

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 December 2024

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

Decision (including any steps ordered)

1. The complainant has requested all correspondence between Cherwell District Council ("the council") and the ICO, for the previous calendar year. The council refused to provide the information, relying upon section 14(1) (vexatious requests) on the grounds of burden, and section 12 (appropriate limit).
2. The Commissioner's decision is that the council is entitled to refuse to comply with the request under section 12.
 - The Commissioner requires the council to provide additional advice and assistance to the complainant as required by section 16(1) of FOIA.
3. 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 the Act and may be dealt with as a contempt of court.

Request and response

4. On 15 May 2024, the complainant wrote to the council and requested information in the following terms:

“Please provide copies of all communications, written and email, exchanged between Cherwell District Council and the Information Commissioners Office (ICO) for the past 12 months.”
5. The council responded on 10 June 2024. It cited sections 40(2) (personal data), s.31 (investigations), and s.42(1) (legal professional privilege) of FOIA to refuse the request.
6. Following an internal review, the council amended its position to apply section 12 (appropriate limit) and section 14(1) (vexatious request) to refuse the request.

Scope of the case

7. The complainant contacted the Commissioner on 10 July 2024 to complain about the way their request for information had been handled.
8. The Commissioner considers that the scope of his investigation is to consider whether the council is entitled to rely upon section 12 and/or s.14(1) to refuse to comply with the request.

Reasons for decision

9. The council said that it had applied section 14(1) to refuse the request, or section 12 in the alternative.
10. The Commissioner’s guidance on the application of section 14 of FOIA to a single burdensome request¹ notes that: “...the [Code of Practice](#) issued by the Cabinet Office under section 45 of FOIA makes it clear that you should always consider section 12 first in these circumstances (see paragraph 7.14 of the code).

¹ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/section-14-dealing-with-vexatious-requests/how-do-we-deal-with-a-single-burdensome-request/>

11. The Commissioner will therefore firstly consider whether the council is correct to apply section 12 to withhold the information from disclosure.

Section 12 – cost of compliance

12. 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”).
13. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (“the Fees Regulations”). This is set at £450 for local authorities.
14. 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.
15. 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.
16. 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.
17. Section 12 is not subject to a public interest test; if complying with the request would exceed the cost limit, there is no requirement to consider whether there is a public interest in the disclosure of the information.
18. The council said that the request covers a broad range of communication. It covers all communications between it and the ICO, which could include (but is not limited to) case work and complaints relating to FOI and EIR requests, Data protection complaints and queries, data protection fees for data controllers, newsletters and meeting requests.

19. It said that it had determined that information could be held in a number of places, including:
 - a. Its Microsoft Outlook system
 - b. It's previous file management system
 - c. Microsoft Teams
 - d. It's archive system
 - e. It's case management system
 - f. An IT system wide search using search terms.

20. It said that its IT department conducted a search of its Outlook systems for point a) above. It clarified that IT department used a search engine called eDiscovery. They used the search terms of from and to any email address ending in @ico.gov.uk. The search period was set to 1 May 2023-14 May 2024. This search resulted in the following:
 - Indexed – 7,631 items – 7.35 GB
 - Unindexed- 235,814 – 340.58 GB

21. It said that it had taken 1 hour to conduct the search, and that it estimated that it would take a further 6 hours to download the indexed files identified.

22. It said that it had estimated that it would take one member of staff one minute to review each item to check it for relevance. It therefore calculated that it would take a staff member 4057 hours to review the files.

23. It said that its estimate does not include further investigations into the systems and file management locations listed above in points b)-f). It considered that conducting these searches would add a substantial amount of further time to process the request, and that this would significantly burden staff resources.

The Commissioner's conclusions

24. The Commissioner has considered the above arguments. In the first instance, he has discounted the time which the council has taken into account for downloading information on its IT system. This is on the basis this is not staff time per se. Downloading files does not require an officer to sit and watch the process for the entire period of time. Computing time does not equate to time spent by staff searching for, or retrieving, relevant documents.

25. Secondly, he considers that the estimate of one item per minute to review the information for relevance has been set too high. The request was for all correspondence between the council and the ICO over the

given period. It would initially only require a simple check to determine whether the item falls within the scope of the request, and the Commissioner considers that a brief glimpse of the vast majority of correspondence would be enough to identify whether it is relevant to the request or not.

26. He nevertheless considers that the council has demonstrated that it holds a voluminous number of communications with the ICO, and that it would take it a significant amount of time in order to carry out the tasks necessary in order to fully respond to the request.
27. The Commissioner considers that an average of 10 seconds per item would allow for an officer to determine whether an item falls within the scope of the request or not.
28. With this in mind, the calculation would be as follows:
 - 243,445 items multiplied by 10 seconds per item = 2,434,450 seconds.
 - 2,434,450 divided by 60 = 40,574 minutes
 - 60,681 divided by 60 = 676 hours
29. 676 hours would therefore still greatly exceed the time limit of 18 hours set by the Fees Regulations.
30. Even limiting the items to the indexed items alone would amount to 21 hours, and this would not locate 'all' communications, as per the scope of the complainant's request.
31. The Commissioner has also taken into account that carrying out the other necessary search areas which the council has highlighted would add additional time to its estimate.
32. The Commissioner has therefore decided that the council's estimate was reasonably reached based upon the numbers of items it has located, and based upon the fact that its calculations only relate to one of the areas from the list of possible locations where information may be held.
33. The Commissioner has therefore decided that the council was able to apply section 12(1) to refuse to respond to the request further.

Section 14(1) – vexatious requests

34. As the Commissioner has decided that the council was correct to apply section 12 of FOIA to the request he has not gone on to consider the application of section 14(1).

Section 16(1) – duty to provide advice and assistance

35. Section 16(1) 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.
36. 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.
37. The council confirmed that it has provided information to the complainant to aid in obtaining information falling within the scope of the request. It said that in a letter to the complainant dated 10 June 2024, it informed the complainant that ICO decision notices are published on the ICO's website, and can be searched according to authority and date. ICO newsletters are also published on the website. It also gave weblinks to two relevant decision notices relating to the council which fall within the time period specified.
38. The Commissioner considers that the council should have provided further advice that narrowing the period of time which the request covers would reduce the number of items caught within it, and could potentially bring the request within the appropriate limit.
39. The Commissioner therefore considers that the council failed to provide adequate advice and assistance as regards its duty under section 16(1) of FOIA.

Right of appeal

40. 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

41. 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.
42. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Ian Walley
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