

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 July 2012

Public Authority: Council of the Isles of Scilly
Address: Town Hall
St Mary's
Isles of Scilly
TR21 OLW

Decision (including any steps ordered)

1. The complainant requested information about the expenses claimed by the Chief Executive and the Chief Technical Officer for the financial year 2009/2010. The Council of the Isles of Scilly ('the Council') refused to comply with the request as it would exceed the cost limit under section 12 of the FOIA. The Commissioner's decision is that the Council correctly refused the request under section 12 as compliance would exceed the appropriate cost limit. The Commissioner requires no steps to be taken

Request and response

2. On 24 February 2011, the complainant wrote to the Council and requested information in the following terms:
"Could you give me details of all expenses and allowances claimed by the Chief Executive in 2009/2010? Please include all expenses and allowances paid directly to the officer. Please also include all expenses and allowances paid directly by the Authority."
3. On 4 March 2011 the complainant submitted a second request for information for:
"Could you give me details of all expenses and allowances claimed by the Chief Technical Officer in 2009/2010? Please include all expenses and allowances paid directly to the officer. Please also include all expenses and allowances paid directly by the Authority."

4. The Council responded to both requests on 30 March 2011 stating that, to comply with the requests would exceed the appropriate cost limit as provided under the FOIA and, as a result, it was relying on section 12 of as the basis for refusing the requests.
5. On 1 August 2011 the complainant contacted the Council and requested an internal review of its handling of the requests.
6. Following a number of reminders from the complainant and the Commissioner, the Council provided the outcome of its internal review on 19 January 2012 and upheld its decision that section 12 of the FOIA was applicable as the cost of complying with the requests would exceed the appropriate cost limit.

Scope of the case

7. The complainant contacted the Commissioner to complain about the way his requests for information had been handled. He specifically asked the Commissioner to consider whether the information he requested should be disclosed.

Reasons for decision

Section 12

8. Section 12 of the FOIA states that a public authority is not obliged to comply with a request for information if it estimates that the cost of complying would exceed the appropriate cost limit which in this case is £450 as laid out in section 3(2) of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations'). This must be calculated at the rate of £25 per hour, providing an effective time limit of 18 hours.
9. Regulation 4(3) of the Fees Regulations states that an authority, when estimating whether complying with a request would exceed the appropriate limit, can only take into account the costs it reasonably expects to incur in:
 - determining whether it holds the information;
 - locating the information, or documents containing it;
 - retrieving the information, or documents containing it; and
 - extracting the information from any documents containing it.

10. Section 12(4) of the FOIA provides that in certain cases a public authority can aggregate the cost of complying with requests. Section 5 of the Fees Regulations sets out the circumstances in which it may be appropriate to aggregate requests. This states that two or more requests to one public authority can be aggregated for the purposes of calculating costs if they are:
 - a. by one person, or by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign;
 - b. for the same or similar information to any extent; and
 - c. the subsequent request is received by the public authority within 60 working days of the previous request.
11. The Commissioner will first consider whether the Council was entitled to apply section 12(1) to the two requests. What the Commissioner must consider is whether the Council is entitled to combine the work together for these two requests, or whether each request should be considered individually.
12. The Commissioner is satisfied that the two requests the Council used for the purposes of aggregating the cost of compliance were both made by the complainant. The Commissioner is also satisfied that the two requests are for the same or similar information; namely, the expenses and allowances claimed/paid in respect of two senior Council officers. The Commissioner is also satisfied that the two requests were received within a period of 60 working days. The Commissioner therefore considers the Council was able to aggregate the cost of complying with the requests of 24 February 2011 and 4 March 2011.
13. Having reached this conclusion, the Commissioner has gone on to consider the application of section 12(1).

Would compliance with the requests exceed the appropriate limit?

14. The Commissioner asked the Council to provide a detailed reasonable estimate of the time taken and cost that would be incurred by providing the information falling within the scope of the request. The Commissioner asked that, when the Council provided these calculations, a description of the nature of the type of work involved was also included.
15. The Council advised that, to locate, retrieve and extract the information relevant to the first part of each request referring to expenses and allowances paid directly to the officers concerned would be a relatively straightforward process and would fall within the cost limit. It advised that this information is stored by way of expense forms which officers complete and submit to reclaim travelling and subsistence expenses.

The Council has provided the following estimate in respect of expenses paid direct to the two officers in question via its expense system:

Estimate A

Activity	Time
Determine information format and location, create work instruction for member of staff to complete the information gathering exercise	0:30
Manager to brief member of staff and walkthrough test of work instruction	0:15
Visit the archive	0:30
Identify location of expenses files	0:30
Extract expense claim forms for Chief Executive and Chief Technical Officer (claims are filed in cardboard boxes in loose format) – estimate 15 claim forms	0:15
Photocopy the forms and supporting receipts	0:15
Return claim forms to the archive boxes	0:15
Enter relevant details from each expense form onto a spreadsheet – by person, by expense category, date, month claimed, reason for expense of event, amounts (exc Vat, Vat and gross amount). Estimate 15 claim forms x 10 entries per claim = 150 + reconciliation time – estimated at 45 seconds per item	01.52
TOTAL	3:57

16. The Council state that compliance with the second part of the requests, relating to expenses paid direct by the Council in respect of the two officers in question is a more complex process. These expenses primarily relate to expenditure in respect of air travel, boat travel (inter island and to and from Penzance), helicopter, fixed wing, hotel and accommodation costs, car hire, fuel and some other associated costs for authorised business which are paid by the Council to the suppliers direct rather than reclaimed by officers.
17. The information relevant to this part of the requests is recorded within the Council's electronic accounting system by account code which categorises costs by committee responsibility, service type and nominal (cost type). The Council's payment system records payments made to suppliers, including expenses paid to staff members as the Council does not process expense claims through its payroll. Paper copies of invoices, orders and other paperwork are held in relation to entries on the Council's accounting system and payment system. The paper records are organised and categorised and filed by supplier and at the end of each financial year, the records are transferred into archive boxes and stored off site.

18. The Council provided the following estimate in respect of expenses paid through its accounting system in relation to the two officers in question:

Estimate B

Activity	Time
Locate diaries for both officers.	0:20
Review diary of both officers for the period 2009/10 – average 30 seconds per page ie per work day (includes time to resolve any queries)	2:10
Identify all dates of travel or time spent out of the office on business and note details on a spreadsheet – estimate 200 events based on a sample from 2011/12 which showed 30 events in 4 months for the Chief Executive – 45 seconds per entry.	2:30
Visit archives and obtain the order books for the officer's budgets. <i>NB no additional time as this would be done at the same time as retrieval of officer expense forms</i>	
Review order books for relevant time period and note all relevant order numbers, type of expense and supplier. Order books comprise of 50 pages and 10 order books cover the period in question. Estimate to review each book – 10 minutes	1:40
Retrieve relevant invoices from the archive for each supplier – 200 invoices at 40 seconds per item on average	2:13
Match order numbers with relevant invoices to identify actual costs	2:00
With some suppliers, an order may have been made by another department or budget holder or include as part of a composite invoice eg invoices received from inter island boating, helicopter travel and car hire. Extract and analyse all these types of invoices	2:00
Enter details of supplier, order number, cost of item, supplier reference, nominal code and event attended on a spreadsheet. Where appropriate apportion "joint costs" which include visitors and guests fairly eg boat travel for more than one person. Approximately 200 entries at an average of 1 minute per entry	3:20
Copy all invoices as proof in case of queries and link to spreadsheet by reference. Estimate 30 seconds per item – 200 items	1:40
File invoices in same order as extract – estimate 30 seconds per item – approximately 200 items	1:40
Cross check payments made via company charge cards to ensure all payees are identified – 12 statements per	1:12

officer = 24 statements. Extract charge card statements from archive and review – 3 minutes per statement	
Enter the details of the supplier, order number, cost of item, date, supplier reference number, nominal code and the event attended on a spreadsheet – one minute per item.	0:24
File charge card statements in order they were extracted	
Pass to manager for review	
Peer review by manager and resolution of queries	0:30
Total	21:39
Contingency – missing papers, interruptions etc	0:30
Total	22:09

19. The Council advised that whilst no specific sampling exercise had been carried out in order to calculate the estimates provided, it had received a separate request from the complainant dated 20 March 2012 for details of the expenses and allowances for the Chief Executive for the period 1 April 2011 to 31 July 2011 (including expenses paid direct to the officer and expenses paid by the Council). The Council confirmed that it complied with this request and provided the requested information. In responding to this request, the Council confirmed it used the same procedures and methodology as outlined in its estimates referred to above. The Council confirmed that it took a total of 6 hours and 45 minutes to respond to the request.
20. The Council's total estimate for the time it would take to comply with the requests in this case, taking into account all of the processes detailed above is 26 hours and 6 minutes (estimate A - 3:57 plus estimate B - 22:09). The Council maintain that compliance would exceed the appropriate limit.
21. The issue of what constitutes a reasonable estimate in relation to the cost limit was considered by the Information Tribunal in the case of *Roberts v the Information Commissioner*. The Commissioner is assisted by the Tribunal's approach as set out in paragraphs 9 -13 of the decision:
- *"Only an estimate is required"* (i.e. not a precise calculation)
 - The costs estimate must be reasonable and only based on those activities described in regulation 4(3)
 - Time spent considering exemptions or redactions cannot be taken into account
 - Estimates cannot take into account the costs relating to data validation or communication

- The determination of a reasonable estimate can only be considered on a case-by-case basis and
 - Any estimate should be “sensible, realistic and supported by cogent evidence”.
22. The Tribunal went on to suggest that producing an estimate requires a process of both investigation and assessment/calculation. At paragraph 12, the Tribunal said:
- “...The investigation will need to cover matters such as the amount of information covered by the request, its location, and the hourly rate of those who have the task of extracting it. The second stage will involve making an informed and intelligent assessment of how many hours the relevant staff members are likely to take to extract the information...”.
23. The Regulations specify those tasks that may be taken into account when forming a cost estimate. The Commissioner considers it debatable whether some of the tasks specified by the Council would fall within those tasks specified in the Regulations. For example, the estimates for briefing a member of staff to carry out the task, the time to re-file paper documents, and the time for a manager to review the information. However, the Commissioner accepts that enough of the tasks specified by the Council can be taken into account that the possibility that some of the tasks cannot be taken into account will not impact upon the conclusion here.
24. The Commissioner notes that, it would be possible for the Council to provide details of expenses paid direct to the officers concerned. However, the Commissioner accepts that the issue of payments made direct by the Council in respect of expenses relating to the two officers is a more complex procedure. The Council has provided the Commissioner with samples of its accounting system, and copies of invoices and bills. Based on this and the explanations provided the Commissioner is satisfied that the processes which the Council has identified would be necessary in order to determine the information held relevant to the request. For example, the Commissioner notes that invoices for boat and air travel are “combined” invoices covering a number of Council departments and individuals. It would therefore be necessary to identify the travel undertaken by the specific officers who are the subject of this request.
25. Due to the nature of the information requested by the complainant and the way in which it is recorded and held by the Council, it is the Commissioner's view that the Council has provided adequate explanations – as referred to above – to demonstrate that it would exceed the appropriate limit of 18 hours to locate, retrieve and extract

the requested information. The conclusion of the Commissioner is, therefore, that section 12(1) was appropriately applied by the Council and that it was not obliged to comply with the request.

Section 16

26. Section 16(1) imposes an obligation for a public authority to provide advice and assistance to a person making a request, so far as it would be reasonable to do so. Section 16(2) states that a public authority is to be taken to have complied with its section 16 duty in any particular case if it has conformed with the provisions in the Section 45 Code of Practice in relation to the provision of advice and assistance in that case.
27. Whenever the cost limit has been applied correctly, the Commissioner must consider whether it would be possible for the Council to provide advice and assistance to enable the complainant to obtain information without attracting the costs limit in accordance with paragraph 14 of the Code. In this case the Commissioner has considered whether it would have been reasonable for the Council to have advised the complainant further about reducing the scope of her request.
28. In its refusal notice, the Council advised that if the complainant was to make a narrower request, for example for a particular type of expense, it may be able to comply with the request. In its internal review, the Council stated that it may be able to respond to a specific request for information about a particular mode of travel, for example travel by rail, or car hire.
29. It appears that in relation to this specific request, the complainant did not narrow or refine his request. However, the Commissioner notes that the complainant did submit a new request on 20 March 2012 (as referred to paragraph 19 above) for expenses claimed by the Chief Executive only for a four month period, and the Council complied with the request.
30. Based on the above, the Commissioner considers that the Council complied with its obligations under section 16(1) because it offered reasonable advice and assistance in this case.

Other matters

31. Whilst there is no explicit timescale laid down by the FOIA for completion of internal reviews, the Commissioner considers that internal reviews should be completed as promptly as possible. The Commissioner believes that a reasonable time for completing an internal review is 20

working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days.

32. The Commissioner is concerned that despite the fact that the complainant requested an internal review on 1 August 2011, the Council did not respond until 19 January 2012. The Commissioner does not believe that any exceptional circumstances existed to justify the significant delay, and he therefore wishes to register his view that the Council fell short of the standards of good practice by failing to complete its internal review within a reasonable timescale. He would like to take this opportunity to remind the Council of the expected standards in this regard and recommends that it aims to complete its future reviews within the Commissioner's standard timescale of 20 working days.

Right of appeal

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: 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

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.

Signed

Andrew White
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