

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 October 2011

Public Authority: Norwich City Council
Address: City Hall
Norwich
NR2 1NH

Decision

1. The complainant requested information about the award of contracts to a company. The request was refused on the grounds that the cost of locating and retrieving the information exceeded the statutory cost limit. During the Commissioner's investigation, the complainant refined his request and the public authority disclosed the information described in that refined request to the complainant.
2. The Commissioner's decision is that Norwich City Council did not produce a satisfactory estimate of its costs for compliance with the request, and was therefore unable to rely on the provisions of section 12 of FOIA in refusing the request on the grounds of the cost for compliance with the request.
3. During the course of the Commissioner's investigation, the complainant submitted a refined request. As the information in the refined request has now been disclosed, the Commissioner does not require the public authority to take any steps.

Request and response

4. On 9 September 2010, the complainant wrote to Norwich City Council (the council) and requested information in the following terms:

"Could you please provide copies of due diligence reports, minutes of meetings etc., relating to the award of contracts to Connaught Plc and/or its subsidiaries. Including any opinion / review of Comaught Plc and /or its subsidiaries with respect to financial

position, sustainability etc. May I thank you in anticipation of your attention"

5. The council responded on 14 October 2010. It stated that:

"The Council is unable to provide you with the information you have requested. This is because the cost of locating and retrieving the information exceeds the "appropriate limit" as stated in the Freedom of Information (Fees and Appropriate Limit) Regulations 2004."

6. Following an internal review the council wrote to the complainant on 11 November 2010. It upheld the initial decision to refuse the request, stating that the requested information covered:

"a wide range of documentation, held in a number of locations, some of which would require several different officers to spend a considerable number of hours to search, locate and process the requested information."

Scope of the case

7. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He complained that his request had been refused on cost grounds.
8. The Commissioner considers the scope of his investigation to be to examine the council's refusal of the request on grounds of the cost for compliance, under the provisions of section 12 of the FOIA.

Reasons for decision

9. Section 12 of FOIA/EIR states:

Exemption where cost of compliance exceeds appropriate limit

Section 12(1) provides that –

"Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit."

10. The 'appropriate limit' is defined at regulation 3 of The Freedom of Information and Data Protection (Appropriate Limit and Fees)

Regulations 2004¹ and relates to the costs for the following four activities, which are set out at regulation 4:

- determining whether it holds the information,
 - locating the information, or a document which may contain the information,
 - retrieving the information, or a document which may contain the information, and
 - extracting the information from a document containing it.
11. For Norwich City Council, the cost limit is set at £450. To the extent that this relates to the time spent on the activities listed above, that time is to be estimated at a rate of £25 per hour, ie a maximum of 18 hours' work.
 12. The Commissioner enquired what estimate of its time the council had produced in reaching its conclusion that the cost limit would be exceeded.
 13. Its response explained that the complainant's request for information concerning the award of contracts to Connaught Plc was very wide and asked for any opinion or review of Connaught Plc and/or its subsidiaries with respect to financial position, sustainability etc.
 14. It explained that the documentation being requested is not held in one location or in a particular filing system. Because of nature and the scope of this request it would be necessary to liaise with several officers of the council and for each to search for documentation and review correspondence in order to respond to the request. It would be necessary for officers to search through all the documentation they hold in order to establish whether it met the criteria of the request.
 15. It provided an estimate of the time it would take various officers of the council to respond to this information request, reproduced below.

¹ <http://www.legislation.gov.uk/ukxi/2004/3244/contents/made>

Officer/Department	hours
Chief Executive	1
Deputy CEO	1
Director of Regeneration & Development	1
Head of Procurement & Service Improvement	4
Head of Housing Property Services	3
Head of Citywide Services	1
Strategic Contracts Manager	2
Commercial/Performance Team Leader	2
Contract Development Manager	2
Property Asset Manager	2
Consultants x 2	4
Communications staff	1
Head of Legal Services	1
Contracts Working Party papers	1
Cabinet papers	1
Total	27

16. The Commissioner observed that the table reproduced above does not provide a sufficiently cogent and evidenced response to justify the council's application of section 12 of the Freedom of Information Act in refusing the complainant's request on the grounds of costs. There is, for example, no explanation as to how the values for the hours for each department are derived. He requested clarification from the council about the basis for this estimate, for example: whether any sampling exercise has been undertaken, and clarification as to whether the estimates confine themselves to the four activities which are listed at regulation 4 of the Fees Regulations.
17. Despite reminders, the council has not provided any further clarification of its estimate and the Commissioner therefore concludes that the estimate is not sufficiently derived from an *"informed and intelligent assessment of how many hours the relevant staff members are likely to take to extract the information"* nor that it is *"supported by cogent evidence"*².

² See the Information Tribunal in the case of *Alasdair Roberts v IC*:
[http://www.informationtribunal.gov.uk/DBFiles/Decision/i275/Roberts%20v%20IC%20\(EA-2008-0050\)%20Decision%2004-12-08.pdf](http://www.informationtribunal.gov.uk/DBFiles/Decision/i275/Roberts%20v%20IC%20(EA-2008-0050)%20Decision%2004-12-08.pdf)

18. He therefore finds that the refusal of the request on grounds of the cost for compliance under section 12(1) of FOIA was not correctly given.
19. The Commissioner also notes that the Information Tribunal has linked a refusal of a request on grounds of cost, to the duty of a public authority to provide advice and assistance to the applicant which is required by section 16 of FOIA. That advice and assistance, so far as it would be reasonable for the public authority to do so, should be given with a view to helping the applicant to frame a request which the public authority can comply with, and how this should be done is set out in more detail in the Secretary of State for Constitutional Affairs' Code of Practice drawn up in compliance with section 45 of FOIA³.
20. The Commissioner notes that no such advice and assistance appears to have been offered to the complainant and that there is no apparent reason why it would not have been reasonable to do so at the time.
21. During the course of the Commissioner's investigation, the complainant clarified the information of interest to him. He described it as follows:

"the documents that I am looking for include:

1) The long term contract that was intended to be signed with Connaught on the 10th February 2010.

2) The Interim contract signed on the 8th March 2010

3) The Connaught bid.

4) The Invitation to tender (that Connaught bid against and led to document number 1)"

22. In response to a query from the Commissioner, the complainant confirmed that this refined request had never been put to the council and he subsequently wrote to the council in similar terms. The council indicated that it was able to comply with the refined request, and the requested information described at paragraph 21, above, was disclosed to the complainant during the course of the Commissioner's investigation.

³ <http://www.justice.gov.uk/guidance/docs/foi-section45-code-of-practice.pdf> see particularly part II, paragraphs 3-15

23. The Commissioner observes that, had the council fulfilled its obligations under the section 16 duty to provide advice and assistance, this refined request could have been submitted and fulfilled at the time. Therefore, the outcome of this complaint will be to ensure that the complainant is left in the position he would have been in, had he received reasonable advice and assistance at the material time. It is also noted that, had this been done at the time, the complainant would have received the information of interest to him at an earlier stage, and without the need for the involvement of the Commissioner.
24. The Commissioner's decision is that Norwich City Council incorrectly refused the complainant's initial request, because it has failed to show that its estimate gave sufficient grounds to refuse the request on the grounds of the cost for compliance. This is a breach of section 12(1) of FOIA.
25. In incorrectly refusing the request, the council has therefore also breached section 1(1)(b) of FOIA, which relates to the duty to disclose information on request.
26. Furthermore, by its failure to provide advice and assistance to the complainant when it refused his request, the complainant was not made aware of the possibility that his request might be refined and complied with. This is a breach of section 16(1) of the Act.
27. The refusal notice provided to the complainant failed to sufficiently explain the grounds on which the request was refused. No reference to section 12 of the Act was made in the refusal notice sent to the complainant, in breach of the requirements of section 17(5) of FOIA.
28. The Commissioner notes that the information requested by the complainant in his refined request has been disclosed to him. He therefore does not require any further steps to be taken.

Right of appeal

29. 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: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

30. 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.
31. 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
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