

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

### **Decision notice**

**Date:** 3 June 2025

**Public Authority:** City of York Council  
**Address:** West Offices  
Station Rise  
York  
Y01 6GA

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

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1. The complainant has requested information relating to unfilled vacancies at the council. The City of York Council ("the council") disclosed some information, however it applied section 12 to refuse the remainder of the request.
2. The Commissioner's decision is that the council was able to apply section 12 to refuse to respond to the request further.
3. The Commissioner does not require the council to take any steps.

## Request and response

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4. On 25 October 2024, the complainant wrote to the council and requested information in the following terms:

"Please advise

1. The Councils total (FTE) establishment
2. The number of vacant posts
3. The number of temporary staff employed to cover vacancies
4. The cost of the temporary staff cover (including temporary promotions)

For the latest available date

a) The number of authorised posts by the department and the vacancy rate

b) A list of long-term vacant posts (over 8 weeks) indicating the grade and activity area together with an indication of the reason why the post has not been filled (e.g. no response to job advert, recruitment freeze etc). Please indicate which Council services are currently adversely impacted by staff vacancies and the action being taken to address any issues."

5. The council responded on 7 November 2024:

- It provided links detailing the information falling within parts 1 and 2 of the request and applied section 21 of FOIA (information available by other means).
- It said that no information is held falling within parts 3 and 4, and parts a) and b) of the request.

6. The complainant asked the council to carry out a review of its decision on the same day. They said that he found it inconceivable that the council did not know:

1. The number of staff vacancies in each department
2. The length of time that posts have not been substantively filled &
3. The reasons for not filling any long-term vacancies."

7. Following an internal review the council wrote to the complainant on 5 December 2024. It said that in order to provide the information it would need to manually search its electronic files, and that doing this would exceed the appropriate limit. It therefore applied section 12 of FOIA to refuse the request.

## Scope of the case

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8. The complainant contacted the Commissioner on 6 December 2024 to complain about the way their request for information had been handled. The complainant continued to argue that the council should be able to provide the information within the appropriate limit. He said, however, that at the local appeal stage he had reduced his request to only encompass:
  - The number of staff vacancies
  - The number that are long-term (over 8 weeks)
  - The reasons for each long-term vacancy (e.g. no response to job advert, no suitable candidate, vacancy frozen, etc).
9. During the course of the Commissioner's investigation, on 30 April 2025, the council disclosed further information to the complainant which responded to the majority of the request. The Commissioner therefore asked the complainant whether they were now content with the council's response, and therefore would withdraw their complaint to the Commissioner. The complainant, however, remained concerned that the council was not able to disclose any information on the length of time that posts have been vacant or the reasons for not filling them. They argued that this was the essence of the information which they were seeking to obtain from the council.
10. The Commissioner therefore asked the council to reconsider this point. The council, however, reiterated its argument that responding to these parts of the request would require work which would exceed the appropriate limit.
11. The following therefore analyses whether the council was correct to apply section 12 to refuse to respond further to the request.

## Reasons for decision

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### Section 12 – cost of compliance

12. Section 12(1) of 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. The appropriate limit for public authorities such as the Council is £450. As the cost of complying with a request must be calculated at the rate of £25 per hour, section 12(1) effectively imposes a time limit of 18 hours for the council.

13. 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.
14. 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.
15. 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 complainant's position

16. The complainant argues that the council could ask heads of each department for the information. The complainant believes that this information will be available to the heads as they will be aware of the shortfalls within their departments. The complainant argues, therefore, that the council should not exceed the appropriate limit if it asks the heads for the information from their departments, then collates and discloses this in response to the request.

#### The council's position

17. In its response to the complainant of 30 April 2025 the council explained why it is not able to respond to the request within the appropriate limit.
18. It explained that where positions become vacant Chief Officers are notified and make an initial assessment and decision about whether to request the vacancy to be filled. There is, however, no requirement to record this decision, and no central log held of all requests. The decisions may also be made verbally, and requests may be made without a request form being completed or the decision recorded.

19. It explained that where a request has been approved, it is then sent to a control board for final approval before being sent to advert. It said that a spreadsheet is kept showing the posts that have been approved, and it disclosed a copy of this to the complainant.
20. It noted that the Finance Department would hold some information, however this is based on initial estimates from budget records rather than the outcome of Chief Officer and cost control panel decisions on the vacancies being filled.
21. It explained that in order to provide the information which the complainant has requested, information would need to be manually checked by finding the vacancy on the cost control tracker, then checking whether the post was advertised, and then working through the relevant recruitment files to locate the requested information and determine whether the position had been filled.
22. It explained that it had carried out a sample test from the finance spreadsheet which showed that there were 190.53 vacancies. For 11 vacancies noted in children's social care, early held and YJS 2025 structure chart, it had been able to look at five vacancies and track them through the recruitment process within one hour, finding that 2 of these posts were no longer vacant. In extrapolating this up to the full 190, it concluded that it could not respond to the request within the appropriate limit.
23. In regard to the complainant's argument that it could simply ask the Chief Officers to provide numbers for their departments, the council explained that there are currently 16 Chief Officers across the council. Each of those officers has a number of teams within their area of responsibility. It argues that whilst decisions may have been made not to fill a post in a particular team, the managers will not remember the details to be able to record and collate this information. Therefore, each chief officer would need to contact the managers within their service area and ask for any relevant records which are held, and to provide any memories of verbal decisions so that the requested information can be collated.
24. It explained that decisions may not have been recorded, and that where records are held, there would be no set format for this, and they may be contained in personal files, or email accounts of the relevant managers.
25. It also concluded that there would be no set terms which could be used as key words to carry out targeted searches of the council's accounts because the content may not have contained the words "vacancy" "resign" etc. Emails may have more generally discussed that a member of staff was leaving and whether their post should be filled. It also

argues that such discussions might have been included as a short paragraph within an email containing many other issues which are not relevant to the request.

26. It further explained that locating relevant information might therefore require managers to check other records, including human resources records to identify the specific dates on which staff members advised when they were leaving, and then check through the emails around these dates to or from their relevant chief officers to locate any emails, as well as personnel files to retrieve the relevant information.
27. The council provided a link to its [current structure chart](#) to give an indication of the number of managers who would be required to locate and retrieve relevant information. It also provided a link to information about managing budgets and resources which it considered might be useful to the complainant: [Browse meetings - Decision Session - Executive Member for Finance, Performance, Major Projects, Human Rights, Equality and Inclusion](#).

#### The Commissioner's analysis

28. The council has provided information where it is held in its records and has explained why it is unable to provide the remainder of the requested information within the appropriate limit.
29. In addressing the complainant's suggestion that the council could ask its heads of departments as they would be aware of any shortfalls within their department, FOIA rights only relate to recorded information which is held at the time that the request is received. The council would not be under a duty to create new information in order to respond to the request, and so information which Chief Officers only hold in their minds is not information which is held for the purposes of FOIA. The council has also explained why it would not be able to respond within the appropriate limit even using this approach.
30. The Commissioner notes the fully detailed arguments submitted by the council. As required by the test in *Randall v IC & Medicines and Healthcare Products Regulatory Agency*, he considers that its arguments are sensible, realistic and that they have been supported by cogent evidence. It has carried out a sample test, and provided a detailed explanation why it is unable to comply with the request within the appropriate limit.
31. There is no contradictory evidence available to the Commissioner that indicates the council's position is wrong.
32. The Commissioner has therefore decided that the council was correct to apply section 12 to refuse to respond to the request further.

## Right of appeal

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

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

**Ian Walley**  
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