

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 September 2013

Public Authority: Rochdale Metropolitan Borough Council

Address: One Riverside
Smith Street
Rochdale
OL16 1XU

Decision (including any steps ordered)

1. The complainant requested information about the number of licensed taxi drivers with serious criminal convictions for violence from Rochdale Metropolitan Borough Council ("the council"). The council refused to comply with the request on the basis that to do so would exceed the appropriate limit in costs set by section 12(1) of the Freedom of Information Act 2000 ("the FOIA").
2. The Commissioner's decision is that the council correctly applied section 12(1). Additionally, the Commissioner found there to be no breach of section 16(1), as there were no means by which the request could reasonably be refined.
3. The Commissioner does not require any steps to be taken.

Request and response

4. On 30 January 2013 the complainant requested the following:

"How many licensed taxi drivers have got serious criminal convictions for violence?"
5. The council contacted the complainant on 27 February 2013 to refuse the request on the basis that it would exceed the costs limitations provided by section 12 of the FOIA.
6. The complainant requested an internal review on 28 February 2013.

7. The council completed its internal review on 28 March 2013. It stated that it wished to maintain its position.

Scope of the case

8. The complainant asked the Commissioner to consider whether the council had correctly relied on section 12 of the FOIA.
9. The Commissioner also considered whether the council provided appropriate advice and assistance under section 16 of the FOIA.

Reasons for decision

Section 12 – The cost of compliance

10. Section 12(1) of the 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."

11. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Regulations") sets the appropriate limit at £450 for the public authority in question. Under the Regulations, a public authority may charge a maximum of £25 per hour for work undertaken to comply with a request. This equates to 18 hours work in accordance with the appropriate limit set out above.
12. A public authority is only required to provide a reasonable estimate or breakdown of costs and in putting together its estimate it can take the following processes into consideration:
 - determining whether it holds the information;
 - locating the information, or a document which may contain the information;
 - retrieving the information, or a document which may contain the information; and
 - extracting the information from a document containing it.
13. In his assessment of whether the council has correctly relied upon section 12 of the FOIA, the Commissioner has considered the submission provided by the council to him on 10 July 2013, as well as the refusal notice and subsequent internal review provided by the council to the complainant.

14. The council has explained to the Commissioner that complying with the complainant's request would involve searching through approximately 700 hardcopy files in order to identify those that are relevant to the request. Each file represents an individual licensed taxi driver who has been referred to a licensing panel for a variety of reasons, of which the holding of any conviction is only one reason. The complainant's request specifically asks for the number of licensed taxi drivers who have serious convictions relating to violence. The council has explained that identifying such drivers would require each file being individually assessed.
16. The council undertook a sampling exercise whereby 6 files were searched for the type of information that the complainant had requested. It took 1 hour for a council officer to do this. The council therefore identified that it would an average of ten minutes to assess each file for the required information. Therefore, to search approximately 700 files and identify the total number of licensed taxi drivers with serious convictions for violence would take approximately 116 hours.
17. The Commissioner asked the council to elaborate on the size and structure of each file. The council explained that files could range from relatively slim (up to 40 sheets of paper) to extremely detailed files comprising several hundred sheets of paper. The size of a file can partly depend on the length of time that a driver has been licensed, but other factors may also affect this. The files were found to have no recurring structure, with the different types of document being in mixed order. It is important to note that each file contains a range of documents submitted by an individual in their application to be licensed, in addition to documents generated by the council. The Commissioner therefore considers that the apparent size and structure of the files supports the outcome of council's sampling exercise.
18. Having considered the above, the Commissioner is satisfied that total compliance with the request in its current form would far exceed the appropriate limit. The council was therefore correct to apply section 12 of the FOIA to the complainant's request.

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

19. Section 16(1) of the 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 practice (the "code")¹ in providing advice and assistance, it will have complied with section 16(1).

20. The code advises that, 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, it should provide the requester with reasonable advice and assistance.
21. The Commissioner's guidance states that the minimum a public authority should do in order to satisfy section 16 is indicate if it is not able to provide any information at all within the appropriate limit. Communicating this to a complainant may avoid further and futile attempts to refine the request to bring it under the appropriate limit. Also, if the requestor understands the way in which the estimate has been calculated to exceed the appropriate limit, it should help them decide what to do next².
22. In this instance, the council's refusal notice explained what steps it would need to take in order to locate, retrieve and extract the requested information, and confirmed that the information could not be provided within the appropriate limit. The Commissioner notes that the request in this case could not reasonably be refined in a way that would provide a representative or meaningful response to the request. On the basis of the council's response the Commissioner is satisfied that it would have been clear to the complainant that the request could not have been refined or revised to bring it within the terms of the appropriate limit.
23. The Commissioner has therefore concluded that the council provided such advice and assistance as was reasonable, and that it therefore complied with section 16(1).

¹ <http://www.justice.gov.uk/downloads/information-access-rights/foi/foi-section45-code-ofpractice.pdf>

²

http://www.ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/costs_of_compliance_exceeds_appropriate_limit.ashx

Right of appeal

24. If 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

25. 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.
26. 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
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Wycliffe House
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