

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 February 2012

Public Authority: Warwickshire County Council
Address: Shire Hall
Warwick
CV34 4RR

Decision (including any steps ordered)

1. The complainant has requested the additional costs Warwickshire County Council (the Council) incurred in 2009 and 2010 as a result of a named school (the school) going into special measures, along with relevant financial statements or accounts.
2. The Commissioner's decision is that the section 12(1) exemption did not apply because the Council did not provide a satisfactory estimate of its costs for full compliance with the information request and so did not demonstrate that section 12(1) FOIA was engaged.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation:
 - to confirm what information falling within the scope of the request was held at May 2011 and, in relation to the information held,
 - to either supply it to the complainant or apply a FOIA exclusion or exemption other than section 12.
4. The Council must take these steps within 35 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 (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. Following an earlier exchange of correspondence, the complainant wrote to the Council on 13 May 2011 making a nine-part request for

information. Parts 1 – 7 of the information request were resolved and parts eight and nine of the request were pursued in the following terms:

8. What were the additional costs Warwickshire paid in 2009 and 2010 as a result of [the school's] going into special measures?

9. Could I please have copies of the financial statements/ accounts relating to the questions I have asked?

6. The Council responded on 6 June 2011. It answered parts 1 – 7 of the request but said that full compliance with the request, including answering questions 8 and 9, would exceed the appropriate costs limit under section 12 FOIA.
7. Following an internal review the Council wrote to the complainant on 8 August 2011. It provided a substantial amount of further relevant information but stated that there were no separate accounts relating to the additional support given to the school. The Council said that providing the remainder of the information requested would take in excess of 23 hours and it therefore continued to rely on section 12 FOIA and maintained the refusal to provide the information in the form requested.

Scope of the case

8. The complainant contacted the Commissioner on 27 August 2011 to complain about the way his request for information had been handled. He said he was concerned that no justification had been offered by the Council for the time estimate of 23 hours it had given. He said that if accountability of the Council were limited to matters that it claimed would take more than 23 hours, that seemed close to unaccountability.
9. The Commissioner investigated the complaint and considered the Council's application of the section 12 FOIA exemption.

Reasons for decision

10. Relevant parts of section 12 (Exemption where cost of compliance exceeds appropriate limit) of FOIA are set out below:

Section 12(1) states:

'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.'

Section 12(2) provides that:

'Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.'

Section 12(3) states that:

'In subsections (1) and (2) "the appropriate limit" means such amount as may be prescribed, and different amounts may be prescribed in relation to different cases.'

11. Accordingly, section 12 provides that a public authority is not obliged to comply with a request for information if it estimates that meeting the request would exceed the appropriate cost limit. The appropriate limit is set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (SI 2004 No 3244) (the regulations). A public authority may take into account the cost of locating, retrieving and extracting the requested information in performing its calculation. The cost limit in the case of the Council is currently set at £450 and equates to 18 hours work charged at £25 per hour.
12. Under regulation 4(3) a public authority may, for the purposes of its estimate of the cost limit, take account only of the costs it reasonably expects to incur in:
- determining whether it holds the information;
 - locating a document containing the information;
 - retrieving a document containing the information
 - extracting the information from a document containing it.

These activities are sequential, covering the retrieval process of the information requested from the public authority's information store, no matter how or where the information is held. The charging regime does

not allow the Council to take into account the cost of considering whether the information requested was exempt.

13. The Council told the Commissioner that it did not keep separate budget information in respect of support given to individual schools and that the additional cost information requested had to be obtained from other information held.
14. The Council said it had gathered information about support allocated to the school from team diaries and meeting notes, a process which, it said, took about three days, and would have been close to, if not over, the 18 hours limit. Similar information had also been collated for a comparator school. The Council said that these schedules had been compiled for the purposes of responding to the request and did not otherwise exist.
15. The Council added that it was likely that it also held invoices submitted to the schools which had provided head teacher or deputy support.
16. The Council said it would not hold other financial statements or accounts as it did not account for work in that way. The Council added that, with hindsight, it could have made that clearer in its response to the complainant.
17. On 6 December 2011 the Council told the Commissioner that it did not consider it held any further information falling within the scope of the request and appeared to say that it no longer relied upon the section 12 exemption.
18. On 7 December 2011, and in repeated subsequent requests, the Commissioner's staff asked the Council, if it did still wish to rely on the section 12(1) exemption, to justify its assertion to the complainant that to comply with the request would take some 23 hours and that it had already spent some 18 hours in responding to it. The Council did not reply. The Commissioner made a further, final request to the Council, asking for a response by 20 January 2012, but again the Council did not respond. Accordingly the Commissioner proceeded to a decision based on the information he held.
19. Despite repeated requests from the Commissioner's staff, the Council did not produce a satisfactory estimate of its costs for full compliance with the information request. It has therefore not demonstrated that the section 12(1) FOIA exemption was properly engaged. Accordingly the Commissioner has decided that the section 12(1) exemption did not apply.

20. The Commissioner requires the Council to confirm what information falling within the scope of the request it did hold in May 2011 and, in relation to the information held, to either supply it to the complainant or apply a FOIA exclusion or exemption other than section 12.

Right of appeal

21. 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

22. 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.
23. 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

Jon Manners
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