

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 December 2024

Public Authority: Oxfordshire County Council
Address: County Hall
New Road
Oxford
OX1 1ND

Decision (including any steps ordered)

1. The complainant has requested, from Oxfordshire County Council ("the council") copies of the council's correspondence with the ICO. The council initially refused the request on the basis that section 12 applied. On review, it maintained its position that section 12 applied, however it disclosed some information falling within the scope of the request (up to the appropriate limit). It redacted information from the information that was disclosed, applying the exemptions in section 21 (information available by other means), 40(2) (personal data of third parties), section 30 (investigations) and 41 (information provided in confidence).
2. The complainant complained that the council was wrong to redact information under sections 21, 30 and 41. They also argued that further information will be held by the council.
3. The Commissioner's decision is that the council was not correct to apply section 12. He has therefore not gone on to consider the remainder of the exemptions applied by the council.
4. The Commissioner requires the council to take the following steps to ensure compliance with the legislation.
 - To respond to the request again as required by section 1 of FOIA, without relying upon section 12.

5. The council must take these steps within 30 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 2 February 2024, the complainant wrote to the council and requested information in the following terms:

“For calendar year 2023, please provide copies of all communications you hold between the Council and the Information Commissioner's Office. Where possible and with the necessary redactions, include copies of third-party document that were exchanged between the two parties.

Please provide ALL information you hold, including Freedom of Information and Data Protection matters that includes service updates; meeting and event arrangements; advice sought/received; instructions/responses on complaints; regulatory recommendations and discussions/responses around these recommendations; ad hoc emails.”

7. The council responded on 26 February 2024. It refused the request on the basis that section 12 of FOIA applied (appropriate limit).
8. The complainant requested that the council carry out an internal review of its decision.
9. Following its internal review, the council wrote to the complainant on 14 June 2024. It said that it was still relying upon section 12 of FOIA, but it had decided to carry out work up to the appropriate limit. It therefore disclosed relevant information to the complainant, redacted under the exemptions in sections 21, 30, 40(2) and 41.

Scope of the case

10. The complainant contacted the Commissioner on 15 June 2024 to complain about the way their request for information had been handled.
11. The complainant argued that the council will hold further information falling within the scope of the request.

12. The complainant also disagreed with the application of the exemptions to the information which was disclosed, with the exception of “private information” (meaning information exempted under section 40(2)).
13. As regards the names and contact details of non-senior council and ICO employees, therefore, this information falls outside the scope of this decision notice.
14. During the course of the investigation, the council withdrew its reliance upon section 41. It said that section 40(2) was applicable to this information.
15. The council said that it has stopped work in responding to the request when it reached the appropriate limit. The following decision notice therefore firstly considers whether the council was correct to apply section 12. If it was not, then the Commissioner will require the council to reconsider the request from the outset given that it has not fully considered it as of this point.

Reasons for decision

Section 12 – cost of compliance

16. 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 limit” as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (“the Fees Regulations”).
17. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (“the Fees Regulations”). This is set at £450 for local authorities.
18. The notional cost of the staff time needed to comply with a request must be estimated at a rate of £25 per person per hour. This means that section 12(1) of FOIA effectively imposes a time limit of 18 hours for the council.
19. For the purpose of its estimate, a public authority can only take account of the costs it reasonably expects to incur in:
 - determining whether it holds the information;
 - locating the information, or a document which may contain it;

- retrieving the information, or a document which may contain it; and
 - extracting the information from a document containing it.
20. A public authority does not have to make a precise calculation of the cost of complying with a request; only an estimate is required. However, it must be a reasonable estimate. The Commissioner considers that any estimate must be sensible, realistic and supported by cogent evidence.
21. Section 12 is not subject to a public interest test; if complying with the request would exceed the cost limit, there is no requirement to consider whether there is a public interest in the disclosure of the information.
22. The task for the Commissioner is to reach a conclusion as to whether the cost estimate made by the council was reasonable; in other words, whether it estimated reasonably that the cost of compliance with the request would exceed the limit of £450, that section 12(1) therefore applied and that it was not obliged to comply with the request.

The council's arguments

23. In its review response the council said that the effort required to comply with the request would be close to or greater than the appropriate limit in section 12.
24. The council therefore said that it had made reasonable searches for information relating to the request up to the appropriate limit of time as described in section 12 of the Act
25. It estimated that it would take approximately 41 hours to locate, retrieve and extract the requested information. It calculated that:
- To locate all correspondence with the Information Commissioner's Office – 4 hours
 - To extract all correspondence that is not duplicated or exempt information – 35 hours
 - To collate and release all correspondence – 2 hours.
26. It clarified that its searches had located 4,551 emails. It used suffix information (meaning everything in the mail exchange containing @ico.org.uk and @oxfordshire.gov.uk) to locate the relevant emails. It said that these were then filtered to remove emails not within the scope of the request such as newsletters. The Commissioner notes, however, that newsletters *would* fall within the scope of the complainant's request and does not understand why the council has taken this step.

27. It said that it would only have corresponded with the ICO via email, and it therefore considered that these searches were likely to locate any information falling within the scope of the request.
28. It said that it has then gone through this information to ensure it is within scope, to remove duplication, and to collate it into a releasable format.
29. Further to this, it said that it has redacted that information where it considers exemptions are applicable, and disclosed the remaining information to the complainant. It confirmed, however, that it did not include the time taken to redact information into account when calculating its estimate.
30. From this information, it identified the exemptions it has subsequently claimed, and redacted documents where necessary.

The Commissioner conclusions

31. The Commissioner has considered the arguments of the council in respect of its application of section 12 of FOIA.
32. An automated search of the email inbox would be unlikely to take 4 hours to complete.
33. The council has included several tasks that are unnecessary in its estimate, including removing duplicates. These could simply be supplied to the requestor. The time taken to exclude these should not have been included in the estimate by the council.
34. The council said that it has also included time to collate the emails into a releasable format. The Commissioner is unsure what the council means by this argument, nor why it would be necessary in order to disclose the information to the complainant.
35. In its initial response, the council was unclear as to whether it had taken into consideration time for extracting exempt information from that located. This cannot be taken into account for a section 12 estimate. The council did subsequently confirm that this was not taken into account, however.
36. The Commissioner considers that the council's arguments in respect of its application of section 12 are therefore unclear. Give this, he has not been persuaded by the council's arguments in calculating its estimate.
37. The Commissioner notes the council's comments that it estimated that complying with the request take it close to or greater than the

appropriate limit. However, the request itself was not complicated. Under the costs which can be taken into account in the fees regulations, this would have required a search of the council's email accounts, extracting that information and then supplying the emails to the complainant. Collating or redacting the information cannot be taken into account in calculating the estimate. Neither is extracting information to avoid duplication.

38. The council's searches have uncovered all emails which include the suffix ico.org.uk as the sender or the intended recipient. The Commissioner considers that it would not take a significant degree of time to then sift through each of these emails quickly in order to determine whether they fall within the scope of the request. This would simply require a check of the sent, to, or CC fields. For instance, at 10 seconds to check each email is a communication between the ICO and the council, (and therefore, that it falls within the scope of the request), the relevant time would be 12.5 hours work:

$4551 \times 10 \text{ seconds} = 45,510 \text{ seconds}$
 $45510 \text{ seconds} / 60 = 758 \text{ minutes}$
 $758.5 \text{ minutes} / 60 = 12.6 \text{ hours}$

39. The Commissioner has therefore decided that the council was not correct to apply section 12 to refuse to respond to the request further in this instance.
40. The Commissioner therefore requires the council to reconsider the request without relying upon section 12 of FOIA.

Other matters

41. The Commissioner notes that the council sought to apply section 30 to redact some of the information from that it disclosed to the complainant. Based purely upon the arguments submitted by the council, his view is that this exemption is unlikely to apply. The council did not demonstrate to the Commissioner that it has the necessary investigative duties or powers in order to apply the subsections of section 30 which it has sought to apply.
42. The Commissioner also wishes to remind the council that in cases where it wishes to withhold information under FOIA, this should be done with careful consideration of the actual content of the information, at a granular level if necessary. This then needs to be clearly evidenced and demonstrated to the Commissioner in its submissions. The council needs to ensure that its submissions clearly identify which exemption has been

applied to withhold each redacted section of information where this is necessary in order to fully understand the application of the exemptions.

43. Should a public authority decide that considering the information to the necessary level of detail would place a grossly oppressive burden upon it, due to the request seeking a substantial volume of information, and from which the potentially exempt information cannot be easily isolated, then section 14(1) may provide an exclusion from the duty to comply with the request. The Commissioner has published guidance which addresses such issues.¹

¹ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/section-14-dealing-with-vexatious-requests/how-do-we-deal-with-a-single-burdensome-request/>

Right of appeal

44. 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

45. 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.
46. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Ian Walley
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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