

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 November 2014

Public Authority: Cardiff Council

Address: County Hall
Atlantic Wharf
Cardiff
CF10 4UW

Decision (including any steps ordered)

1. The complainant requested various items of information from Cardiff Council in respect of Council Tax and the inspection of properties where a Class C exemption has been applied for. The Council informed the complainant that it did not hold relevant information falling within the scope of his request by virtue of section 1(1) of the FOIA and the Commissioner issued a decision notice (case reference FS50486424) accepting that on the balance of probabilities, no information was held. The complainant appealed to the First-tier Tribunal (Information Rights) which disagreed, and ruled on 24 January 2014 [EA/2013/0183] that the Council must re-consider the request for information and either communicate the information requested to him or serve a refusal notice under section 17 of the FOIA. The Council reconsidered the request and subsequently relied on section 12 of the FOIA to refuse it.
2. The Commissioner's decision is that Cardiff Council was correct to rely on section 12 of the FOIA.
3. The Commissioner does not require the Council to take any steps.

Request and response

4. On 8 June 2012, the complainant wrote to Cardiff Council ('the Council') requesting the following information in respect of Council Tax and the inspection of properties where a Class C exemption has been applied for:

"Question 3. If [named Council official's] response is based upon a written policy, then under the terms of the Freedom of Information Act, please provide a copy of that written policy..."

Question 4. If [named Council official's] response is based upon a "V]erbal and unwritten policy, then ... please confirm the date the policy came into place, please provide the minutes of the meeting at which the policy was agreed, and please provide copies of all e-mail and letters which put in writing any part of this policy – both those that have been sent internal to the Council, and those that have been sent to members of the public.

Question 7. "If the requirement for my current residential address (which you have confirmed that I am not under obligation by statute to provide) is [a] requirement of Council policy, ... please provide a copy of that policy..."

Question 8. If this is yet another verbal and unwritten policy, ... please confirm on what date the policy came into place, please provide the minutes of the meeting at which the policy was introduced, and please provide copies of all e-mails and letters that put in writing any part of this policy – both those that have been sent internal to the Council, and those that have been sent to members of the public.

...In respect of the requirement to visit in accordance with your verbal polices, I would ask;

Question 9. ...please confirm on what date the policy came into place, please provide the minutes of the meeting at which the policy was introduced, and please provide copies of all e-mails and letters that put in writing any part of this policy – both those that have been sent internal to the Council, and those that have been sent to members of the public.

Question 10. ...please provide the minutes of any meeting at which the policy has been reviewed, and the changes in the policy that resulted."

5. The Council responded on 3 August 2012. It stated that:

...following a search of our paper and electronic records, I have established that the information you requested is not held by the Council."

6. Following an internal review the Council wrote to the complainant on 12 October 2012. It stated that:

"I can confirm that ...no information is held in relation to your request...

7. *...The Council do not have or hold any policies or indeed any documentation such as procedures or minutes relating to your request ...in relation to any Council Tax claims of unoccupied and unfurnished exemptions, we do not have formal Council [P]olicy or guidance which is required to be followed."*
8. The Commissioner issued a decision notice under reference number FS50472358 on 31 July 2013, confirming that in his view, the Council had complied with its obligations under section 1(1) of the FOIA.
9. The complainant appealed to the First-tier Tribunal (Information Rights), which ruled on 27 January 2014 that it is likely that the Council does hold some information relevant to the request and ordered it to reconsider the request, and either provide the information or issue a valid refusal notice under section 17 of the FOIA.
10. The Council issued its amended response to the complainant on 18 February 2014. The response refused the request on the basis that the cost of compliance would exceed the appropriate limit and therefore cited section 12 of the FOIA. The Council also confirmed that although it was mainly relying on section 12 of the FOIA, it also considered that section 14(1) was engaged.
11. The Council subsequently confirmed to the complainant that it did not require the opportunity to undertake an internal review of its amended response, and that he should submit a complaint to the Commissioner if he was dissatisfied with it.

Scope of the case

12. The complainant contacted the Commissioner on 4 May 2014 to complain about the way his request for information had been handled. The complainant was not satisfied that the Council had provided a 'reasonable estimate of costs' in its amended response. The complainant also disagreed with the Council citing section 14 of the FOIA and explained to the Commissioner that the volume of correspondence

with the Council over this issue was purely to tease out the details of the policy referred to February 2012.

13. As stated in paragraph 2 of this notice, the Commissioner considers that the Council correctly relied on section 12 of the FOIA, therefore he has not gone on to consider the Council's reliance on section 14(1).

Reasons for decision

Section 12 – cost of compliance exceeds the appropriate limit

14. Section 12 of the FOIA states that:

"Section 1(1) does not oblige a public authority to comply with a request for information if the authority 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 'Regulations') sets the appropriate limit at £450 for the public authority in question. Under these Regulations, a public authority can charge a maximum of £25 per hour for work undertaken to comply with a request. This equates to 18 hours work in accordance with the appropriate limit set out above.
16. A public authority is only required to provide a reasonable estimate or breakdown of costs, and in putting together its estimate it can take the following processes into consideration:
 - (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. The Council confirmed to the complainant that whilst it is likely that correspondence may be held in relation to Class C Exemptions within its records, to comply with his request would exceed the appropriate limit.
18. In terms of the Council's internal records, the Commissioner notes that at the time the Council provided its original response, it undertook a search of its records which confirmed that it did not hold a written policy or any minutes of meetings relevant to the request. The Council also contacted all relevant officers within the Council Tax area who undertook an electronic and paper search of their records which revealed no emails

or other correspondence relevant to the request. This was confirmed in the Commissioner's previous decision notice FS50486424.

19. With regard to correspondence sent to members of the public, the Council informed the complainant that it holds 150,000 live Council Tax accounts with records for each account held on two separate systems, and that it had searched its records under the following terms: Class C exemption, Class C, Class C guidance, Class C Policy, Class C procedure and Class C checklist.
20. The Council also informed the complainant that it had undertaken a sampling exercise searching through 10 Council Tax accounts within both systems. The exercise took a total of 20 minutes to check the 10 account records and based on this, the Council estimated that an average of 30 account records could be checked per hour, which equates to 5000 hours in total.
21. The Council's amended response also confirmed that this estimate did not include archived account records.
22. In his assessment of the Council's reliance on section 12 of the FOIA, the Commissioner contacted the Council for further information in respect of the estimate provided. He asked the Council to confirm the dates its live records cover, to provide a print of the relevant systems and details of the process or processes involved in checking the accounts of both live and archived records.
23. The Council confirmed that its live records go back as far as 1 April 1993 when the Council Tax was first introduced if the same individual has been continually liable for the charge since that date.
24. The Council also provided the Commissioner with five 'screen shots' of the relevant databases, four from the iworld database and one from the Comino.
25. The first screen shot was an image from the '*iworld account summary*' which gives an overview of the current position regarding the council tax account. The Council explained that this is usually the starting point when an account is being reviewed.
26. The next screen is the '*iworld liability and reductions*' which provides details of the current liable parties along with information relating to any reductions, namely relevant exemptions awarded to that account.
27. Following on from this, the Commissioner viewed the screen-shot for the '*iworld property information*', which contains details of the banding of the property, any inspections of the property and exemptions awarded for the current and previous accounts.

28. The Council explained that the '*iworld notebook*' provides details of specific notes that have been made by staff in relation to the account. It further informed the Commissioner that although the one provided only contained two entries, accounts can have many more than this and there can also be more than one notebook chapter on an account to look through.
29. The final screen-shot was of the 'Comino account' system. The Council explained that this shows any documents including letters, emails and memos, that the Council Tax Team has received in relation to the account. A list of the different documents is shown on the left of the screen and once this is selected the document will open on the right of the screen. One of the options is for a Council Tax Discount/Exemption query.
30. The Commissioner notes that the Council's estimate of 30 accounts per hour gives an average of two minutes per live account. He has considered the screen shots provided by the Council, with a view to assessing whether the two minutes per account is, in his opinion, reasonable. Having viewed the five screen shots, he has concluded that the estimate provided by the Council is reasonable and that it was correct to rely on section 12 of the FOIA in its amended response to the complainant. As the Commissioner is satisfied that section 12 of the FOIA is engaged, he has not gone on to consider its reliance on section 14(1). The Commissioner also considers that as the estimate is so far in excess of the appropriate limit, any attempt to refine the request to bring it within the cost limit would prove meaningless.

Right of appeal

31. 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

32. 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.
33. 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

Anne Jones
Assistant Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF