

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 August 2016

Public Authority: Wolverhampton City Council

Address: Civic Centre
St Peter's Square
Wolverhampton
WV1 1SH

Decision (including any steps ordered)

1. The complainant has requested information relating to cremations held at the Bushbury Crematorium.
2. Wolverhampton City Council (the Council) refused to comply with the request under section 12 of the Freedom of Information Act 2000 (FOIA) as it said it would exceed the cost limit to do so.
3. The Commissioner's decision is that the Council was correct to apply section 12 FOIA in his case. However it breached its obligations under section 16 FOIA in relation to the way in which it dealt with this request.
4. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Provide the complainant with advice and assistance in accordance with the Council's obligations under section 16 FOIA.
5. 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

6. On 4 November 2015 the complainant requested information of the following description:
 1. How many cremations were held at the Bushbury Crematorium in each of: (a) October 2014; (b) January 2015; and (c) June 2015?
 2. Which slots —between 09:00 and 17:00 —were booked for a service at the Bushbury Crematorium on each weekday during each of: (a) October 2014; (b) January 2015; and (c) June 2015?
 3. What was the approximate origin of residence of service users of the Bushbury Crematorium in respect of all services which took place between 1 April 2015 and 1 October 2015 by way of postcode district (i.e. WV1, TF11 etc)?
7. On 4 January 2016 the Council responded. It refused to disclose the requested information under section 43(2) FOIA.
8. The complainant requested an internal review on 28 January 2016. The Council sent the outcome of its internal review on 24 February 2016. It upheld its original position.

Scope of the case

9. The complainant contacted the Commissioner on 31 March 2016 to complain about the way the request for information had been handled.
10. During the course of the Commissioner's investigation the Council additionally applied section 12 FOIA to the request as it said that it would exceed the cost limit to comply with parts 2 and 3 of the request.
11. The Commissioner has considered whether the Council was correct to apply section 12 FOIA in the first instance.

Reasons for decision

Section 12 – cost exceeds appropriate limit

12. Section 12 of the FOIA allows a public authority to refuse to deal with a request where it estimates that it would exceed the appropriate cost limit to:
 - either comply with the request in its entirety, or
 - confirm or deny whether the requested information is held.
13. The estimate must be reasonable in the circumstances of the case. The appropriate limit is currently £600 for central government departments and £450 for all other public authorities. Public authorities can charge a maximum of £25 per hour to undertake work to comply with a request - 24 hours work for central government departments; 18 hours work for all other public authorities. If an authority estimates that complying with a request may cost more than the cost limit, it can consider the time taken to:
 - (a) determine whether it holds the information
 - (b) locate the information, or a document which may contain the information
 - (c) retrieve the information, or a document which may contain the information, and
 - (d) extract the information from a document containing it.
14. The appropriate limit for the Council is £450 or the equivalent of 18 hours work.
15. The Council explained that to comply with the request in full, every individual cremation record would need to be reviewed to obtain this information.
16. Although the Council did not rely upon section 12 initially, it said that it was estimated that to actually produce the withheld information in respect of questions 2 and 3 would require a review of in excess of 1300 individual records and would take a minimum of one working week of officer time, to identify, determine if held and extract the requested information.
17. It went on that a more detailed sampling analysis undertaken since has revealed that to obtain the requested information (capable of retrieval electronically via Bereavement Services databases) would involve examination of 685 individual records in respect of question 2. For question 3 this would require examination of in excess of 1301 individual records.
18. The Council said therefore that even allowing a minimum retrieval time of 2 minutes per record, this would require in excess of 22 hours of work for question 2 and some 43 hours of work to undertake for question 3,

in determining if held, identifying, extracting and retrieving of the requested information.

19. It is not clear from the Council's response whether the records relevant to part 2 of the request would also be relevant to part 3 of the request and therefore whether the time estimate could be reduced accordingly due to this potential duplication. However even if this would be possible, given the number of records that would need to be reviewed overall (1301), compliance would vastly exceed the cost limit. The Commissioner considers that the estimate of 2 minutes to retrieve each record and review the record to extract the required information is reasonable.
20. Whilst the Council has only argued that parts 2 and 3 of the request would exceed the cost limit in this case, the Commissioner's Guidance on section 12 explains the following:

"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 Regulations can be satisfied. Those conditions require the requests to be:

- 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."
21. In this case parts 1, 2 and 3 of the request were made by the same person within a period of 60 days and they are for the same or similar information as all parts of the request relate to cremations held at the Bushbury Crematorium. Parts 1, 2 and 3 of the request can therefore be aggregated.
 22. Based upon the Council's arguments, to comply with this request would vastly exceed the cost limit and therefore it was correct to apply section 12 FOIA in this case.

Section 16 – advice and assistance

23. Under section 16 FOIA the Council is obliged to provide the complainant with advice and assistance to help the complainant refine

the request to fall within the cost limit or explain why this would not be possible.

24. Upon viewing the Council's letter to the complainant in which it explains that it is relying on section 12 FOIA and why, it does not provide any advice and assistance as to whether and if so how the request could be refined to fall within the cost threshold.
25. As no advice and assistance has been provided in relation to this request, the Commissioner does not consider that the Council has complied with its obligations under section 16 FOIA.
26. As the Commissioner considers that section 12 applies to this request, he has not gone on to consider the application of exemptions any further.

Right of appeal

27. 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

28. 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.
29. 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

**Gemma Garvey
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**