

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 June 2023

Public Authority: Kent County Council
Address: Sessions House
County Hall
Maidstone
Kent
ME14 1XQ

Decision (including any steps ordered)

1. The complainant has requested information from Kent County Council ("the Council") in relation to logos being removed from a festival poster. The Council refused to provide the information, relying on section 12(1) of FOIA – cost of compliance exceeds the appropriate limit.
2. The Commissioner's decision is that the Council is entitled to rely on section 12(1) of FOIA to refuse the request. The Commissioner is satisfied that the Council provided sufficient advice and assistance to the complainant in both the original response and again once it had reconsidered its response in the internal review and, as such, it has met its obligations under section 16 of FOIA.
3. The Commissioner does not require the Council to take any steps as a result of this decision notice.

Request and response

4. On 22 January 2023, the complainant wrote to the Council and requested information in the following terms:

"Please supply me with correspondence from councillors, council officials, council entities and partnerships to include 'Reconnect' and the 'build back better' fund on the subject of and/or containing the

words 'Cartoon Festival' 'Herne Bay Cartoon Festival' from June 2022 through the present day. I do not believe there will be a huge quantity, but I am aware of correspondence which I have not seen, which I now need. This correspondence may take the form of emails, file notes, meeting minutes, letters, memos and so forth.”

5. The Council responded on 13 February 2023. It stated that it holds the requested information, but that it was withholding it, citing section 12 of FOIA – cost exceeds the appropriate amount.
6. Following an internal review the Council wrote to the complainant on 31 May 2023. It stated that it upheld its original position.

Scope of the case

7. The complainant contacted the Commissioner on 30 April 2023 to complain about the way their request for information had been handled.
8. The Commissioner considers that the scope of the case is to determine if the Council was correct to rely on section 12(1) of FOIA. He will also consider if the Council has provided advice and assistance as required under section 16 of FOIA.

Reasons for decision

Section 12 – cost of compliance

9. Section 1(1) of FOIA states that:

“Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.”

10. Section 12 of FOIA states that:

(1) 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.

(2) Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless

the estimated cost of complying with that paragraph alone would exceed the appropriate limit.

11. The "Appropriate Limit" is defined in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Regulations") and is set at £450 for a public authority such as the Council. The Regulations also state that staff time should be notionally charged at a flat rate of £25 per hour, giving an effective time limit of 18 hours.
12. When estimating the cost of complying with a request, a public authority is entitled to take account of the time or cost spent in:
 - (a) determining whether it holds the information,
 - (b) locating the information, or a document which may contain the information.
 - (c) retrieving the information, or a document which may contain the information, and
 - (d) extracting the information from a document containing it.
13. 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 in the case of *Randall v Information Commissioner & Medicines and Healthcare Products Regulatory Agency EA/2007/0004*, 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.
14. In this case, the Council explained that it does not have a single central database that will enable it to input a name, an email address, or even a search term. As such, it means the Council would have to first identify teams, officers and members who they believe may hold information within the scope of the request based on its knowledge of council operations. Following this, it would then need to ask all the staff involved to do a manual search of their records using the specified parameters. The Council explained that the next step would be for each record located to be assessed. It advised that it has 84 members, over 150 departments and over 6000 members of staff.
15. The Council explained that it has approached 36 individuals who it believed would be most likely to hold information within the scope of the request. It advised that it took over 21 hours for just some of them to conduct searches of their own and their team's generic mailboxes.

16. The Council went on to advise that they found six emails during the searches conducted, one of which is outside the scope of the request. It provided the complainant with the five relevant emails.
17. The Council advised that the 21 hours it had taken for the searches so far does not include the time it would take to search the network drives and local systems for other types of records that had been requested.
18. The Commissioner is satisfied that from the information provided, it would take the Council significantly over the appropriate time limit to obtain the requested information. He is satisfied with the explanations regarding how the systems work and the amount of time it would take to find every item that falls within the scope of the request.
19. The Commissioner's decision is that the Council was correct to apply section 12(1) of FOIA to the request.

Section 16 – advice and assistance

20. Section 16(1) of 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 practice¹ in providing advice and assistance, it will have complied with section 16(1).
21. The Council originally advised the complainant that it could not determine a way in which the request could be refined. However, upon carrying out the internal review, the Council did advise ways in which the request could be revised. The Commissioner notes that the Council has apologised to the complainant for its original response.
22. The Commissioner is satisfied that the Council has provided sufficient advice and assistance and, therefore, it has not breached section 16 of FOIA.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf

Right of appeal

23. 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

24. 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.
25. 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

Michael Lea
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF