

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 February 2013

Public Authority: Blackpool Borough Council

Address: Town Hall
Blackpool
FY1 1AD

Decision (including any steps ordered)

1. The complainant requested information from Blackpool Borough Council ("the council") about how much it had spent on outsourcing to either barristers or solicitors for employment tribunals between 1 August 2000 and 31 October 2010. The council refused to comply with the request on the basis that section 12(1) was engaged, the exclusion relating to the costs limit under the Freedom of Information Act 2000 ("the FOIA"). The council estimated that it could search 27 files before the "appropriate limit" under section 12(1) was exceeded. The complainant asked the council to undertake this work, starting from 2010 and working backwards. The council said that the complainant had not sufficiently refined the request.
2. The Commissioner's decision is that the council breached section 16(1) of the FOIA by failing to provide reasonable advice and assistance and section 1(1)(a) and 10(1) for failing to confirm or deny whether it holds any information falling within the scope of the refined request.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Starting from October 2010 and working backwards, the council should search the 27 files that it estimated could be searched within the appropriate limit, or less should the appropriate limit be exceeded before the estimate is reached. The council should provide to the complainant any information that is located falling within the scope of the request. If no information is found, the council should write to the complainant to confirm that is the case.

4. 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

5. On 14 January 2011, the complainant requested information from the council in the following terms:

"I would like to know how much the Council has spent outsourcing to either Barristers Chambers or Solicitors at Employment Tribunals for all Council Staff (including Teaching Staff). Any combination of those below, between 1st August 2000 and 31 October 2010:

- 1) *For constructive dismissal*
- 2) *Unfair dismissal*
- 3) *One (or more) of the various discrimination claims and/or under the Protection from Harassment Act*
- 4) *Any other Employment issues, I may have omitted.*

Please name the Solicitors/Barristers that the council have outsourced to: For example, 2010 Number (which is the cost spent) Name (Name of Solicitor/Barrister). Please provide the figures in the following format e.g. 2006 – NUMBER HERE AND SOLICITOR OR BARRISTERS NAME HERE; 2007 – NUMBER HERE AND SOLICITOR OR BARRISTERS NAME HERE; 2008 – NUMBER HERE AND SOLICITOR OR BARRISTERS NAME HERE; 2010 – NUMBER HERE AND SOLICITOR OR BARRISTERS NAME HERE; etc, thus making it easier for one to read and to ensure there is no misunderstandings.

I would request that you include VAT in the figures. Not a before and after VAT, a figure which included total cost including VAT.

Please also send this information as 'calendar years' not financial years".

6. The council failed to respond within 20 working days, prompting further correspondence from the complainant.
7. On 19 April 2012, the council responded and said that it did not hold all of the information requested. In relation to the information that was held, the council said compliance with the request would exceed the appropriate limit under section 12 of the FOIA.

8. The complainant replied on 22 April 2012 and asked the council to provide whatever information it could within the appropriate limit.
9. The council replied on 23 April 2012 and said that the complainant's response was not specific enough. It said that it would be able to search 27 files before the limit was exceeded.
10. The complainant replied on 27 April 2012 and asked the council to start from 2010 and work backwards.
11. The council replied on 30 April 2012 and said that it still did not consider that the complainant had sufficiently refined the request although it did not explain why, prompting further complaints from the complainant.

Scope of the case

12. On 4 September 2012, the complainant contacted the Commissioner to complain about the way her request for information had been handled. She specifically asked the Commissioner to consider whether the council had complied with its obligations under section 16 of the FOIA to provide reasonable advice and assistance.

Reasons for decision

Section 16 – Duty to provide reasonable advice and assistance

13. Section 12(1) provides that a public authority may refuse to comply with a request for information if it estimates that compliance would take longer than 18 hours. 18 hours is considered to incur a cost of £450 which is the appropriate limit set for local authorities under the FOIA. If the authority relies on section 12 of the FOIA, it then needs to consider its duty to provide advice and assistance under section 16 of the FOIA. The Code of Practice under section 45 of the FOIA states the following on the subject:

"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 (i.e. cost threshold) 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-focusing their request, information may be able to be supplied for a lower or no fee".

14. The council explained that to retrieve any information would require an initial manual search of its hard copy case files held in local storage. The council said that its referencing system does not provide a category reference for the type of case so an initial review would be required to identify which files relate to employment tribunals. The council said that it could potentially consult current staff members who had dealt with employment tribunals to see whether they could identify which cases relate to employment tribunals but such an approach would be reliant on individual recollection. The council said that once potential files to search had been identified, closed files would then need to be retrieved from storage. Each employment tribunal case found would then need to be reviewed further to establish whether barristers or external solicitors were engaged. The council estimated that it would take approximately 20 minutes per case file with a further 10-20 minutes to determine the payments made via the council's payments system and relevant records. The council said that it estimated that it could search 27 files within the appropriate limit but this may or may not reveal any information relevant to the complainant's request.
15. Once the council had indicated to the complainant that it had estimated that it could search 27 files before the limit was reached, the complainant asked the council to provide the information that it was able to by working from 2010 backwards within the appropriate limit. The council subsequently refused to do this on the basis that the complainant had not sufficiently refined her request. The Commissioner disagrees with the council on this point because the complainant did specify a relevant date to start from rather than just simply asking the council to work up to the appropriate limit. Furthermore, she was directly asking the council to provide the advice and assistance that it had already suggested could be provided when it estimated that it could search 27 files before the limit was exceeded. In the Commissioner's view, although the refinement provided was limited, it was sufficient to enable the council to carry out the searches that it had indicated it could do within the appropriate limit. The Commissioner understands that the council overlooked the time frame provided in the initial request and this had resulted in its position at the time that the request had not been sufficiently refined.
16. In view of the above, the Commissioner considered that the council had breached its obligation to provide reasonable advice and assistance under section 16(1) of the FOIA because it incorrectly informed the complainant that it could not search the estimated 27 files without further clarification from her, which was not in fact required. As the Commissioner was satisfied that the request had been sufficiently refined by the complainant, the council should have responded to the refined request in accordance with its obligations under section 1(1). As the council failed to conduct the search, it breached its obligation under

section 1(1)(a) in particular by failing to confirm or deny if any recorded information was held falling within the scope of the refined request. Section 10(1) states that public authorities should comply with section 1(1)(a) within 20 working days following receipt of a request for information. The council breached section 10(1) by failing to do this.

17. The council said that it considered that searching the files would not result in any meaningful response and it may be that no information would be found. The Commissioner appreciates the point of view expressed by the council that in view of the much broader scope of the original request and the way the records are kept, it seems unlikely that carrying out the search requested would reveal a significant amount of information and may reveal no information at all. However, the complainant has still asked for the search to be carried out, accepting the risk that the search may reveal very limited information or no information falling within the scope of her request. The Commissioner has therefore ordered steps for the council to take in order to ensure that it complies with its obligations under the FOIA.

Right of appeal

18. 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

19. 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.
20. 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

Graham Smith
Deputy Commissioner and Director of Freedom of Information
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF