

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 30 April 2013

**Public Authority:** Lancashire County Council  
**Address:** County Hall  
Preston  
PR1 8XJ

#### **Decision (including any steps ordered)**

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1. The complainant has requested from Lancashire County Council ('the council') information relating to the costs of the Olympic torch relay. The Commissioner's decision is that the council has correctly applied the exemption where the cost of compliance exceeds the appropriate limit and complied with its duty to provide advice and assistance. He does not require any steps to be taken.

#### **Request and response**

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2. On 16 July 2012 the complainant made the following request for information under the FOIA:

"I am writing to you following a number of constituents who have contacted me about the costs placed on local authorities in the North West of England as a consequence of having to organise the Olympic torch relay.

I would therefore be grateful if you could give me a breakdown of the costs incurred by your local authority and what contribution, if any was made by LOCOG."

3. The council responded on 25 July 2012 citing the exemption at section 12(1) of the FOIA, where the cost of compliance exceeds the appropriate limit, due to the diverse range of officers/Directorates and other organisations involved in the process. It further stated that, given the nature of the information, it is difficult to suggest a way in which the request can be amended to bring it within the threshold of the costs

limit. It said that much of the work done was part of officers' normal duties with some specific deployment on each day of the torch to cover unforeseen events/incidents and an estimated cost based on the limited amount of resources easily identified would be meaningless.

4. An internal review was requested on 27 July 2012 in which the complainant stated that the council is the only local authority in the North West to refuse to provide the requested information.
5. The council provided its review response on 19 September 2012. It maintained reliance on section 12 of the FOIA and confirmed that the council received no financial contribution from LOCOG. It stated that as the County Council's role in the event was essentially a supportive and enabling role, the interventions carried out by the County Council are not easily identifiable as the bulk of the supportive work related to staff time and advice at meetings in each of the districts through which the relay passed. It further explained that District Councils within Lancashire acted as lead authority for their area in connection with the torch relay and as such many of them will no doubt have identified budgets for events and community engagement as well as developing traffic management plans for their areas. However, the County Council did not identify a specific budget for work in connection with the torch relay; it was simply carried out as part of normal duties which is not uncommon where the County Council's officers are carrying out their obligations to ensure a safe and efficient highway network. It stated that, given the circumstances, whilst it would be possible to identify some specific costs incurred by the County Council in their supportive role (for example, costs of making relevant Traffic Regulation Orders and costs of event signage), this would in no way be a true reflection of the overall costs. Collating the overall costs would require all officers involved going back over many weeks and months of duties and appointments to identify time spent on the event.

### **Scope of the case**

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6. The complainant contacted the Commissioner 10 September 2012 to complain about the way his request for information had been handled. He stated that he had written to 40 local authorities in the North West of England with similar requests and this council was the only one to deny him the information
7. The Commissioner has considered whether the exemption at section 12 of the FOIA applies in this case. He has also considered whether the council has complied with its duty at section 16 of the FOIA to provide advice and assistance.

## Reasons for decision

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### **Section 12 – Exemption where the cost of compliance exceeds the appropriate limit**

8. Section 12 of FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate cost limit which, in this case, is £450 as laid out in section 3(2) of the fees regulations.
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. As the costs are calculated at £25 per person per hour for all authorities regardless of the actual cost or rate of pay, the limit will be exceeded if the above activities exceed 18 hours.
11. 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*<sup>1</sup> said that a reasonable estimate is one that is "...sensible, realistic and supported by cogent evidence".
12. In his guidance on this subject<sup>2</sup>, the Commissioner states that a sensible and realistic estimate is one which is based on the specific

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<sup>1</sup> Appeal number EA/2006/0004, 30 October 2007

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[http://www.ico.org.uk/for\\_organisations/guidance\\_index/~media/documents/library/Freedo](http://www.ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedo)

circumstances of the case and should not be based on general assumptions, for example, that all records would need to be searched when it is likely that staff in the relevant department would know where the requested information is stored.

13. In the aforementioned guidance on the subject, the Commissioner also states that;

"A public authority is not obliged to search for, or compile some of the requested information before refusing a request that it estimates will exceed the appropriate limit. Instead, it can rely on having cogent arguments and/or evidence in support of the reasonableness of its estimate. It is good practice to give these arguments or evidence to the requestor at the outset to help them understand why the request has been refused. This reasoning is also likely to be required if a complaint is made to the Information Commissioner.

14. The Commissioner sought further information from the council in order to assess whether its estimate was reasonable and based on cogent evidence.

15. The council explained that geographically Lancashire is a large county (over 3000 square kilometres) which is split into 12 districts and the Olympic torch passed through 9 of Lancashire's districts: Burnley, Chorley, Fylde, Hyndburn, Lancaster, Preston, Rossendale, West Lancashire and Wyre. It stated that, as has been explained in previous correspondence with the applicant, the County Council's role was supportive in nature, with the District Council's being lead authorities and taking the main role in organising the passage of the Olympic torch through the county. As such, the County Council, unlike many (if not all) of the Districts, did not have a separate, specific budget for its involvement in facilitating the passage of the torch through the County. The majority of the County Council work involved was done as part of the day-to-day duties of Highways Officers, advising at meetings, site visits and other general 'staff time' duties. This is standard, as the County Council's Highways Officers overall role is to ensure a safe and efficient highway network, something which entails a variety of work.

16. Although the council did not provide a breakdown of costs it would incur in locating further information, or conduct a sampling exercise, it did explain to the Commissioner that it had identified over 20 officers that

had involvement in the preparatory work for the procession of the Olympic torch across all 9 Districts through which the torch passed, and it may be that there are more. It said that in order to ascertain what information is held about the costs associated with any work done by them, all the officers involved would have to search their emails, diaries and calendars etc. over many months in the lead up to the actual processions to try and identify any recorded instances of their direct involvement, and then determine the time spent and equate that to the hourly rate. It submitted that, given the number of officers involved, and factoring in the 18 hours to which the £450 appropriate limit equates, this would give each officer less than 50 minutes to search all emails, diaries, planners and calendars to identify potentially relevant work, and then confirm and calculate time spent. The council stated it is firmly of the opinion that categorically confirming what relevant information is held would exceed the appropriate limit of £450.

17. The Commissioner has examined the argument provided in relation to what searches would have to be undertaken and considers the council's estimate, that it would take in excess of 18 hours for at least 20 officers to search their emails, diaries, planners and calendars to identify potentially relevant work, and then confirm and calculate time spent, to be reasonable. He appreciates that calendars and diaries could be searched relatively easily to identify attendance at meetings and site visits and that email searches could be undertaken to identify any relevant to the Olympic Torch relay but also appreciates that the officers involved would then have to establish if recorded information is held in relating to the actual time spent dealing with issues relating to the relay, such as time spent preparing advice for a meeting, travelling to a site visit, or responding to emails. He also considers the council's explanation as to why it didn't have a specific budget for its involvement in facilitating the passage of the torch through the County to be reasonable.
18. The Commissioner therefore finds that the council correctly refused the complainant's request on the grounds of cost for compliance under section 12(2) of FOIA, as confirming whether or not the information is held would, in itself, exceed the appropriate limit.

### **Section 16 – Duty to provide advice and assistance**

19. Section 16 of the FOIA states that it shall be the duty of a public authority to provide advice and assistance to requesters, so far as is reasonable, and where a public authority conforms with the code of practice under section 45 in relation to the provision of advice and assistance, it will be taken to comply with the duty imposed.

20. Where a public authority cites s.12, paragraph 14 of the section 45 code of practice indicates that the authority should consider providing an indication of what, if any, information could be provided within the costs limit. This allows the applicant to choose how to refine the request to successfully obtain a more limited piece or section of the requested information.
21. As stated in paragraph 3, in its initial response, the council informed the complainant that it is difficult to suggest a way in which the request can be amended to bring it within the threshold of the costs limit. Then in its internal review response, and as stated in paragraph 5, the council stated that 'whilst it would be possible to identify some specific costs incurred by the County Council in their supportive role (for example, costs of making relevant Traffic Regulation Orders and costs of event signage), this would in no way be a true reflection of the overall costs'.
22. Although the council didn't specifically offer to provide the complainant with the specific costs that could be easily identified, it did provide an indication of what information could be provided within the appropriate limit. Therefore, the Commissioner considers that the council has complied with the section 45 code and the section 16 duty to provide advice and assistance.
23. The Commissioner also considers that the council provided advice and assistance to the complainant by informing him that the District Councils within Lancashire acted as lead authority for their area in connection with the torch relay and as such many of them will have identified specific budgets.

## **Other matters**

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24. As he has made clear in his published guidance on internal reviews, the Commissioner considers that internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the FOIA, the Commissioner's view of a reasonable time for completing an internal review is 20 working days from the date of the request for review. In this case the Commissioner notes that complainant first requested an internal review on 27 July 2012 but the council did not provide an internal review response until 19 September 2012, almost eight weeks later. The council should ensure that internal reviews are carried out promptly in future.

## Right of appeal

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25. 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)

26. 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.
27. 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**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**