

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 August 2024

Public Authority: Monmouthshire County Council
Address: County Hall
The Rhadyr
Usk
NP15 1GA

Decision (including any steps ordered)

1. The complainant has requested, from Monmouthshire County Council (the Council), certain financial information in respect of a specified financial year. The Council provided some information, however the complainant wanted further detail about the “functions” or services provided by contractors or suppliers (ie what, exactly, they had been paid to do – “the functions that the public are paying for”). The Council cited section 12 of FOIA (‘cost of compliance’) to refuse to comply with the request for that information.
2. The Commissioner’s decision is that the Council was correct to refuse to comply with the request, on the basis of section 12 of FOIA.
3. However, the Commissioner also finds that the Council didn’t comply with its obligations under section 16 of FOIA (‘advice and assistance’).
4. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Either provide the complainant with advice and assistance to help them to refine the request of 6 March 2024 such that it falls within the cost limit; or

- If the request can't be meaningfully refined, explain why this is the case.
5. The public authority must take these steps within 30 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 FOIA and may be dealt with as a contempt of court.

Request and response

6. The request that is the focus of this decision notice is a refined version of a request that the complainant originally made on 8 February 2024.
7. In the following paragraphs, for context the Commissioner will set out the original request and how it came to be refined, before outlining the Council's position on the refined request.
8. The complainant's original request was as follows:

"Could you please state the budget and expenditures for the chief executives [sic] office, both in total and individually broken down by internal sections, and, or departments.

Including external contractors, with company names and the functions that they carry out for [the Council].

TIME SCOPE

For the financial years starting in : [sic]

2022

2023

2024".

9. The Council responded on 29 February 2024 and provided some information relating to the first sentence in the request; it also asked for clarification regarding the second sentence.

10. The complainant clarified that they wanted information about “All external contractors for the CEO’s office and the functions that the public are paying for”, and believed the Council should hold a list.
11. In response, the Council cited section 12 of FOIA in respect of the requested information about external contractors, thereby refusing that part of the request.
12. The Council offered to provide the names of suppliers or contractors and how much it paid them, saying it could do so within the relevant limit of 18 hours under the Freedom of Information (Appropriate Limit and Fees) Regulations 2004 (the Fees Regulations); but refused to provide the ‘function’ or service information requested, on the basis of section 12.
13. There followed some correspondence in which the Council clarified the departments within the Chief Executive’s directorate, and the complainant stated which departments were of interest to them.
14. The Council emphasised (6 March 2024) that “It is the task of interrogating each invoice to identify the function/service that will demand the time”. Again, the Council offered to provide the names of the suppliers or contractors and how much they were paid, for all three years.
15. On 6 March 2024 the complainant reduced the request’s scope to the year 2023 – 2024. This refined request is the request that is the focus of this decision notice:

“I am primarily interested in the services that the public is receiving for its money ...

And who the contractors are ...

But to assist, please reduce the request scope to 2023/2024”.
16. The Council said (11 March 2024) that it remained “unable to interrogate each invoice” for the full year stated in the refined request, within 18 hours. It provided some information (names of contractors and amounts paid) for 2021 – 2022 and 2022 – 2023; noted that 2023 – 2024 information “is not available at this time as the financial year has not closed yet”; and cited section 12 in respect of the services provided.

17. The complainant asked the Council to comply with the refined request, and said it should be able to state why the companies were employed.
18. The Council provided an internal review on 26 March 2024 in which it provided further information (total budget and expenditure figures for the financial years beginning in 2022 and 2023; and total budget figures for the financial year beginning in 2024). It said this information was all it could provide within the appropriate limit of 18 hours, as it was unable to interrogate each invoice.

Scope of the case

19. The complainant contacted the Commissioner on 3 April 2024 to complain about the way their request for information had been handled.
20. The Commissioner exchanged some correspondence with the complainant about the case, and the complainant clarified that their focus is their refined request of 6 March 2024 where they reduced the original request's scope to cover the year 2023 – 2024 only. The Commissioner's understanding is that the complainant wants information about the services provided by the suppliers or contractors, for that year.
21. His understanding is that they dispute the Council's application of section 12.
22. The Commissioner therefore considers that the scope of this case is to decide whether the Council was correct to rely on section 12, in respect of the refined request of 6 March 2024. He will also consider procedural matters.

Reasons for decision

23. Section 12(1) of FOIA states that a public authority isn't obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the "appropriate limit".
24. The appropriate limit is set out in the Fees Regulations, and it's £450 for public authorities such as the Council.

25. The notional cost of the staff time needed to comply with a request must be estimated at a rate of £25 per person per hour. This means that section 12(1) of FOIA effectively imposes a time limit of 18 hours for the Council.
26. For the purpose of its estimate, a public authority can only take account of the costs it reasonably expects to incur in:
 - determining whether it holds the information;
 - locating the information, or a document which may contain it;
 - retrieving the information, or a document which may contain it; and
 - extracting the information from a document containing it.
27. A public authority doesn't have to make a precise calculation of the cost of complying with a request; only an estimate is required, however it must be a reasonable estimate. The Commissioner considers that any estimate must be sensible, realistic and supported by cogent evidence.
28. Section 12 isn't subject to a public interest test; if complying with the request would exceed the cost limit, there's no requirement to consider whether there's a public interest in the disclosure of the information.
29. The Council explained to the Commissioner that its finance team has confirmed that there are 479 invoice transactions, in respect of the 2023 – 2024 financial year.
30. It said the information is held electronically, but each invoice has its own record or line, and each one would need to be opened and checked.
31. The Council said each one would take 3 – 5 minutes to check, or longer where further checks with managers are required. It explained that descriptions of services procured are user-defined rather than system-defined, so invoices could contain inconsistent or no descriptions, resulting in the need to consult with managers to determine the purpose of those invoices.
32. The best-case scenario, the Council said, is that each invoice transaction would take 3 minutes to check; and with a total of 479 invoice transactions for the 2023 – 2024 financial year, the Council said it would take almost 24 hours to comply with the request.

33. A key concern, for the complainant, seems to be that the Council hasn't taken sufficient steps to determine what relevant information it holds. They're concerned that the relevant department hasn't been consulted - they said the Council's FOIA department could ask the Council's finance department for "information sent to the auditor", and they questioned the need for the Council to search individual files for the information they're seeking. They believe it should be "readily available from the finance department" and could be provided within the appropriate limit as it should be held in an easily accessible way, for auditing purposes.
34. Despite the complainant's concerns, and based on the Council's submissions, the Commissioner is satisfied that the Council has consulted the relevant department (the finance department), and he considers that the Council has provided a reasonable estimate.
35. Whilst the complainant appears to believe that the Council "should" hold the requested information a certain way, for auditing purposes, his guidance¹ explains that when applying section 12 of FOIA a public authority should base its estimate on how it holds the information at the time of the request.
36. In this instance, the Council has explained that due to the way the requested information is actually held, it would need to check each invoice transaction; and the Commissioner sees no reason to doubt the Council's explanation in that regard.
37. He considers that the Council's estimate of 3 minutes (minimum) to check each invoice transaction and extract the relevant information is reasonable.
38. The Commissioner notes that the refined request of 6 March 2024 was made shortly before the end of the 2023 - 2024 financial year. The Council has said there are 479 relevant invoice transactions for 2023 - 2024, and the Commissioner's understanding is that 479 is the figure for the whole financial year. However, any invoice transactions falling after 6 March 2024 wouldn't be within scope of the request, so the number of

¹ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/section-12-requests-where-the-cost-of-compliance-exceeds-the-appropriate-limit/#records>

relevant invoice transactions may actually be lower than 479. However, the Commissioner considers that it's unlikely to be substantially lower, so this consideration doesn't make a difference in terms of his decision.

39. He finds that complying with the refined request would exceed the relevant limit under the Fees Regulations, and the Council was correct to rely on section 12.

Procedural matters

Section 16 – duty to provide advice and assistance

40. Section 16 of FOIA requires public authorities to provide reasonable advice and assistance to those making, or wishing to make, information requests.
41. When a public authority refuses a request because the cost of compliance exceeds the appropriate limit, it should explain to the requester how they could refine their request such that it would fall within that limit. In some cases, it will be appropriate for the public authority to explain why their request can't be meaningfully refined.
42. The Commissioner notes that in response to the refined request, the Council did provide the complainant with total annual budget and expenditure figures for the financial year 2023 – 2024 (the financial year relevant to the refined request), and said that was all it could provide within 18 hours. It also directed the complainant to its website² where it publishes 'Council spend data'.
43. However the Council didn't offer the complainant advice on how they could refine their (refined) request of 6 March 2024, or inform the complainant that the Council was unable to offer any such advice.
44. The Council did say "We remain unable to interrogate each invoice for the full year term in your refined request". However it didn't, for instance, suggest that the timespan of the request is narrowed, to bring

² <https://www.monmouthshire.gov.uk/council-spend-data/>

it within the cost limit, or say it felt that there was no meaningful advice it could provide.

45. The Commissioner notes that the complainant, in response to the Council's internal review, contacted the Council to express concerns that they hadn't been given advice under section 16 of FOIA.
46. The Commissioner considers that the Council could have suggested a shorter timespan of, say, three or six months of the 2023 – 2024 financial year, if such a timespan would bring the request within the cost limit and provide the complainant with details of interest to them about services provided by contractors.
47. The Commissioner's guidance³ notes:

“Where you are unable to offer advice on how the requester could refine their request you should inform [the requester] that this is the case ... this is necessary to comply with your obligations under section 16”.
48. As the Council didn't explain how the requester could refine the request, or explain that it couldn't be meaningfully refined, the Commissioner finds that the Council didn't comply with section 16 of FOIA in respect of the request of 6 March 2024.

³ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/section-12-requests-where-the-cost-of-compliance-exceeds-the-appropriate-limit/#advice>

Right of appeal

49. 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

50. 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.
51. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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