

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 January 2021

Public Authority: West Sussex County Council
Address: County Hall
West Street
Chichester
West Sussex
PO19 1RQ

Decision (including any steps ordered)

1. The complainant has submitted ten requests (within a single item of correspondence) for various information relating to Surrey Fire & Rescue Service. West Sussex County Council ("the Council") refused to comply with the requests on the basis that compliance would impose a grossly oppressive burden upon it, and therefore applied section 14(1).
2. The Commissioner's decision is that the Council is entitled to apply section 14(1) to the requests. However, in applying section 14(1) outside the time for compliance, the Council has breached section 17.
3. The Commissioner does not require the Council to take any steps.

Request and response

4. On 21 January 2020, the complainant wrote to the Council and requested information in the following terms:

In relation to your arrangement to transfer call handling and mobilisation to Surrey Fire & Rescue Service, please provide the following information:

- 1. The text of any requirement in the section 16 agreement between West Sussex and Surrey that refers to staffing levels in Surrey's control.*
- 2. Copies of any documents (reports, emails, memos etc) relating to the West Sussex assessment of adequate staffing levels in the Surrey control room.*
- 3. Details of the control room training and experience of West Sussex Fire & Rescue Service staff who carried out that assessment and signed off staffing levels on behalf of West Sussex.*
- 4. Details of the standards, good practice guides, studies and research material used to inform the assessment process.*
- 5. Copies of risk assessments relating to the operational impact in West Sussex when control room staffing is at, or falls below, the determined minimum level.*
- 6. Copies of reports submitted, since 3 December 2019, that relate to any occurrences that resulted, or could have resulted, in a delay to the attendance at West Sussex incidents.*
- 7. Details of action taken by West Sussex Fire & Rescue Service to address those occurrences.*
- 8. Details of the performance standards set by West Sussex Fire & Rescue Service as part of this arrangement and of the evidence source that will be used to assess that performance.*
- 9. Copies of the text in any agreements with partners, contractors and suppliers that refer to compliance with the Centre for the Protection of National Infrastructure's guidance. This part of the request also covers any equipment or service commissioned by West Sussex Fire & Rescue Service, or West Sussex County Council, that delivers or receives voice or data communication to/from the Surrey fire control.*

10. *Copies of the text in any agreements with partners, contractors and suppliers referring to the security of, and access to, sensitive data (personal, commercial, security) used in connection with call handling and mobilisation.*
5. The Council responded on 21 February 2020. It confirmed that relevant information was held and that it sought to withhold this under the exemption provided by section 43.
6. Following an internal review, the Council wrote to the complainant on 18 September 2020. It issued a revised position in which it disclosed some information and withheld the remainder under section 38.

Scope of the case

7. The complainant contacted the Commissioner to complain about the way his requests for information had been handled.
8. The Council subsequently informed the ICO that it had reconsidered the requests, and perceived that the requests sought information that would fall under the exemptions provided by sections 38, 40(2), 41, and 43. The Council also indicated that it considered compliance with some of the individual requests would exceed the appropriate limit in costs set by section 12.
9. The ICO asked the Council to refer to the Commissioner's public guidance and clarify its final position in respect of the requests.
10. The Council subsequently informed the complainant and the ICO that it wished to refuse the requests under section 14(1), on the basis of the grossly oppressive burden that it considered compliance with the ten requests would impose. The complainant advised the ICO that he wished to challenge the Council's application of section 14(1).
11. The Commissioner therefore considers the scope of the case to be the determination of whether the Council is entitled to apply section 14(1).

Reasons for decision

12. Section 14(1) of the FOIA states that:

Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.

13. The Commissioner has published guidance on vexatious requests¹, which outlines the different circumstances in which section 14(1) may be applied.
14. In the circumstances of this case the Council applied section 14(1) on the basis of the grossly oppressive burden that it considers compliance with the requests would impose upon it.
15. Ordinarily, where the concern of a public authority is about the burden of a request, the relevant provision of the FOIA would be section 12(1). This section provides that a public authority is not obliged to comply with a request where the cost of doing so would exceed a limit. However, a public authority cannot claim section 12(1) for the cost and effort associated with considering exemptions or redacting exempt information.
16. A public authority may apply section 14(1) where it can make a case that the amount of time required to review and prepare the information for disclosure would impose a grossly oppressive burden upon it. This can include time spent on considering exemptions and making redactions.
17. However, the Commissioner considers there to be a high threshold for refusing a request on such grounds. This means that a public authority is most likely to have a viable case where:
 - The requester has asked for a substantial volume of information **and**
 - The authority has real concerns about potentially exempt information, which it will be able to substantiate if asked to do so by the ICO **and**
 - Any potentially exempt information cannot easily be isolated because it is scattered throughout the requested material.

¹ <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

Context

18. West Sussex Fire and Rescue Service is managed by the Council, which is the Fire and Rescue Authority for West Sussex.
19. The Commissioner understands that since December 2019, the Service has shared control room resources with a neighbouring service (Surrey Fire and Rescue Service, which is managed by Surrey County Council), which has also taken over responsibility for the delivering of certain related functions on behalf of the Council. This sharing of resources is permitted under the terms of the Fire and Rescue Services Act 2004.

The complainant's position

20. The Commissioner understands that the complainant is concerned about the staffing levels, and IT issues, relating to the shared control room, and has submitted their requests to clarify if these concerns are justified. In particular, the complainant has indicated that concerns about these matters have been raised by the Fire and Rescue Service Scrutiny Committee, which has asked the Council to report to it on the matter.
21. The complainant contests the Council's application of section 14(1) on the grounds of grossly oppressive burden and considers that the Council has misrepresented the volume of information that may fall under each request. In particular, the complainant considers that the requests seek specific information that the Council should be able to retrieve either electronically, or through consulting with relevant officers.

The Council's position

22. The Council has informed the Commissioner that the ten requests were submitted to it in a single item of correspondence on 21 January 2020.
23. In order to comply with the requests the Council has since identified that it would need to retrieve and review a significant volume of recorded information, which includes the Section 16 Agreement – as referred to in request 1 (385 pages in length), an associated Collaboration Agreement (100 pages in length), and over 500 individual records held in the digital file maintained by the Council's Legal Services Team, which was opened in October 2018.
24. In addition to these known records, the Council also notes that further documents are likely to have been created by a working group that was set up to inform Cabinet about the matter. This working group carried out consultations with the Fire and Rescue Senior Leadership Team, the Fire Brigades Union, the Fire and Rescue Service Association, and the Fire Officers Association. In addition, the Council is also aware of

relevant appraisal documents that were created prior to the digital file being opened by the Council's Legal Services Team.

25. The Council considers that, the collation and review of the information – in order to retrieve the specific information sought by the requests – would take far in excess of 18 hours, which is the appropriate limit set for local public authorities under section 12.

26. However, in addition to this collation and review, the Council also perceives that it would be required to consider the application of exemptions to that information that would fall within the scope of the requests. The exemptions that the Council considers it will need to have regard to are:

- Section 38: The Council considers that this exemption may apply to the information sought by request 6 and 7, which seeks information relating to occurrences that resulted in a fire service being delayed, or potentially being delayed, from attending an incident. The Council perceives that the disclosure of this information may reveal vulnerabilities that may potentially be used maliciously to comprise the ability of the service to respond to incidents.
- Section 40(2): The Council considers that this exemption may apply to the information sought by request 3, which seeks the "*training and experience*" held by specific officers. The Council perceives that this is a request for personnel records, and that the information would represent the individuals' personal data as held for the purposes of recruitment.
- Section 41: The Council considers that this exemption may apply to that information which has been shared between the Council and Surrey County Council for the purpose of delivering the agreed functions. This information is subject to a confidentiality clause within the Section 16 Agreement, in addition to separate Confidentiality Agreement between the two authorities. The Council has provisionally consulted with Surrey County Council, which has indicated that it would not agree to the release of any relevant information that is subject to the clause or Confidentiality Agreement.
- Section 43: The Council considers that this exemption may apply to that information relating to the terms of its agreement with Surrey County Council, which carries out functions in exchange for payment from the Council. The Council perceives that this information may cause detriment to Surrey County Council by placing it as commercial disadvantage against competing bidders

from the private sector, as it is understood that Surrey County Council may seek to pursue similar contracts with other public authorities.

27. The Council considers that compliance with the ten requests, which would require the collation, review, and consideration of exemptions across a large body of recorded information, would impose an unjustifiable level of disruption to the Council's delivery of services and allocation of resources. It is on this basis the Council considers that compliance with ten requests would impose a grossly oppressive burden upon the Council.

The Commissioner's view

28. The Commissioner has considered the Council's position, and recognises that the ten requests seek a substantial volume of information that may be contained within two agreements (numbering 485 pages), 500 records of various contents within the digital file held by Legal Services, and further records likely to be held by the Council.
29. Whilst the Commissioner has noted the complainant's view that they seek only specific information in respect of each of the ten requests, it is relevant for the Commissioner to note that the ten requests do not seek specific named documents, but rather, either seek specific information likely to be contained within those documents (e.g. requests 1, 9, 10), or ask for all documents to be provided that relate to a topic. It is therefore reasonable for the Commissioner to accept that compliance with the ten requests would require considerable effort by officers – and particularly those with knowledge of the subject matter – to review the documents for all relevant information that would fall within the scope of each of the requests.
30. Having considered the circumstances in which the requested information has been created in, the Commissioner is also satisfied that it is reasonable the Council would need to consider the exemptions provided by sections 38, 40(2), 41, and 43 in the event that it complied with the requests.
31. The Commissioner is further satisfied that, due to the nature of the information being contained within a wide scope of documents (including substantial documents such as the Section 16 and Collaboration Agreements), the potentially exempt information cannot be easily isolated, and that the information would need to be manually reviewed by officers familiar with its content to consider the application of exemptions.

32. Whilst the Commissioner recognises that the complainant holds concerns about the sharing of the control room resources between the services, there is no evidence available to the Commissioner that suggests that there is a pressing public interest - such as a significant lack of transparency, or evidence of improper action on behalf on the Council - that would justify the significant diversion of public resources required to comply with the ten requests.
33. Additionally, whilst the Commissioner understands that the matter has been subject to review by elected councillors, she does not consider that this provides a pressing public interest that would justify the burden. Councillors will hold their own powers to examine and question decisions made by the executive in their role of elected representatives, and the fact that councillors are doing so suggests to the Commissioner that the matter is already subject to appropriate scrutiny on behalf of the public.
34. Having considered the above factors, the Commissioner is satisfied that the Council is entitled to refuse the requests on the basis of grossly oppressive burden.

Section 17 – Refusal of request

35. Section 17 requires that where a public authority is relying upon a claim that section 12 or 14 applies to a request, a notice is issued stating that fact within 20 working days.
36. In this case the Council did not issue a refusal notice until the matter was before the Commissioner as a complaint; this was significantly outside the time for compliance. On this basis the Commissioner finds a breach of section 17.

Other matters

37. The Commissioner reminds the Council of the importance of fully considering the scope of a request (or requests) before seeking to respond.
38. In the circumstances of this case the Council failed to fully comprehend the breadth and complexity of the information that the complainant sought, and consequently issued deficient responses under the legislation.
39. The Commissioner refers the Council to the extensive FOIA guidance that she has published at:

<https://ico.org.uk/for-organisations/guide-to-freedom-of-information/>

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: 0300 1234504

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.

Signed

Andrew White
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