

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 March 2013

Public Authority: Isle of Wight Council
Address: County Hall
Newport
Isle of Wight
PO30 1UD

Decision (including any steps ordered)

1. The complainant has requested information regarding Councillor Pugh's responses to email enquiries from members of the public in a specific time frame. The council refused to provide the requested information as it considered that it would exceed the appropriate limit to do so and that section 12 therefore applied.
2. The Commissioner's decision is that the council has correctly relied on section 12 in this case. Accordingly he does not require the council to take any steps.

Request and response

3. On 12 April 2012 the complainant requested information of the following description:

"This is an FOI regarding the correspondence between councillor David Pugh and the general public. I am requesting:

1) The number of written enquiries (including emails) he has received calling for a response.

2) Of 1), the number not responded to within 30 calendar days

3) Of 2), the number still awaiting a response

Include the enquiry dates of the sender for items 2) and 3) (so these can be checked against known examples)

The request is for enquiry dates covering the period from 1st July 2011 to 29th Feb 2012."

4. On the same day he clarified that by the term 'response' he meant more than an acknowledgement, a reply which addresses the subject of the enquiry.
5. On 2 May 2012 the council responded by providing the complainant with the requested information for written enquiries received by post. However, it stated that the time it would take to respond to the request regarding the email correspondence would exceed 18 hours and therefore it refused this part of the request under section 12 of the FOIA.
6. The Complainant submitted the following refined request on 3 May 2012:

"I will modify my request to include emails with a receipt date just for the month of February 2012"
7. The council responded on 6 June 2012 advising that it still considered that section 12 was engaged. It further explained to the complainant that the ICT section had established that Cllr Pugh had processed 280 emails in just 2 days and it would therefore take longer than 18 hours to locate and extract the requested information.
8. On 6 July 2012 the complainant responded asking the council how many days could be provided within the 18 hour limit. This was treated as an internal review request and the council responded on 25 July 2012. It upheld its original position and further explained that due to the large amount and variety of emails sent and received by Councillor Pugh there were a number of steps which must be completed in order to collate the requested information. First it must establish which emails were sent to or from the general public. It would then need to read each email to establish whether it is an enquiry about council rather than constituency business. The council suggested that it could carry out this work for one day within the 18 hour limit.

Scope of the case

9. The complainant contacted the Commissioner on 21 August 2012 to complain about the way his request for information had been handled.

10. He agreed that the scope of his complaint was the council's decision to apply section 12 to the refined request of 3 May 2012 for information about Cllr Pugh's responses to emails received in February 2012.

Reasons for decision

Section 12(1) – Costs exceed appropriate limit

11. Section 12 states that 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. Under the FOIA, the appropriate limit for local authorities is £450.
12. When considering whether section 12 applies, the public authority can only take into account certain costs as set out The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. Paragraph 4(3) states the following:

"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".*
13. When estimating the cost of a staff member carrying out the above activities, the costs are taken to be at a rate of £25 per hour which equates to 18 hours work.
14. In the first instance, it is important to set out that councillors are only subject to the FOIA for the information they hold relating to council business, and not any information they hold relating to constituency or party political matters. The council has explained that in the case of Cllr Pugh, he does not file his council business correspondence separately from all other email correspondence. As such, the council has explained that in order to find the information which falls within the scope of the request, it must necessarily establish whether the content of the email falls within the scope of the FOIA.
15. The complainant has raised concerns that the fact that councillors are not required to hold their council business information separately means

that there is effectively no right of access to such information under the FOIA. The Commissioner does not accept that this is the case. Clearly every councillor will hold and manage their information differently and as such, whilst one council may claim section 12 in relation to the way one councillor holds his information, this will not be the case in every council for every councillor.

16. The council has carried out a sampling exercise to establish if its estimate that the work required to provide the complainant with the requested information would exceed the appropriate limit. In order to provide the information requested it has listed the following tasks which were undertaken:
 1. Select an email received by Cllr Pugh in the requested time frame.
 2. Open and read the email to determine if it relates to council business (rather than constituency or political information) and therefore falls within the scope of the request.
 3. Decide if it required a response.
 4. Search for a response – in some instances this was obvious from the original email, but in others a second search of the sent items folder was required.
 5. Read the response email to determine whether it was a full response as per the complainant's clarification email of 12 April 2012.
 6. Record the dates of the emails where a response was required and those where a response was provided.
 7. Calculate the number of days between enquiry and response.
17. The council stated that it carried out this exercise for 30 incoming emails and recorded the time it took for each step in relation to each email. The average time taken per email was 4.7 minutes. This equates to 12.8 emails an hour, which means that 229.8 emails could be checked within the appropriate limit of 18 hours.
18. In order to determine how many days of emails could be checked within the appropriate limit, the council has checked the number of emails received per day for 7 random days in February, including weekends. The average number of emails per day has been calculated at 96, and given that this includes weekend days, the council has suggested that it is a conservative estimate. Its sampling exercise has therefore

determined that the requested information could be provided for 2.4 days within the appropriate limit.

19. The complainant maintained that the council had not undertaken to provide the requested information using the quickest method. He suggested that as he was requesting information regarding Cllr Pugh's responses to enquiries from the public, all internal emails could be excluded from the search. He argued that the council could undertake a search of the Cllr Pugh's inbox for the term '.gov' as this would identify all internal emails, and these could then be removed from the search.
20. At the Commissioner's request the council considered this suggestion. It acknowledged that a large amount of Cllr Pugh's correspondence would be from council officers and other councillors. However, it explained that its ICT department had advised that whilst searches could be limited to specific external addresses, they could not be limited to all external addresses only.
21. The Commissioner has investigated the possibility of separating internal emails out through a '.gov' search of an inbox. He notes that emails to internal addresses are stored in the organisation's address book, and as such they appear in the 'to' and 'from' fields as just the name of the correspondent, and not the entire email address. Therefore, the '.gov' suffix is not included in the 'from' field and would not be returned in the search.
22. In addition to this, the search of the inbox for '.gov' will return results which contained '.gov' in the body of the email, this is particularly the case when the email footer contains a '.gov' email or website address. Emails sent from the general public to the Councillor may contain the '.gov' suffix in the 'to' field, and emails from other public authorities, which are therefore external emails, will also contain the '.gov' suffix in the 'from' field.
23. Emails which are from a member of the public but which reply to a previous council email when making their enquiry will also be returned in a '.gov' search. This is because the footers and signatures of the council email to which they are replying will contain '.gov'. Further to this, it is possible that an individual has submitted a personal enquiry to Cllr Pugh from their work email address which could be a '.gov' address and which would therefore need to be considered in the collation of the requested information.
24. Therefore, whilst the Commissioner acknowledges that a search for '.gov' emails could weed out some internal emails, it would also risk weeding out emails that need to be considered. Therefore, in order for the council to be sure that it is providing a full response to the request,

there would still be a large degree of manual checking required to establish whether any of the emails separated out by the '.gov' search were actually enquiry emails to Cllr Pugh from an individual acting in their personal capacity asking about council rather than constituency or political matters.

25. In addition to this, given that the maximum number of emails that could be considered within the 18 hour time limit is 220, the Commissioner notes that for the month of February, there could only be a maximum of 8 emails received a day in order for the request to fall within the appropriate limit. Even if the council was able to eliminate internal emails it seems very unlikely that the number of emails from the public would be as low as 8 per day, particularly since the council's estimate of 96 emails received by Cllr Pugh a day is conservative. Therefore, the Commissioner has little difficulty in accepting that the council is unlikely to be able to provide the complainant with the requested information within the appropriate limit, even if it were able to successfully separate out internal emails.
26. In this case, the Commissioner is satisfied that the council's estimate is based on cogent evidence as it is based on a sampling exercise which has been extrapolated to the full scope of the request. He is therefore satisfied that it is a reasonable estimate and that the council has correctly applied section 12.

Right of appeal

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

Website: 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
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