

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 October 2014

Public Authority: Derby City Council
Address: The Council House
Corporation Street
Derby
DE1 2FS

Decision (including any steps ordered)

1. The complainant has requested information about seizures on illicit alcohol and tobacco. Derby City Council (the council) provided some information but refused the remainder relying on section 12 of the FOIA. During the Commissioner's investigation, the council provided some further information but maintained that to provide the rest would exceed the appropriate limit.
2. The Commissioner's decision is that the council has correctly relied on section 12 of the FOIA not to provide this remaining information.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 21 March 2014, the complainant wrote to the council and requested information in the following terms:
 - 1) *"How many events leading to seizures, on separate visits to premises, of illicit tobacco products were made within Derby City in 2011 by Derby City Council Trading Standards, or in which Derby City Council Trading Standards assisted other enforcement agencies?"*
 - 2) *How many events leading to seizures, on separate visits to premises, of illicit tobacco products were made within Derby City in 2012 by Derby City Council Trading Standards, or in which Derby*

City Council Trading Standards assisted other enforcement agencies?

- 3) How many events leading to seizures, on separate visits to premises, of illicit tobacco products were made within Derby City in 2013 by Derby City Council Trading Standards, or in which Derby City Council Trading Standards assisted other enforcement agencies?*
 - 4) For each year above, how many prosecutions were commenced by Derby City Council in respect of the seizures, and what was the result of these prosecutions?*
 - 5) How many events leading to seizures, on separate visits to premises, of illicit alcohol products were made within Derby City Council Trading Standards, or in which Derby City Council Trading Standards assisted other enforcement agencies.*
 - 6) How many events leading to seizures, on separate visits to premises, of illicit alcohol products were made within Derby City Council 2012 by Derby City Council Trading Standards, or in which Derby City Council Trading Standards assisted other enforcement agencies?*
 - 7) How many events leading to seizures, on separate visits to premises, of illicit alcohol products were made within Derby City Council Trading Standards, or in which Derby City Council Trading Standards assisted other enforcement agencies?*
 - 8) For each year above, in respect of seizures of illicit alcohol products, how many prosecutions were commenced by Derby City Council in respect of the seizures, and what was the result of these prosecutions?*
 - 9) In respect of illicit alcohol products seized from licenced premises for each year above, how many licencing reviews were made, and what was the result?*
 - 10) In respect of the licenced premises reviewed for each year above, how many of these premises are still licensed to sell alcohol, regardless of who holds the license."*
5. The council asked the complainant for clarification on 17 April 2014 in respect of questions 1 to 3 and 6 to 7, asking what is meant by the word "event":
 6. The complainant responded on the same day explaining:

"My use of the word 'event' is intended to cover separate visits for the most part, but if a shop was visited, illicit tobacco found, and a further visit was made to other premises as a direct result, where more illicit tobacco was recovered then I would class that as one 'event', but two (or more) seizures."

7. The council provided a response on the 22 April 2014. It provided a link¹ to the information requested for question 10 and refused questions 1 to 9, advising that to provide this information would exceed the appropriate limit, as per section 12 of the FOIA.
8. On the 23 April 2014 the complainant requested an internal review as he was not satisfied that:
 - The council had refused to provide the information to questions 1 to 9: and
 - The link provided in response to question 10 does not provide the ability to obtain the information he requires as he cannot ascertain which premises have been reviewed but are still trading.
9. The council provided its internal review response on the 22 May 2014. It maintained its position, that to provide any further information would exceed the appropriate limit.

Scope of the case

10. The complainant contacted the Commissioner on 29 May 2014 to complain about the way his request for information had been handled as he considers that the information could be provided within the appropriate limits.
 11. During the Commissioner's initial investigations, the council provided further information to the complainant, on 26 August 2014, in relation to questions 9 and 10.
 12. The Commissioner asked the complainant to let him know if he was not satisfied with the information now provided for questions 9 and 10.
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¹ <http://cmis.derby.gov.uk/cmis5/Home.aspx>

13. As the complainant has not stated he is not satisfied with question 9 and 10, the Commissioner considers that the scope of the case is to determine whether section 12 of the FOIA is engaged for questions 1 to 8 of the request.

Reasons for decision

Section 12 of the FOIA

14. Section 12 of FOIA states that a public authority does not have to comply with a request for information if it estimates that the cost of complying with the request would exceed the appropriate limit.
15. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations") sets the appropriate limit at £450 for the council.
16. A public authority can charge £25 per hour of staff time for work undertaken to comply with a request which, in this case, amounts to 18 hours work in accordance with the appropriate limit set out above. If a public authority estimates that complying with a request may cost more than the cost limit, it can consider the time taken in:
 - a) Determining whether it holds the information;
 - b) Locating the information, or a document which may contain the information;
 - c) Retrieving the information, or a document which may contain the information; and
 - d) Extracting the information from a document containing it.
17. In determining whether the council has correctly applied section 12 of the FOIA in this case, the Commissioner has considered the council's rationale it provided to the Commissioner during his investigation.
18. The council has told the Commissioner that the information requested by the complainant will have been recorded by its officers in the course of their duties. This is recorded on the department's database, but the difficulty is retrieving the information because of how it is recorded.
19. The council has explained to the Commissioner that the information is not readily accessible in the format requested. It stated that all file records that might contain appropriate data would need to be individually checked.

20. The council has told the Commissioner that even though this information is held in electronic format on its database, it contains 1051 separate records that may contain data on illicit tobacco seizures and each record may have potentially multiple entries in its respective action diary. This is because the illicit tobacco is often found in conjunction with other illicit/ counterfeit goods during the course of an 'event'.
21. The council further explained to the Commissioner that other breaches of Trading Standards legislation may also be encountered during each 'event'. So even though each 'event' is recorded and assigned a generic code on the database. It states that it is not practical to code each and every outcome of an 'event' because there are often multiple outcomes.
22. On this basis, the council has told the Commissioner that it is not technically possible to run accurate statistical reports from its database on seizures of illicit alcohol or tobacco alone. The only way the council says it can provide accurate data for the request would be to manually check each record and study the text of the record's action diary, which the council has determined would take on average 3 to 5 minutes per record.
23. The council has confirmed to the Commissioner that it undertook a sampling exercise to determine the time it takes to check a record. It also noted that individual records varied widely in terms of length and complexity which explains the 3 to 5 minute range of time to check each record.
24. The council has also told the Commissioner that several hours of officer time was spent in researching and designing an appropriate methodology in order for it to see if it could respond to the request but has not factored this time into its estimates.
25. On this basis, the time it would take the council to extract the information to give an accurate response would be 1051 records x 3 to 5 minutes per record = between 52.55 and 87.6 hours of officer time.
26. The complainant has told the Commissioner that he used to work for the council's Trading Standards and that he considers the council should be able to provide the information within the appropriate limit. He advised that for question 1 to 3:

"Every premises visit is recorded on the computer system in trading standard together with the reason for the visit and the result. Illicit tobacco and tobacco products in general are included in the reasons, as are the results of that visit. A routine computer search should answer this question in minutes, assuming that the records are correctly recorded."

27. The council's response to the Commissioner on this is that its database works by recording and storing information against premises located in the city. The information is recorded against the premises using different programmes within the database itself.
28. The council explained that Trading Standards uses several programmes to record its activities. These being Enforcement visits, Complaints, Samples and Service Requests.
29. Each of these programmes has an 'action diary' which is used by its officers to record their actions depending on the type of activity that took place. The programme has a dictionary of codes that officers use which assist in producing the reports. However, these codes do not cover every type of activity such as illicit tobacco and / or alcohol. The officer therefore chooses the code which is closest to the type of action undertaken such as "Forgery and Counterfeiting", or they can enter the action as free text.
30. The council says that due to there not being codes specifically for illicit tobacco or alcohol on its system, then to be able to produce accurate and reliable data for the request, it would have to interrogate its system. This does narrow down the search to 1051 records, and as explained before, each of these records would need to be opened and the officer's comments read to determine if the case related specifically to illicit tobacco or alcohol. The council has stated that this would also be the case when working with other enforcement agencies.
31. For question 4 the complainant considers:

"Trading Standards, the investigating and enforcement body for such prosecutions is a small department. Each file submitted for consideration of prosecution will be routed through senior management before being passed to the council's legal department. Each file so presented will be a matter of record within Trading Standards, recorded on computer, and probably manually also. Again, a matter of minutes to count the numbers, which will be quite small in any event, I'm sure. But if this is too great a challenge for Trading Standards, the council's legal department will keep records of prosecutions and their results. The combined efforts of these two departments should not exceed an hour or two to answer all of these requests, let alone one."
32. The council's response to the Commissioner on this statement, from the complainant, is that part 4 of the request was made in relation to question 1 to 3 of the request asking how prosecutions were commenced in respect of the seizures, and the results of these

prosecutions. The word 'commenced' was interpreted to include investigations trading standards had commenced but did not necessarily result in a prosecution. And as explained in response to parts 1 to 3 of the request it is unable to provide the information in the appropriate limit.

33. The council has stated that it can respond in isolation in that the council has not taken a prosecution regarding illicit tobacco during the time periods specified, but it is unable to provide the information on how many prosecutions were commenced, within the appropriate limit.

34. For questions 5, 6 and 7 the complainant considers:

"...such visits will be recorded in the same fashion as council only visits. The fact that other agencies were involved will complicate the issue slightly, but this should still be on record, and thus capable of retrieval."

35. The council has again advised the Commissioner that its response to questions 1 – 3 is why it is unable to provide this information within the appropriate limit of section 12 of the FOIA.

36. And for question 8 the complainant considers:

"The Council's Licensing Department will have records of any prosecutions, together with the results, as will the council's legal department."

37. The council's response to the Commissioner on this statement is that question 8 of the request was made in relation to question 5 to 7 of the request, asking how prosecutions were commenced in respect of the seizures, and the results of these prosecutions. The word 'commenced' was interpreted to include investigations trading standards had commenced but did not necessarily result in a prosecution. And again, as explained in response to parts 1 to 3 of the request it is unable to provide the information on how many were commenced, within the appropriate limit.

38. It is however able to answer this question in isolation in that the council did bring one prosecution for illicit alcohol in 2013.

39. On considering the information provided by both parties, the Commissioner sees why the complainant believes that the council could provide the information within the appropriate limit.

40. However the council has explained that its system is not set up with specific codes for alcohol or tobacco and so as a manual task would need to be performed in order to extract the information from the record

notes. This is why it would take over the appropriate limit to provide the information for questions 1 to 8 in this case.

41. With this, the Commissioner's decision is that the council has correctly applied section 12 of the FOIA in this case.

Right of appeal

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: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: 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.

Signed

Andrew White
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