

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 27 April 2022

**Public Authority:** Hertsmere Borough Council

**Address:** Elstree Way  
Borehamwood  
Herts  
WD6 1WA

#### **Decision (including any steps ordered)**

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1. The complainant requested information from Hertsmere Borough Council ("the Council") relating to damaged bins. The Council denied holding some information within the scope of the request and refused the remainder citing section 12(1) of the FOIA.
2. The Commissioner's decision is that the Council was entitled to refuse to comply with the request in accordance with section 12(1) of the FOIA.
3. However, he finds that the Council failed to provide reasonable advice and assistance and therefore failed to meet its obligations under section 16(1) of the FOIA.
4. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
  - Provide the complainant with advice and assistance to help him submit a request falling within the appropriate limit.
5. The Council 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**

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6. On 28 July 2021, the complainant wrote to the Council and requested information in the following terms:  
  
"Can you please get some information for me.  
  
1) how many bins have the crew reported as damaged by them in the last 5 years.  
  
2) how many other residents have complained about their bins being damaged in the last 5 years  
  
3) how many residents have paid the £40 for a replacement in the last 5 years"
7. The Council responded on 26 August 2021. It denied holding information in relation to question 3 of the request and refused to provide the remainder of the requested information as to do so would exceed the cost limit.
8. On 26 August 2021, the complainant requested an internal review.
9. Following an internal review the Council wrote to the complainant on 21 September 2021. The Council maintained its position and clarified that it was citing section 12 (cost limit) as its basis for refusing question 1 and 2 of the request.

## **Scope of the case**

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10. The complainant contacted the Commissioner on 25 September 2021 to complain about the way their request for information had been handled.
11. The Commissioner considers the scope of this case to be to determine if the Council has correctly cited section 12 of the FOIA in response to the request.

## **Reasons for decision**

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### **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 cost limit.

13. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations') at £450 for public authorities such as the Council.
14. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 18 hours for the Council.
15. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the cost it reasonably expects to incur in carrying out the following permitted activities in complying with the request:
  - determining whether the information is held;
  - locating the information, or a document containing it;
  - retrieving the information, or a document containing it;
  - and extracting the information from a document containing it.
16. A public authority does not have to make a precise calculation of the costs of complying with a request; instead, only an estimate is required. However, it must be a reasonable estimate. In accordance with the First-Tier Tribunal decision in the case of *Randall v IC & Medicines and Healthcare Products Regulatory Agency EA/20017/00041*, the Commissioner considers that any estimate must be "sensible, realistic and supported by cogent evidence". The task for the Commissioner in a section 12 matter is to determine whether the public authority made a reasonable estimate of the cost of complying with the request.
17. Section 12 is not subject to a public interest test; if complying with the request would exceed the cost limit then there is no requirement under the FOIA to consider whether there is a public interest in the disclosure of the information.
18. Where a public authority claims that section 12 of the FOIA is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit, in line with section 16 of the FOIA.

## **The Council's position**

19. As is the practice in a case in which the public authority has cited the cost limit under section 12 of the FOIA, the Commissioner asked the Council to provide a detailed explanation of its estimate of the time and cost of responding to the request.
20. In its submissions to the Commissioner, the Council revised its position. It confirmed that it did hold information in relation to question 3 of the request but refused to provide that information citing section 12 of the FOIA as its basis for doing so. The Council maintained its reliance on section 12 of the FOIA to refuse questions 1 and 2 of the request. The Council offered an explanation for how it had calculated that the request exceeded the cost limit.
21. With regards to question 1 of the request, the Council explained that in order to provide the requested information it would have to review the round sheets from all refuse collections within the past 5 years. The Council provided the following breakdown of the number of round sheets it would have to review:

2017 – 130 collections with 14 round sheets and 130 days collections with 15 round sheets = 3,770 total round sheets

2018 – 130 collections with 14 round sheets and 130 days collections with 15 round sheets = 3,770 total round sheets

2019 – 130 collections with 14 round sheets and 130 days collections with 15 round sheets = 3,770 total round sheets

2020 – 130 days collections with 9 round sheets and 130 days collections with 15 round sheets = 3,120 total round sheets

2021 – 130 days collections with 9 round sheets and 130 days collections with 15 round sheets = 3,120 total round sheets
22. In total, the Council stated that it would have to review 17,550 round sheets. It calculated that if it were to review 3 sheets per minute, it would take approximately 104 hours to provide the requested information. However, the Council considers that it is likely to take much longer than this.
23. With regards to question 2 of the request, the Council estimated that it would take approximately 354 hours to provide the requested information. The Council explained that in order to provide the requested information it would have to check its complaints management system to determine how many informal complaints had been made about bins being damaged.

24. The Council explained that it would also check the complaints it had received about waste. It stated that in the last 5 years, it had received 846 complaints relating to waste. These complaints are logged on a spreadsheet by quarter. The Council explained that it would have to manually review the description of each complaint to determine whether it related to damaged bins. The Council estimated that this would take approximately 2 hours.
25. However, as well as reviewing complaints relating to damaged bins, the Council considers that it would also have to check the 1,252 'replace bin requests' it had received and the 5,830 'supply bin requests' for further information within the scope of the request.
26. The Council calculated that if it were to take 3 minutes to review each bin request, it would take approximately 354 hours to search for the requested information (3 minutes x 7,082 bin requests = 354 hours).
27. With regards to question 3 of the request, the Council explained that in order to locate, retrieve and extract the requested information, it would have to manually review 2793 requests for bins made between 1 July 2017 and 1 July 2021.
28. The Council estimated that it would take approximately 3 minutes to review each bin request. Therefore in total, it calculated that it would take 140 hours to locate, retrieve and extract the requested information (3 minutes x 2793 bin requests = 140 hours).

### **The Commissioner's position**

29. The Council has estimated that in total, it would take 598 hours to comply with all 3 questions of the request. This figure is significantly higher than the cost limit under the FOIA.
30. The Commissioner considers the Council's estimate of 104 hours to locate, retrieve and extract the information requested in question 1 of the request to be reasonable.
31. The Commissioner also considers the Council's estimate of 354 hours to locate, retrieve and extract information within the scope of question 2 of the request and 140 hours to locate, retrieve and extract information within the scope of question 3 to be reasonable.
32. Even if the Council was to take only 1 minute to review each bin request, rather than 3 minutes, the cost of complying with question 2 and question 3 of the request would still be far in excess of the cost limit under the FOIA.

33. The fact that the Council can only locate the requested information by carrying out a manual search is pivotal in this request breaching the cost limit.
34. The Commissioner's decision is that the Council estimated reasonably that the cost of complying with the request would exceed the appropriate limit. Therefore, the Council was correct to apply section 12(1) of the FOIA to the request.

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

35. 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 practice<sup>1</sup> in providing advice and assistance, it will have complied with section 16(1).
36. In both its initial response of 26 August 2021 and its internal review response of 21 September 2021, the Council did not advise the complainant that they could refine their request to bring it within the cost limit. Furthermore, the Council did not provide the complainant with suggestions on how to narrow the scope of their request. Neither did it clarify whether it considered that there was no obvious means of narrowing the scope of the request.
37. In its submissions to the Commissioner, the Council stated that as the request is broad and time consuming, it is not obvious how the request could be refined to bring it within the cost limit.
38. However, the Commissioner considers that the Council could have provided the complainant with advice on how to narrow the scope of the request. For example, the Council could have suggested to the complainant that they reduce the time period of their request.
39. The Commissioner's decision is that the Council did not provide the complainant with adequate advice and assistance and therefore breached section 16(1) of the FOIA.

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<sup>1</sup> <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

## Right of appeal

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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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://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 .....**

**Michael Lea**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**