

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 September 2024

Public Authority: Mid Devon District Council
Address: Phoenix House
Phoenix Lane
Tiverton
Devon
EX16 6PP

Decision (including any steps ordered)

1. The complainant requested information from Mid Devon District Council ("the Council") relating to data breaches.
2. The Commissioner's decision is that the Council is entitled to rely on section 12(1) of FOIA to refuse to provide the requested information. He also finds that the Council met its obligations under section 16(1) of FOIA to offer advice and assistance.
3. However, the Commissioner finds that the Council breached section 10(1) (time for compliance) of FOIA by failing to respond to the request within the statutory timeframe of 20 working days.
4. The Commissioner does not require the Council to take any steps.

Request and response

5. On 4 March 2024, the complainant wrote to the Council and requested information in the following terms:

"In order to try and get some answers to these questions, I now ask Mid Devon District Council to provide me with the following information:

1. Copies of all the emails, over the past six months, which contain discussions of 'data breaches', or non-adherence to email or other policies and practices; as well as the possible, or actual, examination of Former Councillor/Officer email boxes, and Current Councillor/Officer email boxes, for evidence of this.

I also ask to be provided with, non-personal, information in respect of the following:

2. Were the email boxes of All Former Councillors scanned?

If Yes - please tell me how far back did the search cover.

If No - please tell me how many were scanned and how far back did the search cover.

3. Were the email boxes of All Current Councillors scanned?

If Yes - please tell me how far back did the search cover.

If No - please tell me how many were scanned and how far back did the search cover.

4. Were the email boxes of All Officers, currently employed, scanned?

If Yes - please tell me how far back did the search cover.

If No - please tell me how many were scanned and how far back did the search cover.

5. Were the email boxes of All Former Officers scanned?

If Yes - please tell me how far back did the search cover.

If No - please tell me how many were scanned and how far back did the search cover.

In each of 2 to 5 above,

- (a) What were the actions or breaches being looked for;
- (b) How long did this process take;
- (c) What resources were allocated to the task;
- (d) How many "Data Breaches" were identified;

(e) For each of the "Data Breaches" identified, what subsequent action was taken?

6. Has the Council reported any "Data Breaches" to the Information Commissioner as a result of these searches?

Please provide the information in .pdf or .docx format to me, at the above email address."

6. The Council responded on 5 April 2024 and refused to provide the requested information citing section 12 of FOIA as its basis for doing so.
7. On 21 April 2024, the complainant requested an internal review. They stated that they were unhappy with the advice and assistance they had been provided with by the Council. However, at the same time the complainant submitted a refined request for information to the Council.
8. On 22 April 2024, the complainant withdrew their refined request for information and asked the Council to review its handling of their request.
9. The Council provided the complainant with the outcome of its internal review on 21 May 2024. In its internal review, the Council only considered whether it had provided the complainant with appropriate advice and assistance. It did not consider whether section 12 of FOIA had been correctly applied to the request. The Council concluded that appropriate advice and assistance had been provided to the complainant.

Reasons for decision

10. This reasoning covers whether the Council is entitled to rely on section 12(1) of FOIA to refuse to provide the requested information.
11. Section 12(1) 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. The appropriate limit for public authorities such as the Council is £450. As the cost of complying with a request must be calculated at the rate of £25 per hour, section 12(1) effectively imposes a time limit of 18 hours for the Council.
12. 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.
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 decision in the case of *Randall v IC & Medicines and Healthcare Products Regulatory Agency EA/20017/00041*, 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.

The Council’s position

14. In its submissions to the Commissioner, the Council explained that in order to provide the information requested in part 1 of the request, it would need to search 26 generic email mailboxes, and the email mailboxes of 42 Councillors and 279 Council Officers, using the search terms “data breach”, “procedure”, “policy” and “practice”, for emails dating from the last 6 months. It stated that once it has conducted these searches, it would then have to review the emails located to establish whether they fall within the scope of part 1 of the request.
15. The Council explained that it has conducted searches of one Council Officer’s email mailbox using the search parameters outlined above. These searches located a total of 1622 emails which may fall within the scope of part 1 of the request.
16. The Council considers that it is unlikely that all Council email accounts would hold as many emails as the Council Officer’s email mailbox. However, it stated that even if each email mailbox held a tenth of the number of emails located by its search of the Council Officer’s mailbox, it would still need to review a total of 56,121 emails in order to provide the information requested in part 1 of the request (346 email mailboxes x 162 emails = 56,121 emails). The Council estimates that it would take approximately 30 seconds to review each email and so it considers that the cost of reviewing all 56,121 emails would clearly exceed the appropriate limit.

The Commissioner's position

17. The Commissioner notes that the Council estimates that it would need to review 56,121 emails in order to provide the information requested in part 1 of the request. He considers this estimate to be reasonable as it is based on a sampling exercise.
18. The Commissioner has calculated that if the Council were to take 30 seconds to review each email and determine whether it falls within the scope of part 1 of the request, in total it would take the Council approximately 468 hours to locate the information held relevant to part 1 of the request (56,121 emails x 30 seconds = 468 hours). He considers the Council's estimate of 30 seconds to review each email to be reasonable. Even if the Council were to take only 10 seconds to review each email, the cost of complying with the part 1 of the request would significantly exceed the appropriate limit.
19. Furthermore, the Commissioner acknowledges that the Council's estimate only takes into account the amount of time it would take to locate the information requested in part 1 of the request. If the Council was to include the time it would take to respond to all parts of the request, it is clear that the cost of complying with the request would further exceed the appropriate limit.
20. Therefore, the Commissioner's decision is that the Council is entitled to rely on section 12(1) of FOIA to refuse to provide the requested information.

Section 16 – advice and assistance

21. 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).
22. In its initial response to the request the Council informed the complainant that even if they were to refine the scope of part 1 of the request, it was unlikely that it would fall within the appropriate limit. However, the Council also advised the complainant that they could refine the scope of their request by limiting their request to parts 2 – 6.

¹ <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

The Council stated that it is likely that it would be able to provide the information requested in parts 2 – 6 of the request within the appropriate limit.

23. The Commissioner notes the Council's view that it would not be practical for the complainant to refine the scope of part 1 of their request. This is because of the large number of emails that have been identified as potentially falling within the scope of part 1 of the request, taking the example of one mailbox alone. The Commissioner accepts that even if the complainant were to significantly reduce the scope of part 1 of the request, it is likely that it would still exceed the appropriate limit. The Commissioner has therefore concluded that there is no easy way for the Council to suggest how the complainant could refine part 1 of the request to bring it within the cost limit.
24. In light of the above, the Commissioner is satisfied that the Council complied with its obligations under section 16(1) of FOIA in its handling of the request.

Procedural matters

Section 10 – Time for compliance

25. 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.”

26. Section 10(1) of FOIA states that a public authority must respond to a request promptly and “not later than the twentieth working day following the date of receipt”.
27. In this case, the complainant submitted their request for information to the Council on 4 March 2024 and the Council did not respond until 5 April 2024. Therefore, the Commissioner finds that the Council breached section 10(1) of FOIA by failing to respond to the request within 20 working days.

Right of appeal

28. 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

29. 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.
30. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Joanne Edwards
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