

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 February 2016

Public Authority: Nottingham City Council
Address: The Guildhall
Nottingham
Nottinghamshire
NG1 4BT

Decision (including any steps ordered)

1. The complainant has made a request to Nottingham City Council ("the council") for statistics about Penalty Charge Notices ("PCNs") issued as a result of a specific traffic camera, along with information about the council's enforcement powers. The council confirmed that some of the requested information was not held, and refused to comply with parts of the request under section 12(1) of the Freedom of Information Act ("the FOIA").
2. The Commissioner's decision is that the council has correctly applied section 12(1) to refuse parts 1b, c and d of the request, but has failed to comply with the requirement of section 16(1) to provide advice and assistance. In respect of part 2 of the request the Commissioner has concluded that the requested information is not held.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - In respect of part 1 of the request, provide the complainant with appropriate advice and assistance as to what information can be provided within the appropriate limit.
4. The public authority must take these steps within 35 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

5. On 24 March 2015 the complainant requested information of the following description:
1. *The number of cars that have received a PCN for the bus lane in the area that I was targeted - Derby Road Inbound Bus Lane near triumph Road.*
 - a) *The number of PCN's issued in total and why.*
 - b) *The number of PCN's challenged and why.*
 - c) *The number of successful challenges and why.*
 - d) *The number of failed challenges and why.*
 2. *Also could you send me the copy of your application to set up and operate the civil enforcement of bus lanes in and around Nottinghamshire and the guidelines which you agreed to adhere to in obtaining this capability.*
5. The council requested clarification (about the timescale that part 1 sought information for) on 30 April 2015. The complainant provided this on 2 May 2015 (by confirming that the information was sought for entirety of the time that the relevant traffic camera had been in operation), and also altered the request by specifying that the timescale should extend until 2 May 2015.
6. The council responded on 20 May 2015. It provided held information for part 1a, refused parts 1b, c, and d under section 12(1), and confirmed that no information was held for part 2 (but provided wider contextual information).
7. The complainant asked for the council to undertaken an internal review on 1 June 2015. The council provided the outcome of this on 30 June 2015. It maintained its original response.

Scope of the case

8. The complainant contacted the Commissioner on 6 July 2015 to contest the council's response. The Commissioner considers the scope of this case to be the determination of whether the council is entitled to rely upon section 12(1) as a basis for refusing to comply with parts 1b, c and d of the request, and whether the council is correct when it says that no recorded information is held in respect of part 2 of the request.

Reasons for decision

Section 12(1) – Calculating the cost of compliance

9. Section 12(1) provides 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.

10. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004¹ ("the Regulations") sets the appropriate limit at £450 for the public authority in question. Under the Regulations, a public authority may 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.

11. 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:

- determining whether it holds the information;
- locating the information, or a document which may contain the information;
- retrieving the information, or a document which may contain the information; and
- extracting the information from a document containing it.

Is the exclusion engaged?

12. The council has informed the Commissioner that any and all relevant information to parts 1b, c and d of the request would be held within its 'Debt Management System' ("the DMS"). However the recording processes used within the DMS mean that the specific information sought by the complainant cannot be easily located, retrieved, and extracted.

13. The council has identified 2089 PCNs that derive from the timescale specified by the complainant. The council has detailed that to determine

¹ <http://www.legislation.gov.uk/uksi/2004/3244/contents/made>

whether each PCN was challenged, the grounds for this, and whether this was successful or not, it would be required to individually check the status of each PCN in order to determine whether any representations had been received by the affected party. Whilst the council does have the ability to identify the number of PCNS that were 'cancelled', such cancellations can be a result of different factors besides a challenge, and the provision of this number would not in itself address the request.

14. The council further considers that an officer would be required to compile the information in the form of a spreadsheet before analysing the content to provide the statistics sought by the complainant.
15. The council has confirmed that a sampling exercise has been carried out, in which it was able to determine and locate the relevant information for 8 PCNS. This took an officer a total of 32 minutes, at an average of 4 minutes per PCN. The council therefore estimates it would take its Enforcement Team a total of 139.3 hours to consider all 2089 PCNS, not including the further time required for the retrieval and extraction of the information.
16. Having considered the above information provided by the council, the Commissioner is satisfied that compliance with parts 1b, c and d of the request in their current form would far exceed the appropriate limit. The council was therefore correct to apply section 12(1) to refuse these parts.

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

17. Section 16(1) of the FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the Section 45 Code of Practice² ("the Code") issued by the Secretary of State, it will have complied with section 16(1).
18. The Code advises that, where an authority is not obliged to comply with a request for information because, under section 12(1) and the Regulations made for that section, the cost of complying would exceed

2

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/235286/0033.pdf

the appropriate limit, it should provide the requester with reasonable advice and assistance.

19. The Commissioner's guidance states that the minimum a public authority should do in order to satisfy section 16(1) is indicate if it is able to provide any information at all within the appropriate limit. Communicating this to a complainant may avoid further and futile attempts to refine the request to bring it under the appropriate limit. If the requestor understands the way in which the estimate has been calculated to exceed the appropriate limit, it should help them decide what to do next.
20. In this case, the Commissioner has identified that the advice and assistance provided to the complainant was limited to advising him that it would not be possible to reduce the scope of the request whilst still providing meaningful information.
21. The council has since advised the Commissioner that it considers the request could be refined to within the appropriate limit by providing only the requested information for an estimated 270 PCNs. However the council maintains that this would not provide any meaningful information, as even if it could provide the estimated 270 PCNs this would only represent 12.92% of the total 2089 PCNs recorded.
22. The Commissioner has noted from its submissions on section 12(1), that the council is able to retrieve PCNs from the DMS by setting date parameters, and that it may be possible to retrieve information for a relatively short length of time. As such, it is reasonable for the Commissioner to conclude that relevant information (i.e. data derived from a smaller amount of PCNs) could be provided to the complainant with the proviso that it derives from a specific timespan. Whilst it is clear to the Commissioner that this would only disclose information for a potentially much shorter period of time than that originally sought, the Commissioner considers that advising the complainant of this possibility would have shown compliance with the Code through indicating what information could be provided within the appropriate limit of costs. However, as the council did not do this, the Commissioner must conclude that it breached the requirement of section 16(1).

Section 1(1) – What information is held

23. Section 1(1) states that any person making a request for information is entitled to be informed by the public authority whether it holds the information, and if so, to have that information communicated to them. This is subject to any exemptions or exclusions that may apply.

The complainant's request

24. In part 2 of the request the complainant has requested a copy of the council's application to implement the civil enforcement of the bus lanes within its authority, and the guidelines that it agreed to adhere to in obtaining this ability.
25. The complainant considers that the council must hold this information by virtue of the fact that it currently implements the civil enforcement of the bus lanes within its authority.

The council's position

26. In its original response and subsequent internal review outcome, the council advised the complainant that the council's application could not be located, but that it was believed this was completed in 2007. As such the council stated its position that it did not consider the information to be held.
27. In response to the Commissioner's investigation, the council has identified that it was never required to make an application to implement the civil enforcement of bus lanes, as this power was conferred on the council by the Statutory Instruments 2005 No. 2755, LOCAL GOVERNMENT, ENGLAND ROAD TRAFFIC, ENGLAND The Bus Lane Contraventions (Approved Local Authorities) (England) Order 2005. On this basis, the council maintains its position that the information is not held, but has referred the Commissioner to the wider contextual information that it has provided to the complainant in order to explain its role in this area.

The Commissioner's conclusion

28. The Commissioner must decide on the balance of probabilities whether further information is held by the council that would fall within the scope of the request.
29. Whilst it is clear that the council's original response and internal review outcome was based on the premise that an 'application' was held in the past but since lost, it has now emerged that the council was not required to submit such an application, and that its enforcement powers were conferred on the council through legislation. Having considered this, in addition to any lack of evidence to the contrary, the Commissioner must conclude that the council's response is correct and the information is not held.

Other matters

30. The complainant, in submitting their complaint to the Commissioner, has expressly stated that they consider the council is under an obligation to hold the information refused under section 12(1) in a cost effective manner so as to enable monitoring of bus lane enforcement. He has also referred the Commissioner to provisional guidance issued by the Department for Transport that relates to the monitoring of bus lane enforcement. Whilst the Commissioner has noted the complainant's view, such a matter falls outside the Commissioner's jurisdiction under section 50 of the FOIA, which does not extend to deciding how a public authority should structure its electronic records for the purposes of other legislation, policy or guidance. The Commissioner's role in this case is to determine whether the council has complied with the terms of the FOIA as it relates to the recorded information that it holds.

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

Andrew White
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