

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 2 October 2024

**Public Authority:** Cherwell District Council  
**Address:** Bodicote House  
Bodicote  
Banbury  
OX15 4AA

#### **Decision (including any steps ordered)**

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1. The complainant has requested all held information referring to Data Protection and Freedom of Information matters, and correspondence with the ICO, for the calendar year of 2023. Cherwell District Council ("the Council") initially withheld the information under the exemptions provided by sections 31(1)(g) (Law enforcement), 40(2) (Personal information), and 42(1) (Legal professional privilege), and subsequently indicated at internal review that it considered the request would engage section 12 (Cost of compliance). During the course of investigation, the Council informed the Commissioner that it wished to rely upon section 14(1) (Vexatious requests) on the grounds of burden, and section 12 in the alternative.
2. The Commissioner's decision is that the Council is entitled to refuse to comply with the request under section 14(1). However, in failing to issue a refusal notice within the statutory timescale, the Council breached section 17(5) (Refusal of request).
3. The Commissioner does not require further steps but refers the Council to the points raised in 'Other matters'.

## **Request and response**

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4. On 2 February 2024, the complainant wrote to the Council and requested information in the following terms ('a' and 'b' added by the council in its subsequent responses):
  - a) For calendar year 2023, please provide copies of all communications you hold between the Council and the Information Commissioner's Office. Where possible and with the necessary redactions, include copies of third party document that were exchanged between the two parties.
  - b) Please provide ALL information you hold, including Freedom of Information and Data Protection matters that includes service updates; meeting and event arrangements; advice sought/received; instructions/responses on complaints; regulatory recommendations and discussions/responses around these recommendations; ad hoc emails.
5. The Council responded on 29 February 2024 under the reference of '8283'. It explained that it considered the request to be a repeat of an earlier one (made on 4 January 2024, and responded by the council under the reference of 8113). It stated that information was withheld on the same basis as the earlier request, that is, it was withheld under sections 31(1)(g), 40(2), and 42(1).
6. On 29 February 2024, the complainant wrote to the Council and asked it to undertake an internal review.
7. Following an internal review the Council wrote to the complainant on 26 March 2024. It maintained its original response. It also stated that it refused the request under section 12(1), as it considered that part b) widened the range of information sought beyond that of part a), and that compliance with the request in full would exceed the costs limit for FOIA.

## **Scope of the case**

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8. The complainant contacted the Commissioner on 27 March 2024 to complain about the way their request for information (of 2 February 2024) had been handled.
9. During investigation, the Council informed the Commissioner that it considered compliance with the request would exceed the appropriate

limit in costs (for section 12(1)), as well as impose a grossly oppressive burden (under section 14(1) of FOIA).

10. The Council confirmed that it wished to rely upon section 14(1), and section 12(1) in the alternative.
11. The Commissioner considers that the scope of his investigation is whether the Council is entitled to rely upon section 14(1) to refuse to comply with the request.

## **Reasons for decision**

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### **Section 14 – vexatious requests**

12. Section 14(1) of FOIA provides that a public authority is not obliged to comply with a request for information if the request is vexatious.
13. The word “vexatious” is not defined in FOIA. However, as the Commissioner’s guidance on section 14(1) explains, it is established that section 14(1) is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress<sup>1</sup>.
14. In the circumstances of this case the Council applied section 14(1) on the basis of the grossly oppressive burden that it considers compliance with the request would impose upon it.
15. Ordinarily, where the concern of a public authority is about the burden of a request, the relevant provision of the FOIA would be section 12(1). This section provides that a public authority is not obliged to comply with a request where the cost of doing so would exceed a limit. However, a public authority cannot claim section 12(1) for the cost and effort associated with considering exemptions or redacting exempt information.
16. A public authority may apply section 14(1) where it can make a case that the amount of time required to review and prepare the information for disclosure would impose a grossly oppressive burden upon it. This can include time spent on considering exemptions and making redactions.

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<sup>1</sup> <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/section-14-dealing-with-vexatious-requests/>

17. However, the Commissioner considers there to be a high threshold for refusing a request on such grounds. This means that a public authority is most likely to have a viable case where:

- The requester has asked for a substantial volume of information and
- The authority has real concerns about potentially exempt information, which it will be able to substantiate if asked to do so by the ICO and
- Any potentially exempt information cannot easily be isolated because it is scattered throughout the requested material.

What information does the request seek?

18. In this case the request seeks:

- All correspondence between the Council and the Information Commissioner's Office ("ICO"), including any third party documents that have been exchanged, for the calendar year of 2023.
- All internal records relating to Data Protection and Freedom of Information matters, for the calendar year of 2023.

The Council's position

19. The Council has explained to the Commissioner that it considers compliance with the request would impose a grossly oppressive burden.

20. To comply with the request in full would require extensive searches across its email systems (Outlook), file management systems, Microsoft Teams, case management system (Iken) and all archives, for the calendar year of 2023.

21. To illustrate this, an electronic search for all correspondence with the ICO has been undertaken of its email system using a search engine tool called eDiscovery. This search used the search term of "@ico.org.uk". This search has identified 194 'indexed' records (which will represent records that have been automatically identified as emails, and attached documents), and over 580,000 'unindexed' records (which will represent items that cannot be automatically identified, and are likely to represent signature attachments like images, but may also include any encrypted files, password protected documents, and corrupted files).

22. This information would need to be reviewed to identify potentially exempt information. As the information relates to information rights matters, being correspondence with the ICO about regulatory

investigations, the Council would likely need to consider the application of the exemptions provided by sections 31(1)(g), 40(2), and 42.

23. This search does not include the much wider scope of information sought by the second part of the request, which seeks all internal records that reference Data Protection and Freedom of Information matters.

#### The Commissioner's analysis

24. The Commissioner has reviewed the request, and the Council's submissions.
25. The Commissioner notes that the request in this case effectively seeks all held information that references information rights matters, for an entire calendar year. The complainant has not sought to limit or define the request, such as to a specific event, topic or area of interest.
26. The Commissioner is aware that public authorities have a wide range of duties under information rights legislation, and reasonably expects that in the course of one calendar year this will result a significant volume of information being held across its systems that reference these duties.
27. In this case, the Commissioner perceives that this is illustrated by the Council's correspondence with the ICO alone, for which 194 individual documents have been identified to date. Whilst the Commissioner recognises that the 580,000 files that the electronic search has identified will not represent individual documents, he recognises that these files would need to be sifted for any documents, such as encrypted items, that have otherwise been missed.
28. The Council has not addressed the second part of the request in detail. However, the Commissioner recognises that this is significantly wider in scope, and seeks "ALL" information relating to information rights held by the Council. The Commissioner recognises that information rights matters will touch upon all areas of a public authority's functions, and will include not only its compliance with the legislation, but also its handling of subject access requests under the Data Protection Act 2018, and information requests under the FOIA and Environmental Information Regulations 2004.
29. The Commissioner therefore observes that the second part of the request seeks a significantly greater volume of information, likely to be many multiples of that sought by the first part (considering that the Council's communications with the ICO with only represent a part of the Council's wider activity around information rights). The Commissioner observes that the electronic searches for this information would likely

need to include generic search terms as 'information request', 'subject access request', 'data protection', 'FOIA', and 'EIR'.

30. The Commissioner recognises that the nature of the information sought by both parts of the request, relating as it does to information rights matters, will highly likely include information that will fall under an exemption provided by FOIA, such as section 40(2) (Personal information), section 42 (Legal professional privilege), and section 31 (Law enforcement). This is because the information will - by its nature - relate to identifiable people, the Council's legal duties under the legislation, and regulatory investigations by the ICO.
31. The Commissioner is therefore satisfied that, even if the entirety of the information was collated, each document would need to be manually reviewed by officers familiar with its content to consider the application of exemptions.
32. The Commissioner notes that, even allowing 5 minutes per document (for the so far identified documents relating to the first part of the request - 194) would require over 16 hours of officer time, and this does not include the sifting of the 580,000 electronic files. Furthermore, it does not include the collation and review of the documents falling within scope of the second part of the request, which as noted, is reasonably likely to be many multiples of the first part.
33. The Commissioner considers that there is limited value in the request that would justify the diversion of public resources and impact upon the Council's ability to provide services that it would cause. Whilst the request relates to a serious purpose (i.e., the Council's compliance for information rights laws), the Commissioner notes that concerns by the public about this compliance can already be referred to the Council in the first instance, with any further complaint being submitted to the Commissioner. Furthermore, in the case of FOIA and EIR complaints that have resulted in formal action under the legislation, the Commissioner's decision notices are published on the ICO website, which the Council has referred the complainant to.
34. Having considered the above factors, the Commissioner is satisfied that the Council is entitled to refuse the request under section 14(1), on the basis of grossly oppressive burden.
35. As the Commissioner has found that section 14(1) applies to the request, he has not considered it necessary to consider the Council's application of section 12(1).

## **Procedural matters**

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36. Section 17(5) of FOIA requires a public authority, relying on section 14(1), to issue a response refusing the request within twenty working days.
37. In this case the Council did not confirm that it wished to rely upon section 14(1) until the Commissioner's investigation. The Council therefore breached section 17(5) of FOIA in the handling of this request.

## **Other matters**

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38. The Commissioner reminds the Council of the importance of fully considering the scope of a request (or requests) before seeking to respond.
39. In the circumstances of this case the Council failed to identify the breadth and complexity of the requested information, and consequently issued a deficient response under the legislation.
40. Had the Council informed the complainant of the volume of information, and the application of section 14(1) in its original response, this may have prevented this matter being escalated, and therefore saved significant resources.
41. The Commissioner further reminds the Council that it should not blindly apply exemptions. The exemptions contained in Part II of FOIA should only be applied when a public authority is first satisfied that neither section 12 nor 14 are applicable to a request.

## Right of appeal

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42. 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@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

43. 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.
44. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Daniel Perry**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
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