

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 October 2024

Public Authority: Mid and East Antrim Borough Council
Address: 1 – 29 Bridge Street
Ballymena
BT43 5EJ

Decision (including any steps ordered)

1. The complainant has requested various information about investments made in local areas. Mid and East Antrim Borough Council (“the Council”) initially disclosed some of the requested information but refused to comply with the remainder of the request under section 12(1) of FOIA (cost of compliance). It also advised that the some of the requested information was publicly accessible under section 21 (information accessible to applicant by other means). During the course of investigation, the Council explained to the Commissioner that having reviewed its handling of the request, it considered that it should have applied section 12(1) to the request in full.
2. The Commissioner’s decision is that the Council is entitled to apply section 12(1) to the request in full and has complied with the duty to provide advice and assistance under section 16 of FOIA.
3. The Commissioner does not require further steps but refers the Council to the observations contained in ‘Other matters’.

Request and response

4. On 6 February 2024, the complainant wrote to the Council and requested information in the following terms:

“In respect of each of the past five financial years and in respect of current plans for each of the next three financial years can you detail

what capital investment MEA has made in each of the towns of Ballymena, Carrickfergus and Larne.

In respect of each individual investment please indicate for each financial year:

- (a) in which town the investment was made
- (b) what the total costs of the investment were or are anticipated to be
- (c) what percentage of the total costs were or will be met by MEA
- (d) if relevant who the other funding partners were or will be and their financial contribution."

5. The Council responded on 27 February 2024. It disclosed some information ("the past five financial years") in respect of parts (a) and (b) of the request but refused to provide the remainder ("in respect of current plans for each of the next three financial years") under section 21 of FOIA. It refused to provide the information sought by parts (c) and (d) under section 12(1) of FOIA.
6. Following an internal review the Council wrote to the complainant on 24 March 2024. It stated that:
 - In respect of parts (a) and (b), it maintained that the remaining information ("in respect of the current plans for each of the next three financial years") was exempt under section 21 but advised where the information could be accessed (on that part of the Council's website for current tenders).
 - In respect of parts (c) and (d), it maintained that to provide the information as requested (for each project for five years) would engage section 12(1). However, the Council advised that it was able to disclose some information that had been identified (namely a breakdown of spend per region for 4 years – 1 April 2019 to 31 March 2023).

Scope of the case

7. The complainant contacted the Commissioner on 10 May 2024 to complain about the way their request for information had been handled, and specifically that the Council was not entitled to rely upon section 12(1) and section 21.
8. During the course of investigation, the Council informed the Commissioner that it wished to rely upon section 12(1) for the request in full. This is because, whilst the Council was able to provide some information falling under the request (specifically, for one aspect of

parts (a) and (b)) it considered that compliance with the request in full would exceed the appropriate limit in costs set for section 12(1).

9. The Commissioner therefore considers that the scope of his investigation is whether the Council is entitled to rely upon section 12(1) for the request in full. For the reasons given in this decision notice, the Commissioner has not considered it necessary to address the Council's application of section 21.

Reasons for decision

Section 12 – Exemption where cost of compliance exceeds appropriate limit

10. 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 limit" as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations").
11. The Fees Regulations specify that the appropriate limit is set at £600 for central government and £450 for non-central government public authorities. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour.
12. This means that a central government department may refuse the request for information under consideration if it estimates that it will take longer than 24 hours to comply with it. For non-central government public authorities the limit is 18 hours.
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. When considering whether the appropriate limit has been reached, a public authority may aggregate the cost of a number of requests¹. This includes multiple requests made within a single item of correspondence.
15. 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".
16. The task for the Commissioner when considering section 12 is to reach a conclusion as to whether the cost estimate made by the public authority was reasonable; in other words, whether it estimated reasonably that the cost of compliance with the request would exceed the limit of £600 or £450. If it did, then section 12(1) applied and it was not obliged to comply with the request.

The Council's position

17. The Council has informed the Commissioner that it considers that compliance with the request, which is in fact composed of four individual requests, would exceed the appropriate limit. Notwithstanding this, the Council has attempted to provide that information which it is able to under the appropriate limit (namely, for parts (a) and (b) where they seek information about the past five financial years), or else refer the complainant to where some of the information which may already be publicly accessible.
18. The Council has focussed its submissions on the costs associated with parts (c) and (d), which seek information about the breakdown of spending for each project within the Council's Capital Programme.
19. The Council has explained that:
 - Each financial year it has an average of 45-60 projects that are included in the Capital Programme, and these parts of the request therefore relates to an estimated 230 individual projects.

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/#aggregate>

- The specific information sought by these parts is not recorded centrally. As such, to analyse the funding breakdown of each project would require an extensive manual review of each project's archived records to verify with accuracy the proportion of Council and external funding.
- It has consulted with an officer most familiar with the subject matter and how recorded information is held (the Head of Capital Works), who has confirmed the required steps that would need to be undertaken. These steps include research within the project file on the Directorate's drive, emails relating to the project, and the archived data held by the Procurement and Capital Finance team. This manual review would take approximately 1.5 hours per project. This time estimate does not include the steps taken to access the records, or to collate the requested information (such as in a table).

The Commissioner's conclusion

20. The Commissioner has considered the request, in conjunction with the Council's position, and accepts that the request is in fact four individual requests contained within a single item of correspondence.
21. As noted in paragraph 14 of this decision, the Council is entitled to aggregate the costs of these requests for the purposes of section 12(1).
22. If the total cost of complying with these requests would exceed the appropriate limit, the Council is entitled to apply section 12(1) and not comply with them.
23. In respect of the Council's arguments, Commissioner recognises that parts (c) and (d) seek financial information about 230 individual projects. To collate the sought information for these parts alone, a Council officer familiar with their content would need to manually review the records for each project. The Commissioner accepts that this alone would take approximately 1.5 hours for each project.
24. Having considered this, the Commissioner accepts that compliance with parts (c) and (d) alone would require approximately 345 hours of officer time alone to identify the requested information. This is significantly in excess of the appropriate limit of £450, or 18 hours of staff time.
25. As parts (c) and (d) of the request alone would engage section 12(1) of FOIA, the Commissioner must conclude that the request in full will engage section 12(1), and that the Council is not obliged to comply with it.
26. When section 12(1) is engaged the Commissioner will typically consider whether a public authority can provide appropriate advice and

assistance to the requester (under the duty to do so at section 16 of FOIA), so that they may refine the request to within the appropriate limit.

27. In the circumstances of this case, the Commissioner recognises that the Council has already attempted to provide some information within the appropriate limit; namely some of that sought by parts (a) and (b). The Commissioner also recognises that the Council has sought to direct the complainant to information already in the public domain (in respect of parts (a) and (b)), as well as provide a breakdown in spend per region (in respect of parts (c) and (d)).
28. The Commissioner also recognises that in respect of parts (c) and (d) there is no effective way to refine these parts. This is because parts (c) and (d) seek financial information that can only be collated through the steps noted above. Even should the Council reduce the timescale of these parts to one financial year (with 45-60 individual projects), this would still exceed the appropriate limit of £450, or 18 hours of staff time. In such a scenario, the Commissioner recognises that there is no meaningful advice and assistance that the Council can offer to refine these parts.
29. Having considered the above, the Commissioner is satisfied that the Council has provided that advice and assistance as is reasonable in the circumstances, and that it has therefore complied with section 16.
30. As the Council is entitled to apply section 12(1) of FOIA to the request in full, the Commissioner has not considered it necessary to consider its application of section 21 to some of the requested information.

Other matters

31. The Commissioner reminds the Council of the importance of carefully reviewing a request before responding under FOIA.
32. In situations where a request, or requests, seek a significant volume of information, the Council should ensure that it addresses this first. This action will inform it how to proceed under the FOIA, including what advice and assistance may be appropriate under section 16.
33. The Commissioner also reminds the Council that in situations where section 12(1) is found to be engaged, a public authority does not need to proceed further and consider whether any of the requested information falls under an exemption contained in Part II of FOIA (e.g., section 21).

Right of appeal

34. 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

35. 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.
36. 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
Water Lane
Wilmslow
Cheshire
SK9 5AF