

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 June 2022

Public Authority: Liverpool City Council
Address: Municipal Buildings
Dale Street
Liverpool
L69 2DH

Decision (including any steps ordered)

1. The complainant requested information from Liverpool City Council ("the Council") relating to business rates paid to the Council. The Council refused to provide the requested information citing section 12 (cost limit) 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

6. On 13 April 2021, the complainant wrote to the Council and requested information in the following terms:

"How many business premises that are registered ratepayers in Liverpool are pubs, bars, leisure clubs, members clubs, function rooms, social clubs, nightclubs and SEVs in the years 2018, 2019 and 2020?

What is the total cumulative gross value of these premises business rates?

What was the value of these rates ACTUALLY collected in 2017/2018, 2018/2019 and 2019/2020?"

7. The Council responded on 25 June 2021 and refused to provide the requested information citing section 12 (cost limit) of the FOIA as its basis for doing so.
8. On 20 July 2021, the complainant wrote to the Council to complain about its response to their request. The Commissioner considers this correspondence to be a request for an internal review.
9. On 2 November 2021, as they had not received a response to their request for an internal review, the complainant contacted the Commissioner to complain about the way their request for information had been handled.
10. To date, the Council has not provided the complainant with the outcome of its internal review.

Scope of the case

11. The scope of this case and the following analysis is to determine if the Council has correctly cited section 12(1) of the FOIA in response to the request.

Reasons for decision

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(1) 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. The Council did not provide the Commissioner with any information to support its position.
20. However, in its initial response to the request, the Council stated that it does not hold information on the type of business that occupies commercial premises in a reportable format. It explained that it would have to manually review 20,000 Business Rates records in order to provide the requested information.
21. The Council estimated that it would take approximately 5 minutes to review each record for the requested information. Therefore, it calculated that it would take approximately 1,666 hours to comply with the request.

The Commissioner's position

22. The Commissioner considers the Council's estimate of 5 minutes to review each record for information within the scope of the request to be reasonable and he is aware of no evidence that calls into question the necessity of manually reviewing 20,000 records in order to comply with the request. He also considers it notable that even if the Council was to take far less than five minutes to review each record, the number of records that it would be necessary to review would still take the request well beyond the cost limit.
23. 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 – advice and assistance

24. 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 practice¹ in providing advice and assistance, it will have complied with section 16(1).

25. 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 reduce the scope of their request.
26. 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. At paragraph 3 above the Council is now required to contact the complainant to remedy this breach.

Other matters

27. The Commissioner cannot consider in a decision notice the amount of time it took a public authority to complete an internal review because such matters are not a formal requirement of FOIA. However, it is good practice to offer an internal review, and, where a public authority chooses to do so, the code of practice established under section 45 of FOIA sets out, in general terms, the procedure that should be followed. The code states that reviews should be conducted promptly and within reasonable timescales.
28. The Commissioner has interpreted this to mean that internal reviews should take no longer than 20 working days in most cases, or 40 working days in exceptional circumstances.
29. In this case, the complainant requested an internal review on 20 July 2021. As the Council had failed to provide the complainant with the outcome of its internal review within 40 working days of request, on 11 November 2021 the Commissioner wrote to the Council and asked it to provide the complainant with the outcome of its internal review within 10 working days of that date.
30. However, by the date of this notice, the Council has not provided the complainant with the outcome of its internal review, 11 months after it was originally requested. The Commissioner considers that the Council has failed to act in accordance with the section 45 code of practice.

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

31. The Commissioner is also disappointed with the level of communication the Council has had with him. The Commissioner has contacted the Council several times throughout the course of his investigation regarding both the Council's failure to complete an internal review, and to obtain further information from the Council regarding its application of section 12 to the request. The Commissioner has not received a response from the Council to any of his communications.
32. The above concerns will be logged and used by the Commissioner when considering the overall compliance of the Council.

Right of appeal

33. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

34. 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.
35. 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

Ben Tomes
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF