

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 June 2023

Public Authority: Warrington Borough Council

Address: East Annexe
Town Hall
Sankey Street
Warrington
WA1 1UH

Decision (including any steps ordered)

1. The complainant requested information regarding dog breeding and selling licences for a specific business. Warrington Borough Council (“the Council”) refused the request citing section 12(1) (cost of compliance) of FOIA.
2. The Commissioner’s decision is that the Council was entitled to rely on section 12(1) of FOIA, in response to the whole of the request. It has also complied with its duty to provide advice and assistance in line with the requirements of section 16 of FOIA. However, the Council breached section 10 of FOIA as it failed to respond to the request within 20 working days of its receipt.
3. The Commissioner does not require the Council to take any steps.

Request and response

4. On the 6 January 2023, the complainant made a request for information in the following terms:

"Please provide me with the following information in relation to the dog breeding and pet selling establishment Kelly's Kennels Limited.

1. A copy of the dog breeding and pet selling licences in place immediately before the issuing of the dog breeding and pet selling licence issued on 5 July 2022 under reference BRO1PS32
 2. A copy of all correspondence in relation to the review of this establishment's licences prior to the issuing of licence BRO1PS32. Please note that all correspondence includes all departments within Warrington Borough Council including Trading Standards and any other department, the request is not limited to the department issuing the licence.
 3. All inspection reports and the application submitted in respect of licence BR01PS32.
 4. All correspondence in relation to the dog breeding licence issued by Fermanagh & Omagh District Council in the names of William and Kelly Fenney. Please note all correspondence includes correspondence with William & Kelly Fenney (the existence of the licence is a matter of public record so I do not believe S40 will apply), Fermanagh & Omagh District Council and any other party."
5. On 9 February 2023, the Council responded advising the complainant that the information was exempt from disclosure by virtue of section 12(1) of FOIA (the cost limit exemption) amongst other exemptions cited.
6. The complainant requested an internal review on 12 February 2023 setting out their grounds for dissatisfaction with the Council's response.
7. The Council provided an internal review response on 5 April 2023 maintaining its reliance on the cost limit exemption under section 12(1) of FOIA, and as part of its section 16 responsibilities suggested they may be able to refine or clarify the scope of their request as the request was for a wide range of information.

Scope of the case

8. The complainant contacted the Commissioner on 21 April 2023 to complain about the way the request for information had been handled. They included a link to the What Do They Know (WDTK) website on 6 May 2023, in turn providing their arguments below:

“The Council’s excuse (and it is an excuse and not a reason) for withholding the previous licence is laughable. The Animal Welfare Regulations and the requirements to display the licence are irrelevant. The relevant considerations are the Freedom Information Act and related guidance. The legislation and guidance refer to information and make no distinction between it being current or historic (other than in relation to retention policy/ time limits for keeping data). The document could be watermarked or annotated as “expired” or “out of date.”

I note that the Council is now raising Section 12 as a reason to withhold information. I do not accept that this is a credible ground to withhold information. I have requested very specific information and do not accept that the Council would need to review every record it holds in order to respond.

I note that the Council is no longer relying on S43 to withhold information.

I also note that the Council has changed its position as regards confirming whether or not it holds the information requested.

My position remains that preserving the regulatory safe space under S31 is a qualified exemption and in this case, there is a legitimate interest in disclosing the information and the disclosure of the information is necessary. There is a very strong public interest in this information being disclosed.”

9. The Commissioner considers the scope of this case is to determine if the public authority has correctly cited section 12(1) of FOIA in response to the request. He has also considered whether the Council complied with its duty to provide advice and assistance under section 16 of FOIA.

Reasons for decision

Section 12 – cost of compliance exceeds the appropriate limit

10. Section 12 of 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 cost limit.
11. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations') at £450 for public authorities such as the Council.
12. 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 of FOIA effectively imposes a time limit of 18 hours for the Council to deal with this request.
13. 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.
14. 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 decision in the case of *Randall v IC & Medicines and Healthcare Products Regulatory Agency EA/20017/0004*, 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.
15. Section 12 of FOIA is an absolute exemption and 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.
16. 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?

17. When dealing with a complaint to him under FOIA, it is not the Commissioner's role to make a ruling on how a public authority deploys its resources or how it chooses to hold its information.
18. Therefore, as set out in the Fees Regulations, the Commissioner has considered whether the estimated cost of responding to the request would exceed the appropriate limit of 18 hours.
19. As is the practice in a case where a public authority has cited the cost limit under section 12, the Commissioner asked the Council to provide a more detailed explanation of its cost estimate.
20. The Council explained to the Commissioner that to determine whether information in scope was held for the request, an initial search was carried out in relation to each part of the request. For parts two, three and four around 350 files needed interrogation for each part. In addition to this, five random sample files were carried out to determine the time taken to find, open and scan read documents to establish their relevance. Sample one took 5 minutes, sample two took 15 minutes, sample three took 5 minutes, sample four took 8 minutes and sample five took just over 1 minute. This did not include any time for download and "Save file as" or the renaming of files.
21. The Council also gave a breakdown of the times and totals to help with understanding the task in hand: 5 min 11 + 15 min 50 + 8 min 54 + 8 min 43 + 1 min 11 = 39.49. Average equals 7 min 58 per sample x 350 records which equates to 46 hrs 28 minutes which did not include downloading, saving, and printing the information.
22. Section 1 FOIA provides a general right of access to information requested. However, a public authority has a duty to consider whether any information located and retrieved is relevant to the request. For these reasons it is not a case of merely providing the information without reviewing it to determine if the information held could be in scope.
23. In light of this, the Council explained that not all information would necessarily fall within scope of the request. Therefore, each item returned would have to be examined individually to identify, and then extract, save, and print the in-scope material.
24. Therefore, to determine if information is held and provide the same, the Council demonstrated this would be well in excess of the 18 hours permitted.

25. Even if it were possible to reduce the amount of time taken (which would seem unreasonable given the above) to check the files, this would still be over the threshold limit at 18 hours.
26. Having considered the estimates provided, the Commissioner's overall conclusion is that the Council has estimated reasonably and cogently that to comply with the complainant's request would exceed the cost limit of 18 hours. The Council was therefore entitled to apply section 12(1) of FOIA to the complainant's request.

Section 16 – advice and assistance

27. Section 16(1) of the FOIA provides that a public authority is required to provide advice and assistance to any individual making an information request where it would be reasonable to do so. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45 code of practice in providing advice and assistance, it will have complied with section 16(1).
28. In general, where section 12 is cited, in order to comply with this duty a public authority should advise the requester how their request could be refined or reduced to potentially bring it within the cost limit.
29. The Commissioner notes that the Council suggested a way the complainant may wish to consider narrowing the request, noting that the request was broad ranging in nature. It suggested that a refined or clarified scope of the request may fall within the cost limits, although it did not guarantee that would be the case.
30. The Commissioner considers this was an appropriate response in the circumstances given the nature of the original request. He is therefore satisfied that the Council met its obligation under section 16 of FOIA and does not require it to take any steps.

Procedural Matters

Section 10

31. In failing to respond to the request within twenty working days of receipt, the Council breached section 10 (time for compliance with request) of FOIA.

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 <mailto:GRC@hmcts.gsi.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

Susan Duffy
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF