

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 April 2012

Public Authority: Portsmouth City Council
Address: Civic Offices
Guildhall Square
Portsmouth
PO1 2BG

Decision (including any steps ordered)

1. The complainant has requested details of the sale of council properties by Portsmouth City Council Asset Management Service, outside the right to buy process, to either council staff or elected members for the years 2003 and 2004.
2. The Commissioner's decision is that Portsmouth City Council correctly relied on section 12 of the Act not to comply with the complainant's request for information.

Request and response

3. On 16 August 2011, the complainant wrote to Portsmouth City Council ("the council") and requested information in the following terms:
 - Details (i.e. price, volume and date of completion) of the sale of council properties by Portsmouth City Council Asset Management Service (outside the right to buy process) to council staff or elected members for the years 2003 and 2004.
4. The council, in its substantive response dated 14 September 2011, refused to disclose the requested information by relying on sections 12 and 14(1) of the Act. The complainant requested an internal review of the council's decision on the same day. On 10 October 2011, the public authority wrote to him with the details of the result of the internal review it had carried out. The outcome was to uphold the original decision.

Scope of the case

5. On or about 11 October 2011, the complainant contacted the Commissioner to complain about the handling of his request for information.

Reasons for decision

6. Section 12 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 limit.
7. When considering whether section 12(1) applies, the authority can only take into account certain costs as set out in statutory instrument number 3244 "The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004" ("Fees Regulations").
8. Paragraph 4(3) of the Fees Regulations states:

"In a case in which this regulation has effect, a public authority may, for the purpose of its estimate, take account only of the costs it reasonably expects to incur in relation to the request 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.
9. The Fees Regulations state that the appropriate cost limit is £600 for central government, legislative bodies and the armed forces and £450 for all other public authorities, which includes the council. This £450 limit is equivalent to 18 hours' work.
10. The council states that to comply with the complainant's request would cause it to exceed the appropriate fees limit of 18 hours. The council provided the following breakdown of its estimated cost:

14 properties identified for 2003/04 from its Asset Management Service database:

- Locating relevant deed packet at estimated 1 hour per deed packet = 14 hours
 - Time to extract purchaser data from deed packet at 14 x 20mins = 4 hr 40 minutes
 - Time to cross reference purchasers' names against HR database = 1hr 30 minutes
 - Total time = 20 hours 10 minutes.
11. The council further states that the Commissioner, in similar and related decisions (FS50211876 and FS50379420), accepted that the above figures were reasonable when applying section 12.
12. In FS50379420 the complainant made the following request to the council:
- "Please provide details of the sale of any council properties by PCC [Portsmouth City Council] Asset Management Service, outside the right to buy process, to Council staff for the years 2005 and 2006."*
13. In the relevant part of the Commissioner's decision notice FS50379420 it was noted, in paragraphs 25 and 26, that:
- "The Council identified 10 properties sold outside its right to buy scheme that were relevant to the request of 25 October 2010. It provided the following estimate of the time required to comply with the request.
- (a) Produce report of properties offered for sale.
- Estimate, negligible and not included in the estimate
- (b) Find the deed packet for each property – average of 1 hour per property based on a sample exercise carried out by its Asset Management Service in which it took between 20 minutes and 1 hour 30 minutes to find the deed packets. The council pointed out that the database from which the list of properties is produced does not include the reference number for the relevant deed packet.
- Estimate: 10 properties x 1 hour = 10 hours
- (c) Interrogation of each deed packet to extract the purchaser's name and the purchase price; 20 minutes per deed packet.
- Estimate: 10 deed packets x 20 minutes = 3 hours 20 minutes

(d) To cross-reference purchaser details with the Council HR database to determine if they are an employee / ex-employee.

Estimate: 1 hour

14. The council, the Commissioner noted in FS50379420, had undertaken a sampling exercise of the time taken to extract the deed packets. He further noted the council's explanation that the other parts of the process had been carried out when complying with previous requests from the complainant and were known to be accurate.
15. In reaching a decision in FS50379420, the Commissioner was mindful that the process required to locate, retrieve and extract the information was identical to that in the FS50211876 and he saw no reason to alter his decision that the council's estimate was reasonable.
16. There is much similarity between the request that is the subject matter of this decision notice and the request adjudicated upon in FS50379420. Both requests relate to the sale (outside the right to buy process) of council owned property to council staff or elected members over a two year period. The Commissioner accepts that the process of obtaining the information is the same for both information requests.
17. The Commissioner has adjudicated previously, in FS50379420 (and FS50211876), that the council's estimates were reasonable and acceptable and these findings were not the subject of appeal. The Commissioner similarly finds that the council estimates here are reasonable and acceptable to him. Accordingly, the council, by virtue of section 12, is not obliged to comply with the complainant's request for information due to the estimation that the cost of complying with the request would exceed the appropriate limit of 18 hours' work.
18. Having found that the council was entitled to rely on section 12, the Commissioner did not go on to consider the applicability of section 14.

Right of appeal

19. 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

20. 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.
21. 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

Alexander Ganotis
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