

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 22 November 2012

**Public Authority:** North East Lincolnshire Council  
**Address:** Municipal Offices  
Town Hall Square  
Grimsby  
DN31 1HU

#### Decision (including any steps ordered)

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1. The complainant requested information relating to the Council Tax (Administration and Enforcement) Regulations 1992, specifically the 'Header H' fee. North East Lincolnshire Council ("the Council") refused to provide the information on the basis that the exclusion under section 12 relating to the £450 cost limit applied.
2. The Commissioner's decision is that the Council correctly applied section 12 but did not provide reasonable advice and assistance in accordance with its duty under section 16.
3. There are no steps to be taken.

#### Request and response

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4. On 8 January 2012 the complainant made the following request for information:

"With regards the Council Tax (Administration and Enforcement) Regulations 1992 (As amended) and more specifically Schedule 5 Header H fee of the regulations.

1) Please define your policy for the following scenario with regards North East Lincolnshire Council charging a debtor the £24.50 fee listed in the schedule.

THE SCENARIO:

North East Lincolnshire Council, or a bailiff acting for them, levies goods to enforce council tax debt but has not physically removed any items.

For reasons, such as the debtor's case being returned to the council or the debt being settled, can this Header H fee be charged to the debtor?

Can you also supply any legal documentation to support your response?

2) Between financial years 2006 and 2011;

Please supply the number of North East Lincolnshire residents who have incurred the Header H fee, as a result of the council or its agents levying a council tax debt, where goods had not been physically removed?

Please categorise the number into;

- a) The number of residents incurring the fee, and
- b) The number of residents who paid the fee."

5. On 10 January 2012 the Council responded stating that it did not hold the information requested in both part one and two of the request.
6. On the same day the complainant requested an internal review.
7. The review, which was provided on 12 January 2012, upheld the original response. In respect of part 2 of the request the Council referred the complainant to a named firm of bailiffs who it advised may hold this information.
8. The complainant provided information to the Council which he considered demonstrated that the Council did have access to the requested information.
9. On 16 July 2012 the Council confirmed to the Commissioner that it did not hold information within the scope of the request.

10. On 3 April 2012 the complainant contacted the Commissioner to complain about the Council's response.
11. Following the Commissioner's questioning the Council found that information within the scope of the request was held and subsequently amended its refusal notice on 3 August 2012. The Council now sought to refuse part 2 of the request under section 12 (Cost of compliance).
12. On 14 August 2012 the complainant requested a further internal review of the amended refusal notice which focussed only on part two of the request.
13. On 7 September 2012 the Council provided a review and upheld its reliance on section 12 in respect of part 2 of the request.

### **Scope of the case**

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14. The complainant remained dissatisfied with the Council's response and the Commissioner continued with his investigation.
15. The Commissioner initially determined the scope of the case on 26 June 2012. However, following the Council's reconsideration of the request and its subsequent amended response the Commissioner amended the scope of his investigation, on 12 September 2012, to consideration of the Council's application of section 12 to the second part of the request.
16. The complainant emphasised to the Commissioner his dissatisfaction at the Council's change in response from stating that the requested information was not held to its response that the information was held.

### **Reasons for decision**

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#### **Section 12 – Cost limit**

17. Section 12(1) provides the following:

“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.”
18. The appropriate cost limit is £600 for central government and £450 for all other authorities, as per the Freedom of Information and Data

Protection (Appropriate Limit and Fees) Regulations 2004. If an authority estimates that complying with a request may cost more than the cost limit, it can consider the time taken 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.
19. The Council informed the Commissioner that information relating to fees incurred and paid was located in the Return Report provided by the named bailiffs to the Council for each defaulter. It informed the Commissioner that 31,823 accounts had been passed to the bailiffs during the time period 2006/7 to 2011/12.
20. In its internal review the Council estimated that each account review would take 10 minutes. However, following further investigation it confirmed to the Commissioner that following a sampling exercise it had identified a quicker method to locate, retrieve and extract the requested information and was able to reduce its estimate to 3 minutes for each account.
21. The Council provided the Commissioner with a detailed explanation of its methodology based on its sampling exercise. The Council located the relevant accounts using the original, electronically stored, Bailiff Files which are sent to the named bailiff each month. It explained that each year file comprised of 24 files with the information held as a string for each debtor. In order to ensure all records were identified the details were transferred to a spreadsheet and separated into its separate data elements (including account numbers). This activity was estimated at 10 minutes for each Bailiff File. Following the locating of the records each account number would be entered into the Council's imaging system to examine the files held on the system for the account searching for the correct Bail Return / Nulla Bonna. The Council explained that a 'Council Tax Case' could have multiple Bailiff Return files and depending on the type of bailiff file (Bail Return / Nulla Bonna) and age of the file, the Header H fee will be either listed as a 'Fee' incurred on a separate page for costs incurred or it will be found in the bulk of the 'History' notes provided with the Return. The details

would then be extracted and recorded on a spreadsheet identifying if the fee was incurred.

22. The Council explained that to determine whether the Header H fee had been paid it would need to consider all the payments received on the Return as some accounts are only partly paid. The Council stated that the costs incurred by the bailiffs are paid before the liability is paid; therefore if some costs are outstanding the amount would be deducted from the amount of the Header H fee paid. The Council estimated 5 minutes to extract the full information in each of these cases.
23. The Council further explained that in cases where there had been a full payment of costs to the bailiffs separate Return files were not sent to the Council. In these cases the Council holds the information on the payment received from the bailiff for the debt only.
24. The Council conducted its sampling exercise for one hour. During this time 19 individuals' cases were checked and the time recorded to retrieve and extract the information for each case was between 2 and 5 minutes. Consequently the Council provided the Commissioner with the following estimates of costs; for the requested period of time £39,775 (1591 hours) and for the single year of 2011/12, with 4583 accounts, £5725 (229 hours).
25. Based on the above, the Commissioner accepts the Council's estimate as reasonable and therefore that the request would exceed the appropriate limit under section 12 of the FOIA.

### **Section 16(1) - Duty to provide advice and assistance**

26. If a public authority wishes to rely on section 12, it must then consider its duty to provide advice and assistance. The Code of Practice under section 45 of the FOIA states the following:

“Where an authority is not obliged to comply with a request for information because, under section 12(1) and regulations made under section 12, the cost of complying would exceed the appropriate limit the authority should consider providing an indication of what, if any information could be provided within the cost ceiling. The authority should also consider advising the applicant that by reforming or re-focussing their request, information may be able to be supplied for a lower or no fee.”
27. The Commissioner notes the Council's consideration of section 16 and its conclusion that:

"...we have determined that due to the large number of accounts it is not possible to refine the request so that it could be responded to without exceeding the appropriate limit."

28. The Commissioner is unable to accept that the Council has adequately discharged its obligations under section 16 on this occasion. In consideration of the explanation provided to the Commissioner the Council could have provided further information to aid the complainant's understanding of the application of section 12.
29. The Commissioner is aware that during his investigation of the case, the complainant has questioned the integrity of the Council as a result of its initial response that it did not hold information within the scope of the request and its subsequent reliance on section 12 to withhold the information. The Commissioner notes that the Council has not provided an explanation to the complainant of its change in response. The Commissioner considers that this would have been helpful in order to fulfil the section 16 duty. However, as a detailed explanation was provided to the Commissioner and is included in this notice, he requires no steps to be taken.

### **Other Matters**

30. Although part 1 of the complainant's request subsequently fell outside the scope of the Commissioner's investigation, he does wish to provide some observations regarding the Council's handling of it. This is because the Commissioner considers that the Council could have provided a clearer explanation of its determination that it did not hold information in respect of part one of the request.
31. With respect to part 1 of the request the complainant explained to the Commissioner that he had used the scenario to clarify the information he required and was of the opinion that the circumstances outlined "would and do occur on a regular basis". The Council did not interpret the request and the Commissioner considers that the Council could have taken a broader interpretation of the "scenario" and to assist the complainant, considered whether it held any information or could provide any explanation relevant to the part 1 request.
32. For example, the Council explained to the Commissioner that it does not have a policy in place regarding the charging of the Header H fee in the scenario outlined by the complainant. The Council explained that it would follow Schedule 5 of the Council Tax (Administration and Enforcement) Regulations 1992 in relation to the scenario and as no

separate policy had been developed no policy is held. Again, the Commissioner considers that it would have been helpful had such an explanation been provided to the complainant.

## Right of appeal

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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](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)

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** .....

**Alexander Ganotis**  
**Group Manager – Complaints Resolution**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**