cases that were more a matter of routine.

12. The council explained to the Commissioner that the only information that could be provided from the electronic systems is a list of cases along with their opening and closing dates. It said that the list gives no indication of the status of the case such as whether any of these cases went to court, were awarded any settlement or whether they were considered to be high-value or important. In relation to the complainant's comments about "management oversight", the council said that any paperwork relating to a case will be held on the case file itself and therefore would be subject to the same process that the council had already described would exceed the appropriate limit. The council said that it did not consider that consulting its staff would be an appropriate way forward in this case. It explained that there are 35 officers working within the legal services department and at any one time, there is a case load of approximately 1700-2000 cases. It said that the outcome would be too dependent on the officer's memory and their subjective interpretation of what cases may be considered to be high-value or important. Finally, in relation to ongoing cases, the council said that it considered that this information would be exempt under the FOIA.
13. The council said that the complainant's request covered 5 years of legal work, which encompasses approximately 3500 cases. The council said it had estimated that it would take approximately 10 minutes per file to retrieve information and collate it into a format which would assist the complainant. The council expressed its willingness to search up to the appropriate limit in this case and it conceded that it would have been appropriate to offer this option to the complainant. However, the council added that there is a real possibility that of the files it selects to perform this task, not all of them will relate to court cases or settlements.
14. The Commissioner notes that the council only has an obligation to offer advice and assistance so far as it would be reasonable to expect it to do so. While the Commissioner understands the council's initial reservations in this case based on the very wide scope of the initial request, the Commissioner does not agree that the council's decision to disregard the complainant's offer to narrow his request was appropriate in the circumstances. The Commissioner decided that it would have been reasonable to expect the council to engage with the requester on the

points he raised in his correspondence, in order to help him to understand whether his offer to narrow the request was helpful, what information could be provided within the appropriate limit, and whether he might to be able to explore other options if he understood fully how the council keeps records of legal cases. For those reasons, the Commissioner considers that the council breached its obligation under section 16 of the FOIA. However, the Commissioner decided that the council's offer to search up to the appropriate limit and the further explanation it has now provided of the way in which it keeps records concerning legal cases has now rectified this situation.

Right of appeal

15. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

16. 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.
17. 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