

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 February 2014

Public Authority: Department for Communities and Local Government

Address: Third Floor
Eland House
Bressenden Place
London
SW1P 5DU

Decision (including any steps ordered)

1. The complainant has requested from the Department for Communities and Local Government (the DCLG) whether it held a document prior to it being submitted to them on 14 August 2012. The DCLG refused the request relying on section 12 of the FOIA.
2. The Commissioner's decision is that the DCLG has correctly relied on section 12 of the FOIA in this case.
3. The Commissioner does not require the DCLG to take any steps.

Request and response

4. On 14 May 2013, the complainant wrote to DCLG and requested information in the following terms:

"[name redacted] would like to put in an FOI request: 'Prior to [name redacted] submitting Helioslough's "The Economic Impact of the Radlett Strategic Rail Freight Interchange" document to the Department for Communities and Local Government on August 14th 2012; did the department hold the document, or did any employee, officer or Minister of the Department for Communities and Local Government see the document."

5. DCLG responded on 11 June 2013. It refused to provide the requested information, relying on section 12 of the FOIA as it determined that to locate, retrieve, and extract the information relevant to the request would exceed the appropriate limit. DCLG asked the complainant to consider refining the request.
6. DCLG provided an internal review on 15 July 2013 and it maintained its position. It also further expanded on asking the complainant to consider refining the request, stating that narrowing the field of people in the DCLG that might hold the information may enable it to comply with the request. It provided examples of departments that would be unlikely to have held the information.

Scope of the case

7. The complainant contacted the Commissioner to complain that the council had refused to provide the requested information.
8. The Commissioner considers the scope of the case is to determine whether the council has correctly relied on section 12 of the FOIA to refuse the request.

Reasons for decision

9. Section 12 of FOIA states that a public authority does not have to comply with a request for information if it 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 2004 ("the Fees Regulations") sets the appropriate limit at £600 for the DCLG. A public authority can charge £25 per hour of staff time for work undertaken to comply with a request which, in this case, amounts to 24 hours work in accordance with the appropriate limit set out above. If a public authority estimates that complying with a request may cost more than the cost limit, it can consider the time taken in:

- a) determining whether it holds the information;
- b) locating the information, or a document which may contain the information;

- c) retrieving the information, or a document which may contain the information; and
 - d) extracting the information from a document containing it.
11. In determining whether the DCLG has correctly applied section 12 of the FOIA in this case, the Commissioner has considered the DCLG's rationale provided to the Commissioner during his investigation.
 12. DCLG has advised the Commissioner that the first step it would have to undertake is determine whether the document referred to was held by the department and/ or had been seen by anyone in the department prior to 14 August 2012.
 13. To do this the DCLG explained it would have to conduct a search and retrieval exercise for every member of staff. There were 1,600 staff members at the DCLG at the time of the request.
 14. The DCLG advised the Commissioner that the search it would have to carry out would be key word searches on every staff member's computer to cover individual and shared files, and also their emails. The DCLG also explained that it would have to also search all manual files.
 15. On this basis the department worked out that in order to search everyone's individual system within the appropriate limit, then it would have to do each search within 54 seconds.

$$\text{£24 hours/1600 employees} = 54 \text{ seconds}$$
 16. The DCLG determined that it would not be able to conduct each search within this timeframe, and based on sample time checks, the search time varied between 90 seconds and 5 minutes. DCLG advised the Commissioner that this just the time involved to retrieve any information. It does not include the time required to review the search results.
 17. On this basis, even if each search could be undertaken in 90 seconds per employee, this would still be outside the appropriate limit.
 18. $1600 \text{ employees} \times 90 \text{ seconds} = 40 \text{ hours}$.
 19. The complainant has stated that the DCLG was able to answer a more wide ranging request on the same topic without relying on section 12 of the FOIA to refuse to provide a response, and similarly, so was the Department for Transport. The Commissioner asked the DCLG about these two other requests that were responded to.

20. The DCLG advised that it could not comment on the request to the Department of Transport as it is not the same public authority.
21. With regards to the previous request answered by the DCLG which was:

"Does the department, hold, or has any employee, officer or Minister of the Department for Communities and Local Government seen, Helioslough's "The Economic Impact of the Radlett Strategic Rail Freight Interchange" document."

DCLG explained to the Commissioner that it was straightforward to confirm that it held a copy of the document as it knew that a copy had been submitted on 14 August 2012 and so no search was required to determine whether it held it. The difference with this request, which it has applied section 12 to, is that the DCLG does not know if it held the document before 14 August 2012 and that is why it would have to conduct a search to see if it was held before this date.

22. On consideration of the DCLG's explanations, the Commissioner is satisfied that it has correctly relied on section 12 of the FOIA in this case.

Section 16(1) Advice and Assistance

23. Section 16(1) of the FOIA imposes an obligation for a public authority to provide advice and assistance to a person making a request, so far as it would be reasonable to do so. Section 16(2) states that a public authority is to be taken to have complied with its section 16 duty in any particular case if it has conformed with the provisions in the section 45 Code of Practice¹ in relation to the provision of advice and assistance in that case.
24. Paragraph 14 of the section 45 Code of Practice states that where a public authority is not obliged to comply with a request because it would exceed the appropriate limit to do so, then it:

"...should consider providing an indication of what, if any, information could be provided within the cost ceiling. The authority should also consider advising the applicant that by

¹ <https://www.gov.uk/government/publications/code-of-practice-on-the-discharge-of-public-authorities-functions-under-part-1-of-the-freedom-of-information-act-2000>

reforming or re-focusing their request, information may be able to be supplied for a lower, or no, fee."

25. The Commissioner has reviewed the DCLG's initial response and internal review response. The commissioner has determined that in its initial response DCLG advised the complainant to consider refining the request, but did not offer much assistance to help the complainant refine the request.
26. However on viewing the internal review response, the Commissioner has determined that the DCLG offered more assistance to the complainant in refining the request. It advising that narrowing the field of people who might hold the information sought could help to bring the request within the cost limits. It gave examples of departments in the DCLG that were not likely to hold the information and that a narrower search on departments that were most likely to hold the information may be manageable.
27. The Commissioner considers that the DCLG has given appropriate advice and assistance in this case and therefore it is now for the complainant to refine the request if they so choose.

Right of appeal

28. 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: 0116 249 4253

Email: GRC@hmcts.gsi.gov.uk

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

29. 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.
30. 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
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
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