

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 22 September 2011

**Public Authority:** Rochdale MBC  
**Address:** PO Box 39  
Municipal Offices  
Smith Street  
Rochdale  
OL16 1LQX

### Decision

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1. The complainant requested information about Rochdale Metropolitan Borough Council's (the "council's") planning and regulation department. Although some of the information was provided, the council refused the remainder under section 12 as the cost of compliance exceeded the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.
2. The Information Commissioner's (the "Commissioner's") decision is that the council has correctly applied the costs exemption and that no further steps need be taken.
3. However, the Commissioner also finds the following elements of the request were not dealt with in accordance with the Freedom of Information Act (the "Act"):
  - The council failed to provide adequate advice and assistance under section 16(1) of the Act.
  - The council failed to comply with section 17(5) as it did not say that it was relying on the costs exemption within 20 working days of receipt of the request.

### Request and response

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4. On 1 October 2010, the complainant wrote to the council and requested information in the following terms:

*"Please disclose*

- *how many people have been employed in the council's planning and regulation department in the years 2004 to date,*
- *how many complaints have been received by that department in each financial year,*
- *how many were held to have been justified and*
- *how many prosecutions the council has taken..."*

5. The council responded on 20 October 2010 and asked for clarification of the complainant's request.

6. The complainant clarified his request on 22 October 2010 as follows:

*"Please provide details of all complaints both from members of the public about professional areas falling within the remit of Planning and Regulation (eg Planning, Consumer Advice, Trading Standards, and Environmental Health etc) and complaints from the public about perceived poor service by the Service or its staff for each of the financial years 2004/5, 2005/6, 2006/7, 2007/8, 2008/9, 2009/10 and 2010 to date together with the total numbers judged to have been justified and the number of prosecutions taken in each of these financial years."*

The complainant further defined 'complaint' on the same day as *"...any problems or potential breaches identified by all other 'enforcement' activities for example inspection, sampling, project work, test purchasing etc"*

7. On 9 November 2010 the council responded to the first point of the complainant's request. However, it was unable to provide the information for 2004-2007 due to a systems change. The information the complainant requested about complaints was refused as exceeding The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. The complainant was invited to 'redefine' his request.

8. On 12 November 2010 the complainant emailed the council expressing his doubt that the requested information would exceed this limit. He redefined his request on 15 November 2010 in the following manner:

*"Please provide numbers of all complaints received across planning and regulation for the years specified, total number judged to be justified and total number of prosecutions taken together with number proven..."*

9. After correspondence between the council and complainant, the council repeated its view on 10 January 2011 that to provide this information would exceed the limit for costs.

10. Following an internal review on 8 April 2011, the council confirmed that it held the information but was unable to supply it to the complainant within the Fees Regulations. The internal review agreed with the initial response that providing the remaining requested information would take in excess of 18 hours.

### **Scope of the case**

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11. The complainant had originally contacted the Commissioner on 5 January 2011 but was advised that an internal review needed to have been conducted prior to the Commissioner accepting the case. On 11 April 2011 he renewed his complaint to the Commissioner about the way his request for information had been handled.
12. The Commissioner considers this case to focus on whether the council correctly applied the cost limit to the requested information.
13. On 13 April 2011 the Commissioner wrote to the council asking for further argument regarding the cost of complying with the complainant's request for information.
14. On 18 May 2011 the council responded by sending the Commissioner the correspondence and supporting documents relating to this matter.
15. On 27 July 2011 the Commissioner wrote to the complainant to explain that, in his view, he accepted that a reasonable estimate had been made by the council.
16. On 11 August 2011 the complainant wrote to the Commissioner stressing that he did not agree with the estimate and disputing how the council had arrived at the estimated figure.

### **Reasons for decision**

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17. The public authority has cited section 12(1), which explains that it is not obliged to comply with an information request where the cost of doing so would exceed the appropriate limit.
18. The Fees Regulations also specify the tasks that may be taken into account when forming a cost estimate as follows:
- determining whether the information is held;
  - locating the information;
  - retrieving the information;

- extracting the information.
19. In this case the public authority has not suggested that it does not hold the requested information, just that compliance with the request would cost more than the statutory limit.
20. A sample exercise was undertaken by the council at the time of the review in order to estimate the time/cost taken to locate, retrieve and extract the information or a document that may contain the information falling within the scope of this request. The relevant part of this estimate is as follows:
- "Gathering data from Flare [database] for each financial year = 17.5 hours*
- Gathering data from Flare across 5 other teams [Environment, Health and Safety, Neighbourhood Improvement, Community Protection, Health Improvement] for each financial year = 87.5 hours*
- Gathering data from other systems (LALPAC [Licensing] & On-Base [Planning]) for each financial year = 35 hours*
- Gathering data in relation to poor service from Professional Staff would also include gathering data from Registrars and Coroners (RON and Mountain) = 4 hours"
21. The costs exemption is specific in that a public authority is required to estimate the cost of compliance with a request, rather than give a precise calculation. The task for the Commissioner here is to reach a decision as to whether the cost estimate made by the public authority is reasonable.
22. The estimate made by the council of the time and cost that would be incurred in relation to this request is 154 hours or £3850 which is well in excess of the limit. The council has acknowledged that its estimate is approximate but that it exceeds the limit to such an extent that it is confident in its refusal to provide the information for that reason. This estimate is based on the requested information being held within the council's local database. The council has not disputed that this information is held. The cost estimate breakdown provided by the council suggests that the public authority is aware of the location of this information held within this database. The estimate made by the council is based on the time that would be taken in extracting and retrieving the information.
23. The complainant has stated that he has knowledge of this database and that the requested information would not take anything

approaching the estimate given by the council. However, the Commissioner has taken account of the council's description of its previous experience in providing regulatory returns from its FLARE database. Providing a statutory return with not dissimilar parameters took between 2.5 and 3 hours for each financial year. Taking the lower estimate of 2.5 hours per year would equate to a total search time of 17.5 hours. The complainant's search requires data retrieval from other teams (as detailed above) in order to reach the estimated figure. From the council's experience intensive searches of the database over a considerable period significantly reduces the system's speed.

24. Where a public authority wishes to maintain that the costs exemption is engaged, it is then required to consider its duty to provide advice and assistance under section 16 of the FOIA. The Code of Practice under section 45 of the FOIA states that the authority "should also consider advising the applicant that by reforming or re-focusing their request, information may be able to be supplied for a lower or no fee". The council, in this case, has acknowledged that asking the complainant to narrow the scope of his request without providing him with an estimated breakdown makes this meaningless. Whilst it is clear from subsequent correspondence that there was little appetite from the applicant to refine the request to a point that might fall below the cost estimate, this was not apparent from the outset. The lack of engagement from the council at the time is evidence of a breach of section 16.
25. The conclusion of the Commissioner is that, for the reasons given above, it was reasonable for the public authority to estimate that the cost of the complainant's requests would exceed the appropriate limit. For this reason the council was not obliged to comply with section 1(1)(b) in relation to these requests.

## Other matters

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26.
  - (a) The Commissioner finds that the public authority failed to comply with section 17(5) in that it did not advise the complainant that the costs exemption was believed to apply within 20 working days of receipt of the request.
  - (b) The Commissioner notes that the complainant wrote expressing dissatisfaction with the council's response to his request on 18 January 2011. This should have prompted the council to undertake a review. The council only conducted a review on 8 April 2011 after intervention from the Commissioner. However, the council has accepted that the review should have been

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conducted and any similar letter from a complainant in the future will trigger an internal review.

## Right of appeal

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27. 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](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

28. 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.
29. 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**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**