

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 March 2013

Public Authority: Carmarthenshire County Council
Address: County Hall
Carmarthen
SA31 1JP

Decision (including any steps ordered)

1. The complainant requested copies of all communications between Carmarthenshire County Council ('the Council') and Towy Community Church. The Council refused the request under section 12 of the FOIA. The complainant subsequently limited her request to communications between the parties relating to a specific project. The Council maintained that to comply with the refined request would exceed the appropriate limit and as such section 12 of the FOIA applied. The Commissioner has investigated and has found that the Council incorrectly relied on section 12(1) as the basis for refusing to provide the requested information.
2. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation:
 - Issue a fresh response under the FOIA that does not rely on section 12(1).
3. The public authority 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 pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

4. On 3 June 2012, the complainant wrote to the Council and requested information in the following terms:

"Given that Carmarthenshire Council has described the Towy Community Church as a Partner organisation, please could you provide copies of all correspondence including, but not exclusively, email exchanges, letters and meeting notes between the Council (and its individual officers and Members) and the Towy Community Church, Carmarthen (including officers of the church) since January 2007 until present. This request does not refer exclusively to the Excel Project.

Please also include any correspondence between any representatives of both organisations."

5. The Council responded on 2 July 2012 stating that, to comply with the request would exceed the appropriate cost limit as provided under the FOIA and, as a result, it was relying on section 12 of the FOIA as the basis for refusing the request.
6. On 2 July 2012 the complainant wrote to the Council and refined her request of 3 June 2012. She limited her request to correspondence dealing specifically with the Excel project.
7. The Council responded on 31 July 2012, stating that, to comply with the refined request would exceed the appropriate limit as provided under section 12 of the FOIA.
8. On 31 July 2012 the complainant requested an internal review of the Council's handling of her refined request.
9. The Council provided the outcome of its internal review on 17 August 2012 and upheld its decision that section 12 of the FOIA was applicable as the cost of complying with the request would exceed the appropriate cost limit.

Scope of the case

10. The complainant contacted the Commissioner on 21 August 2012 to complain about the way his request for information had been handled.
11. The Commissioner considers that the focus of this complaint is the Council's application of section 12(1) of the FOIA to the refined request of 2 July 2012. This refers to all communications between the Council (and its individual officers and Members) and the Towy Community Church relating specifically to the Excel Project from January 2007 to June 2012.

Reasons for decision

Section 12 – cost of compliance

12. 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. In this case, the cost limit is £450 as set 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.
13. 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.
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 also asked for a description of the nature of the work involved to be included.
15. In its internal review, the Council acknowledged that the complainant had limited her request to correspondence relating specifically to the Excel project but maintained that the request was still broad in terms of the date range covered and the type of information requested. The Council confirmed that it holds information which would fall within the scope of the request and advised that the information is held both manually and electronically.
16. In relation to information held within manual, paper based records, the Council advised that it held files within its Legal Services and Economic Development departments. The file within the Council's Legal Services Department consists of 7 parts as detailed below:
 - Part 1 – 351 pages
 - Part 2 – 614 pages
 - Part 3 – 745 pages

Part 4 – 614 pages
Part 5 – 614 pages
Part 6 – 2,720 pages
Part 7 – 1,404 pages
Total = 7,062 pages

17. The Council confirmed that the pages in the part 1 file were individually counted and measured exactly 4cm in depth. Based on this, the Council estimated that the files contained 87.75 pages per cm. Using this calculation, the Council estimated the number of pages contained within parts 2-7. The Council also reviewed the part 1 file to identify information relevant to the request and it took 14:35:04 minutes. Using this figure, the Council calculated that it would take an average of 2.4 seconds per page ($14 \text{ (minutes)} \times 60 \text{ (seconds)} \div 351 \text{ (pages in part 1)} = 2.4 \text{ seconds}$) to locate relevant information. Using this estimate, the Council calculated that it would take in the region of 4-5 hours to carry out an appropriate search of the file within its legal department ($7,062 \text{ pages} \times 2.4 \text{ seconds} = 4 \text{ hours } 43 \text{ minutes}$).
18. The Council advised that six lever arch files of information relating to the Towy Community Church Excel project were held within its Economic Development department, as detailed below:
 - File 1 – 392 pages
 - File 2 – 192 pages
 - File 3 – 392 pages
 - File 4 – 599 pages
 - File 5 – 261 pages
 - File 6 – 607 pages
 - Total = 2,443 pages
19. Again, the Council confirmed that the pages in the part 1 file were individually counted and measured exactly 5.1cm in depth. Based on this, the Council estimated that the files contained 76.86 pages per cm. Using this calculation, the Council estimated the number of pages contained within the six lever arch files. Using the estimate of 2.4 seconds per page to search its paper records, the Council estimated that it would take 1.5 – 2 hours to carry out searches of the six lever arch files ($2,443 \text{ pages} \times 2.4 \text{ seconds} = 1 \text{ hour } 38 \text{ minutes}$). Therefore, the Council's total estimate for searches required of manual records is 6 hours 21 minutes.
20. The Council advised that its Economic Development department also held an electronic folder, on a shared drive which contained 286 files in the Towy Community Church folder, taking up around 78.4 MB of space. The documents within this folder would include information such as business plans, cash flow projections, funding application forms, grant

information site plans etc. The Council said that, to retrieve correspondence from the folder (other than emails) would require manually opening each file and checking its contents. The Council assumed it would be obvious on opening the file whether the information was correspondence, the Council estimates it would take between 1 and 2 hours to complete this task as "by itself, this is not therefore a major factor in estimating time".

21. In relation to information held within email format, the Council advised that it had identified at least 24 individual mailboxes which would need to be searched in order to identify relevant information. The Council advised that the following steps would be required in order to search these mailboxes:
 - Access individual officers'/elected members computers to convert any personal folders in to Microsoft Outlook format to enable them to be searched.
 - Reconstruct individual mailboxes from computer back-ups for the previous 12 months, to ensure that any deleted items are included.
 - Conduct individual keyword searches on each mailbox.
22. The Council advised the Commissioner that although it had not conducted a sampling exercise relating to this specific request, a similar exercise had recently been conducted in relation to another matter. This involved the reconstruction of 17 Mailboxes and 12 keyword searches, a total of 204 separate searches. The Council confirmed that this process took a total of 25 working days to fully complete, at an average of 8.26 searches per day. The Council pointed out that this did not include any time required to check the electronic documents to establish whether they fell within the scope of the request. In this case, the fact that any document identified through any electronic searches contained one of the keywords in its subject title would not necessarily mean that it would be a communication between the Council and Towy Community Church. As such, each document identified during the electronic keyword searches would then need to be manually reviewed to assess whether it was relevant to the request.
23. The Commissioner asked the Council for further information about the steps and processes required in order to search its email records. He also asked the Council whether there were any alternative methods of searching electronic records, for example, for each officer/Member to carry out searches of their own mailboxes.
24. The Council advised that the main reason why searches of information held electronically take so much time is primarily due to the way in

which electronic records are currently managed within the Council. The Council agreed that where tasks could be delegated to individual users, for them to carry out their own searches of emails/electronic documents, the search process would be simplified. However, the Council confirmed that, in this case, the officers concerned would not have access to all deleted electronic email/electronic documents. As a result, central searches would need to be undertaken, led by the Council's ICT division. To complete this central search, the Council confirmed that the process would be as follows:

- Establish the scope of the exercise by preparing search terms and a list of users.
 - Restore all available backups – due to the retention schedule used by the Council email records could be part of 16 backup jobs, six of which would require backup tapes to be loaded. Each job would take 20 minutes to configure and would require the correct tapes to be loaded. Collation of Outlook Personal File Folders (PST) will take 10 minutes per restore and would need to be run individually overnight (due to network capacity/performance issues).
 - Identification and collation of PST files. User profiles would need to be checked for all personal folders and collated at an average of 20 minutes per user.
 - Configure searches to scan all PST files – 15 minutes per search. Whilst this process is automated, the Council advised that many searches take several hours and required monitoring/manual intervention.
25. As the Council had not provided a total overall estimate for searching email records, the Commissioner again asked the Council to confirm its overall estimate for searching email records. He also asked the Council for further clarification on the processes involved in searching these records, including the number of keyword searches which would need to be run. The Council provided the following estimate for work which would need to be undertaken centrally by its IT division:
- (a) 16 x backup job configuration @ 20 minutes each = 5 hours
 - (b) 6 x tape management @ 30 minutes each = 3 hours
 - (c) 16 x collation of restored files @ 10 minutes each = 2 ½ hours
 - (d) 24 x collation of PST files @ 20 minutes per user = 8 hours
 - (e) 1 x search configuration @ 15 minutes
- Total time – 18 hours 45 minutes

As referred to in paragraph 22 above, it would then be necessary to manually check the emails identified as a result of the searches to see whether the email fell within the scope of the request ie whether it is a communication between the Council and Towy Community Church. The Council advised that it was difficult to provide an accurate estimate for the time it would take to do this as it would wholly depend on the number of emails identified as a result of the searches.

26. In view of the above , the Council's total estimate to comply with the request is between 26 hours and 6 minutes and 27 hours and 6 minutes as follows:

Paper files	6 hours 21 minutes
Electronic Folder of documents	1-2 hours
Email records	18 hours 45 minutes

Plus an un-quantified amount of time to manually check emails identified through relevant searches.

27. A public authority does not have to make a precise calculation of the costs of complying with a request; instead only an estimate is required. However, it must be a reasonable estimate and what amounts to a reasonable estimate has to be considered on a case by case basis. The Information Tribunal in the case of *Randall v Information Commissioner and Medicines and Healthcare Products Regulatory Agency*¹ said that a reasonable estimate is one that is "...sensible, realistic and supported by cogent evidence".
28. The Commissioner accepts that the Council's assertion that searches would be required of paper, electronic and email records. However, the Commissioner notes that some of the activities referred to by the Council in relation to searching email records relate to searching for deleted information contained within its backup records. The Commissioner's guidance on "Determining whether information is held"² refers to information held in backup storage. The Commissioner generally considers that information contained on a backup is not

¹ Appeal number EA/2006/0004, 30 October 2007

²

[http://www.ico.gov.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Practical_application/determining_whether_information_is_held_foi_eir.ashx](http://www.ico.gov.uk/for_organisations/guidance_index/~/media/documents/library/Freedom_of_Information/Practical_application/determining_whether_information_is_held_foi_eir.ashx)

information that can be considered to be “held” for the purpose of FOIA. This is because, the main purpose of backup is disaster recovery and generally, the public authority will have no intention of accessing information on a backup. Rather than looking at the practicalities of recovering such information, the Commissioner’s approach is to focus on the intentions of the public authority.

29. The Commissioner’s guidance also considers the costs of dealing with a request for information and the searches a public authority would be expected to conduct in order to locate, retrieve and extract relevant information. A public authority is likely to have a business need to hold information on backup tapes, for example to recover it in the case of accidental deletion or a disaster occurring which required its recovery. The Commissioner’s view is that such information will not normally be held for the purposes of FOIA. However, where information on a backup is being used as an archive facility, he considers that the information is held for the purposes of FOIA. As such, if the only reason to retrieve such “archived” information is to respond to a request an authority can include recovery costs when considering the appropriate limit under section 12.
30. In this case, the Council has stated that searches would be required of its backup records in order to recover any deleted information. The Council has not provided any evidence to suggest that its backup records are in any way being used as an archive facility. In view of this, the Commissioner does not accept that the Council can take into account any time it has estimated to be involved in searching its backup records, because in his view this information is not held for the purposes of FOIA and therefore it falls outside of the scope of the request. The Council confirmed that the activities listed at (a) to (c) in paragraph 25 of this notice totalling 10.5 hours all relate to processes involved in searching backups.
31. Therefore, as the Commissioner does not accept that the Council needs to include any time relevant to searching its backup records, this reduces the Council’s overall estimate for the time to comply with the request to around 15.5 – 16.5 hours, plus any additional time to manually check the emails identified through electronic searches to ascertain whether they are communications between the Council and the Towy Community Church.
32. The Commissioner accepts the Council’s position that it is unable to accurately calculate the amount of time required to check through the emails to assess whether they are relevant to the request as it would depend on the number of emails identified as a result of the searches. However, the Commissioner notes the Council’s previous advice that the process of checking electronic information to determine whether it is

correspondence falling within the scope of the request is not an onerous one, as referred to in paragraph 20 above in relation to the electronic folder held by its Economic Development Division, where it estimated it would take 1 to 2 hours to check 286 files.

33. Based on the arguments put forward by the Council and the fact that the Commissioner does not accept the Council needs to take into account any time associated with searching its backup files, the Commissioner is unable to reasonably conclude that compliance with the request would exceed the appropriate limit. Therefore he does not accept that section 12 and the Fees Regulations have been correctly applied in this case.

Right of appeal

34. 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

35. 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.
36. 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

Anne Jones
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