

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 October 2024

Public Authority: Guildford Borough Council
Address: Millmead House
Millmead
Guildford
GU2 4BBX

Decision (including any steps ordered)

1. The complainant requested a range of information relating to a specific councillor. Guildford Borough Council (the "Council") relied on section 12 of FOIA (cost of compliance) to refuse the request.
2. The Commissioner's decision is that the Council has properly relied on section 12(1) of FOIA for the reasons set out in this notice. He also finds that the Council complied with its advice and assistance obligations in accordance with section 16 of FOIA.
3. No steps are required as a result of this notice.

Request and response

4. On 4 February 2024 the complainant wrote to Guildford Borough Council (the "Council") and requested the following information:

"I understand [redacted] has left the Council/ is no longer a Councillor and he was required to return his IT and telecommunications equipment to GBC. I am writing to make a Freedom of Information (FOI) request under the provisions of the Freedom of Information Act 2000. My request pertains to obtaining all communications on record involving [redacted] including telecommunications records between January 2023 and July 2023. I request the following information:

1. Copies of all emails, letters, memos, and any other written communications involving the specified council worker, whether sent or received by them.
 2. Any internal or external communications, including but not limited to correspondence with GBC employees, members of the public, contractors, or third-party organizations, involving [redacted].
 3. Details of any meetings, including minutes, where [redacted] was in attendance or mentioned.
 4. Any reports, documents, or records created or endorsed by [redacted] in the course of his duties.
 5. Telecommunications records, including call logs, text messages, and other communications data, for [redacted] during the relevant period."
5. The Council responded on 6 February 2024. It confirmed that the individual referred to in the request did not send any emails during the identified timeframe. In relation to the outstanding information the Council confirmed that this was held but that it identified over 2000 emails and that the time it would take to comply with the request would exceed the appropriate limit defined in section 12 of the FOIA. The Council provided the complainant with suggestions for refining the scope of their request to accommodate it within the appropriate limit.
6. In subsequent correspondence the complainant suggested possible ways that the Council might reduce the scope of the request, however, no agreement was reached between the parties as to a refined form of the request.
7. On 6 May the complainant asked the Council to carry out an internal review. The Council has confirmed that it did not carry out a formal internal review.

Scope of the case

8. On 6 May 2024 the complainant contacted the Commissioner to complain about the way their request for information had been handled.
9. The Commissioner has considered whether the Council was entitled to refuse the request on the basis of section 12 of the FOIA.

Reasons for decision

Section 12 – cost of compliance

10. Section 12(1) of the 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. For public authorities such as the Council the appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 at £450 for public authorities.
12. 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.
13. 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.
14. 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.
15. 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.

16. The Council explained to the Commissioner that it holds the requested information but as the ex-Councillor identified no longer had an email account on the its network, this would involve carrying out a search using the Council's email archive service "Cryoserver".
17. The Council explained that, following an initial sampling search, it established that there had been a total of 2,209 emails during this period. The Council confirmed that it would take roughly two minutes to upload and process each email and render it into a format for communication; the total time taken to carry out these actions, therefore, would amount to 4,418 minutes. Based on this calculation the Council concluded that cost of complying with the request would exceed the appropriate limit.
18. In reaching his conclusions the Commissioner has noted that the request largely identifies information which would have been held on a specific email account and / or personal drive which appears to have been deactivated for several months at the time of the request. The Council's explanation of the timeframe needed to retrieve and extract the requested information using its Cryoserver archive service appears to tally with this fact.
19. On the basis of the Council's explanation of the work that it would need to carry out to retrieve and extract the information, the Commissioner is satisfied that complying with the request would exceed the appropriate limit and that the Council was entitled to rely on section 12 to refuse the request.

Section 16 – duty to provide advice and assistance

20. Section 16 of the FOIA requires public authorities to provide reasonable advice and assistance to those making, or wishing to make, information requests. The FOIA defines specific scenarios where the duty to provide advice and assistance is triggered. One such scenario are instances where an authority applies section 12.
21. 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 rare cases, it will be appropriate for the public authority to explain to the requester why their request cannot be meaningfully refined.
22. The Council confirmed that its initial response to the complainant of 6 February 2024 advised them to narrow the scope of their request to bring it within the confines of the appropriate limit.

23. The Council has stated that the complainant responded on the same date and asked it to limit the request to communications between the ex-Councillor and the Council including other Councillors, any contractors / third party suppliers.
24. The Council confirmed that it responded to this revised request on 29 February 2024 and sent the complainant copies of emails (including attachments) and letters sent to the ex-Councillor from council employees/Councillors (i.e., from email addresses within the "Guildford.gov.uk" domain and restricted to emails where the ex-Councillor was the sole recipient) during the period between 1 January and 9 May 2023 (the date on which the individual ceased being a councillor). The Council explained that it also provided weblinks to details of meetings, including agendas and minutes, where the ex-Councillor was in attendance or mentioned.
25. The Council has stated that on 2 March 2024 the complainant responded stating that they were not happy with the information provided and asking for an internal review to be carried out.
26. Further correspondence between the complainant and the Council followed but, ultimately, despite some information being provided, an agreement about the form that a refined request would take was not reached. The main reason for this appears to be the limited usefulness of the Cryoserver archive system. For example, the Council has confirmed that the complainant's suggestion to exclude any regular generic sets of emails (emails sent out to the entire Council) would not have been possible as Cryoserver does not have the technical functionality to do this.
27. Having considered the available evidence the Commissioner considers that the Council provided the complainant with levels of advice and assistance that were reasonable in the circumstances. Whilst it did not prove possible in this case for a manageable version of the request to be formulated, this does not negate the advice and assistance provided by the Council and the attempts made to help the requester. As confirmed in the Commissioner's guidance, this also does not undermine the application of section 12¹.

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/>

28. The Commissioner is satisfied that the Council complied with section 16 when dealing with the request.

Other matters

29. Although they do not form part of this decision notice the Commissioner would like to note the following matters of concern.

Section 45 code of practice – internal reviews

30. The Code of Practice issued under section 45 of the FOIA (the "Code") provides recommendations for public authorities as to good practice in the handling of requests.
31. The Code recommends that authorities should offer to carry out internal reviews and that reviews should be independent, thorough and normally completed within 20 working days².
32. In this case, whilst the Council engaged with the complainant's concerns about the handling of the request as part of the process of providing advice and assistance. it has acknowledged that it did not carry out a formal internal review.
33. The Commissioner recognises that it might sometimes be difficult to separate review requests from ongoing correspondence, however, he considers that providing a distinct, formal review can be beneficial to all parties and can potentially avert the need for a referral to the Commissioner.

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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

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.

Christopher Williams
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