

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 August 2013

Public Authority: Gloucester City Council
Address: Herbert Warehouse
The Docks
Gloucester
GL1 2EQ

Decision (including any steps ordered)

1. The complainant requested information from Gloucester City Council ("the council") relating to internet visits on an officer by officer basis, although he did not require individual names or user IDs. The council refused to comply with the request, relying on the exclusion under section 12(1) and the exemption under section 40(2) of the Freedom of Information Act 2000 ("the FOIA"). These provisions relate to requests that would exceed the costs limit and third party personal data.
2. The Commissioner's decision is that the council correctly relied on the exclusion under section 12(1) to refuse the request. However, the Commissioner found procedural breaches of section 10(1), 16(1), 17(1), 17(5) and 17(7) of the FOIA.
3. The Commissioner does not require any steps to be taken.

Request and response

4. On 31 March 2012, the complainant requested information in the following terms:

"[Name of complainant's daughter] requests that she be provided with statistics relating to the number of internet visits made by Council Officers during May-August 2011, and what percentage of these visits were made to shopping, web mail or travel sites. [Name] accepts that this could be quite an onerous task, and only requires that the information is provided in relation to staff based at HKP [Warehouses known as Herbert, Kimberley and Philpotts]. Please accept this as a

request for information under the Freedom of Information Act”.

5. The council prepared a response dated 16 April 2012, but the complainant did not receive this. The council said it was not going to respond to the request on the basis that compliance would exceed the costs limit under the FOIA of £450.
6. The complainant wrote further to the council on 20 April 2012 and clarified that he was the person making the request and that he did not require any individuals to be identified. Chaser letters were also sent when no response was received.
7. The council replied on 14 September 2012 and referred to its earlier response of 16 April 2012. It said that this may have been lost in the post. The council said that it wished to maintain its position that section 12 applied and it provided more rationale. It also referred to the website categories mentioned in the request and said that this information was not held.
8. On 23 and 24 September 2012, the complainant requested an internal review. In the letter dated 23 September 2012, he said that he wanted the information on “*an officer by officer basis*”. He asked for the information to be provided in a table form and set out an example. In the letter of 24 September 2012, in an effort to assist the council, the complainant made a new request in the following terms:

“The front sheet of individual staff reports showing information listed under the following headings:

- *Report Request Parameters*
- *Report Highlights*
- *Visits by Classification*
- *Visits by Category.*

In terms of any potential Data Protection issues, the user ID can be blacked out. Further, I note that the service can be identified from the bottom of the report front-sheet. I understand that this will not be an issue if generated directly from the Council’s IT department. I am content for this information to also be blacked out.

To further speed up the process, I do not require the internet usage data for the Council’s Legal Team or ‘BT&T’.

9. The council completed an internal review but unfortunately did not provide this directly to the complainant. The complainant did not receive a copy of the council’s internal review until it was forwarded by the Commissioner on 16 May 2013. In the internal review, the council

maintained its position although it sought to rely on the additional exemption, section 40(2). This exemption relates to personal data. Referring to the new request on 24 September 2012, the council said that it would refuse this request for the same reasons.

Scope of the case

10. The complainant contacted the Commissioner to complain about the way his requests for information had been handled. For clarity, the complainant advised the Commissioner that the information he wanted was represented by the request he made on 24 September 2012 although he wished the Commissioner to consider some purely procedural concerns about the handling of the earlier request. He specifically asked the Commissioner to consider the following issues:

The council's initial response of 16 April 2012

- The council did not provide a refusal notice within 20 working days
- The council did not state the information requested and whether the FOIA was the appropriate legislation
- The council did not confirm whether or not the information requested was held by the council
- The council did not clarify that it was relying on an exemption or specify the sub section
- The council did not detail the reasoning behind the refusal
- The council did not state whether it had a complaints procedure and what it entails
- The council did not state that a complaint could be made to the ICO

The council's response of 14 September 2012

- The council did not issue the response within 20 working days
- The council did not provide any advice and assistance

The council's response of 16 May 2013 (the date it was provided to the complainant by the Commissioner)

- The council failed to provide this response within 20 working days (see the Other Matters section of this notice for comments about late internal review)
- The council has incorrectly applied section 12(1) to provide the information subsequently requested on 24 September 2012 and has again failed to provide advice and assistance
- The council has incorrectly applied the exemption under section 40(2)

Reasons for decision

Section 12(1) – Costs limit

11. This exclusion 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.
12. When considering whether section 12 applies, the authority can only take into account certain costs as set out in Statutory Instrument no 3244 "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 cases where an authority has made an estimate in accordance with section 12, the Commissioner would expect the authority to state a time estimate. It should also explain fully why it has estimated the activity concerned would take that long, specifying in detail what would be involved.
15. Although the Commissioner is specifically considering the later request made on 24 September 2012, it is still worth considering aspects of the council's responses with respect to the earlier request where it is relevant.
16. In its initial response of 16 April 2012, relating to the earlier request, the council said that the request relates to three linked warehouses at Gloucester Docks known as Herbert, Kimberley and Philpotts. The council said that the vast majority of the council's staff are based at these sites. The council said that providing information about these staff would take a considerable amount of resources and it estimated that this would exceed the appropriate limit of £450 worth of work. The

council's follow on response of 14 September 2012 elaborated on the initial response. The council said that it does not have records readily available relating to internet visits and the information would therefore have to be produced by running a computer report. The remainder of the comments do not appear to be relevant because they focused at that stage on providing information relating to service areas rather than on an individual officer basis.

17. The council completed an internal review which was made available to the complainant on 16 May 2013. In this response, the council specifically acknowledged the clarification provided that the information was being sought on an individual basis. It said that this would still exceed the costs limit because individual reports are not available and would need to be produced through running individual reports for officers, for the stated period. The council estimated that this would take 15 to 20 minutes per individual and not seconds as suggested by the complainant in earlier correspondence. The council said that it would be likely to take over 60 hours to comply with the request because there are approximately 250 members of staff concerned. With specific reference to the request of 24 September 2012, the council said that this would still exceed the costs limit because it would still involve the production of individual reports.
18. The complainant does not accept that the council has accurately estimated the amount of time that it would take to produce the reports. Specifically, he disputes the council's estimate of the number of staff involved as well as the amount of time it would take to produce a report once those staff members have been identified. The Commissioner has quoted from the complainant's concerns below to explain more precisely the nature of those concerns.
19. The complainant said the following:

"I understand that the HKP buildings house approximately 215 employees. The council's IT department has already obtained the internet data of 20 or so employees – the Legal Team, certain random officers, and staff within 'BT&T'. Therefore, additional information need only be obtained by the council in relation to no more than 200 members of staff".

"...My understanding is that the Council employs approximately 340 people (of which approximately 215 are based at HKP). If there are 29 services at HKP, then this equates to an average of 7 or so people in each service"

"To clarify, I have requested the internet information of staff based at HKP during May-August 2011 (excluding staff in Legal and BT&T).

[Name of council officer] states that my request relates to 250 employees, which I believe is inaccurate. My understanding is that HKP housed approximately 215 employees at that time. On the basis that I do not require the reports for Legal Service and BT&T, my request more realistically relates to 180 or so employees".

20. The complainant said the following:

"I note that [name] internet usage report took under 2 minutes to create and, as [name] and [name] were identified as high internet users, then it must follow that reports for other individuals will take almost no time at all to generate (less than 30 seconds). Therefore, I consider it implausible that my request would exceed 18 hours of work".

"It seems logical that an officer would simply need to input the Report Request parameters (which would be the same for each officer, with the exception of the user ID). I believe this would take no more than 3-5 minutes per individual"

21. The complainant also supplied to the Commissioner copies of email correspondence between himself and "Wavecrest" Technical Support. The complainant believes this correspondence supports his case that producing a report would not take as long as the council suggests. The technical advisor refers to the time on the example report which the complainant has in his possession of 1 minute 47 seconds and says that this the actual time that it took to create the report. He says that a large amount of data could be created quickly if the "Data Manager" is turned on in the product. This allows for the raw logfile data to be pre-processed so that the data is already sorted by date, time, user, url, etc. He says that the report may take quite a long time to build if the data was not pre-processed beforehand.
22. The Commissioner wrote to the council to ask it to elaborate further on its response and he highlighted the complainant's particular concerns regarding how the estimate had been arrived at. The council told the Commissioner that it wished to maintain that section 12 was engaged with respect to the request made on 24 September 2012 and it elaborated on the earlier responses provided.
23. On the subject of how many staff members the request is likely to concern, the council told the Commissioner that it was basing its estimate on the general figure of 250 staff members as it believes that the sites at the time housed this number of officers. The council said establishing more precisely how many staff were at HKP offices and who they are would in itself be a fairly time-consuming activity. The council said that a member of the Human Resources team would need to interrogate the council's former HR system to identify the names of the

staff employed by the council during the relevant time period. It said that this would involve extracting a list of staff employed at the time by running a report. An officer would then need to manually check the list to identify (using their knowledge of the organisation at that time) which staff members were based at the council's HKP offices during the relevant period. The council clarified that the system in place at the time did not hold data about the location of staff members and that there was no easier method of identifying this information using other information or systems. The council estimated that this activity would take approximately 5 and a half hours as the council's total staff at that time was in the region of 350.

24. The council also disputed the complainant's comments regarding the amount of information available to it as a starting point. The council clarified that internet use reports are only produced when required. The only reports in existence for the time period concerned are those in respect of eleven members of the Legal Services team, which the complainant has specifically excluded from the terms of his request.
25. The council explained that once it had established a complete list of the relevant staff based at the sites at the time, further work would be required to review the list. The council said that it would need to add usernames to the list created in order to run the reports requested. It said that it does not currently maintain a cross referenced database of HR system staff identification and network usernames so this would largely be a manual process. The council estimated that it would take approximately 1 minute and 10 seconds per member of staff to add usernames in order to run the reports.
26. Regarding the time it would take to run individual reports once the preparation described above has been completed, the council said that it buys a product called "CyBlock" from Clearview IT Solutions and uses Wavecrest as a third party supplier for the resolution of technical issues. The council said that each time a report is run, all raw data is reviewed, including both work and personal use of the internet. The council said that it does not operate the "Data Manager" function to which the Wavecrest technician referred, as it has not need to use it and the cost associated with doing so is significant. The council said use of this system would require the set-up of a data warehouse, costing the council thousands. The council said that, as recognised by the technician, processing raw data may take a significant amount of time.
27. The council told the Commissioner that the length of time it takes to run each report is dependent upon the amount of browsing done by the individual user. The council said that in some cases, this can be considerable. It added that the performance of the system can also be affected by the volume of internet activity since it uses the same system

for recording internet usage as it does for running the reports. The council said that, by way of an example, to run a report for one member of the legal team took 23 minutes and 35 seconds, not including the time to initiate the report. The council said that it is not possible to say exactly how long it would take to run each report as this will vary depending on the circumstances as described, however, it considers that an average of 15 to 20 minutes is a reasonable estimate based on the experience of one of its officers. The council said that based on this, even if it adopted the figure of 180 staff as suggested by the complainant, at the average time estimated, it would still take the council 45 hours to produce 180 reports.

28. Dealing first with the issue of the number of staff members involved, the complainant has not been able to provide evidence to refute the council's estimate that around 250 staff members were housed at the sites during the relevant time period. The Commissioner therefore has no specific reason to dispute the reasonableness of this based on the council's knowledge of its offices. It appears that the total number of staff members relevant to this request would actually be a little less than 250 however, factoring in the fact that the complainant has specifically stated that he does not require reports for the legal team and "BT&T".
29. The council has estimated that it would take approximately 5 hours and 30 minutes to run a report and consider which staff members were based at the sites at the time. When the Commissioner questioned the council about how this time estimate was arrived at, the council said that it could not provide a specific explanation because as the system was old, knowledge of how long it takes to run reports has been lost.
30. In terms of how long it would take on average to run a report to obtain the requested information, the Commissioner queried the council's estimate, referring to the example report provided by the complainant which appears to have taken 1 minute and 47 seconds to produce, in contrast to the example report referred to by the council which it said took 23 minutes and 35 seconds. Given that the council has referred to the impact of a high volume of internet activity when reports are generated, affecting the total run time, the Commissioner also queried if the example report referred to had been run at a time of high internet activity and whether it would be possible to run the reports at a time of low internet activity.
31. Given the variable nature of the reports and the impact of internet activity, the council said that it was difficult to be more precise about the likely run time for reports. It said that rather than produce multiple samples, it had arrived at its estimate based on the experience of one of its officers, who states that on average he can generate approximately

four reports in an hour. The council also produced a table, breaking down the time estimate of 15 to 20 minutes for running the reports. Having inspected this breakdown, it appeared to the Commissioner that the council has taken into account time that it was not permitted to include when producing a costs estimate (see paragraph 12 of this notice). Acceptable time estimated by the council was 35 seconds to log on and go to the relevant report section. A further 1 minute and 10 seconds seems reasonable to set all of the parameters to start the report generation. The council then estimated a typical time of 3 minutes and 55 seconds to generate the report and receive it via email based on officer experience. Again, there is no particular reason for the Commissioner to doubt the reasonableness of that time. However, time taken after this seems irrelevant. The council has taken into account the time it would take to save the file, check it, delete the email, and log out of the system. These extra processes amount to over 9 minutes of additional time.

32. In short, although the Commissioner accepts that it is impossible for the council to be precise about how long it would take to run each report, the Commissioner was not persuaded by the council's evidence that the time estimate of 15 to 20 minutes was reasonable. Based on the evidence available, it seems likely that a more reasonable time estimate would actually be around 5 minutes to generate a report on average, excluding the time taken by the council to undertake processing for its own purposes, such as checking the accuracy of the reports.
33. Having considered all of the above however, the Commissioner has concluded that, on the balance of probabilities, compliance with the request would exceed the appropriate limit of 18 hours. It seems more likely than not that the total number of staff members involved is actually greater than has been suggested by the complainant (180) and less than has been suggested by the council (250). If the total time to run a report was actually 5 minutes, and it was run for 215 staff, that would just about take the request to the appropriate limit, not including the additional time it would take for the council to identify the staff members concerned using its old HR system, which is not able to identify where the staff members were based at the time.
34. As the Commissioner has decided that section 12(1) was engaged, he has not gone on to consider the application of the exemption under section 40(2) of the FOIA.

Section 16(1) – Reasonable advice and assistance

35. When a public authority maintains that section 12(1) is engaged, it needs to consider its duty to provide reasonable 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".

36. The Commissioner notes that the council attempted to provide advice and assistance in its internal review provided to the complainant on 16 May 2013. It said that it had considered whether or not the reports could be produced within the costs limit by producing reports by service rather than by individual officer but it concluded that this would make no difference since the information can only be found by searching for individual names within a service.
37. The Commissioner was not satisfied that the above represented reasonable advice and assistance in the circumstances since it was clearly not an option that the complainant could pursue. The Commissioner therefore asked the council to consider its obligation under section 16(1) again. Following this, the council said that it could provide a number of individual reports within the costs threshold. It said that it would redact some personal data using the exemption under section 40(2). The council wrote to the complainant directly to make this offer, stating that it estimated that it could produce a little over forty reports within the costs limit.
38. The complainant replied to the council and rejected the offer above. He continued to dispute the time it would take to produce the information.
39. The Commissioner has found that section 12 was engaged for the reasons detailed above. Although the Commissioner considers that it is likely that the council could actually produce a number of reports greater than it has estimated by working up to the costs limit, the Commissioner is satisfied that by offering to work up to the appropriate limit, the council has now complied with its obligation to offer reasonable advice and assistance.
40. For clarity, while the Commissioner was preparing to issue this notice, the complainant contacted the Commissioner to explain that he was willing to make a refined request to ask for the information that could be provided based on a list of employees that he is aware worked at the sites in question at the time. He said that he would be happy for the

information to be provided in an anonymous order, rather than list order, and he hoped that this would help to increase the amount of information that could be provided within the appropriate limit because the council would not need to spend time identifying employees who worked at the sites. Such a refinement would be a new request, and if the complainant wishes to explore that option further, he should contact the council directly about it to make the request.

Procedural issues

The council's response of 16 April 2012

41. The complainant made his initial request on 31 March 2012. The council said that it responded on 16 April 2012 but this response was not received by the complainant. Despite chaser correspondence from the complainant, a further copy of the response was not provided by the council until 14 September 2012. The Commissioner finds that the council breached section 17(1) and 17(5) of the FOIA for failing to provide a refusal notice within 20 working days specifying that it was relying on section 40(2) and 12(1).
42. The complainant has complained that the council did not state the information requested and did not say whether the FOIA was the appropriate legislation. These are not specific breaches in the legislation although it would be good practice to include this information in a response. In any event, the Commissioner notes that there does not appear to have been any doubt over which request the response was referring to and the council's response does actually say that the request is being refused in reliance on a provision under the FOIA.
43. The complainant says that the council did not state whether the information requested was held. The Commissioner notes that it may be inferred from the council's response that it accepted that at least some of the information requested was held. The council subsequently suggested that some information was not held. The Commissioner therefore agrees with the complainant that ultimately the council's initial response fell short of the specific obligation to confirm or deny whether the information was held. The Commissioner therefore finds a breach of section 10(1) for the failure to do this within 20 working days.
44. The complainant says that the council failed to clarify that it was relying on an exemption and to specify the subsection involved. Under section 17(5), a public authority only has to state that it is relying on section 12. The Commissioner has already found a breach for the failure to do this within 20 working days. Under section 17(1), public authorities are obliged to state specifically that they are relying on an exemption and specify the exemption in question. The Commissioner has already found

a breach for the failure to do this within 20 working days. By the time of the internal review, the council had clarified that it was also relying on the exemption under section 40(2).

45. The complainant says that the council did not detail the reasoning behind the reliance on section 12(1). There is no specific obligation to explain the reasons why section 12(1) applies in the FOIA although it would be a matter of good practice to do so.
46. The council breached section 17(7) for failing to give details of its internal review procedure and details of the right to complain to the Commissioner provided by section 50 of the FOIA.

The council's response of 14 September 2012

47. The Commissioner has already found appropriate breaches for the failure to respond within 20 working days.
48. The Commissioner agrees that the council breached section 16(1) for failing to offer reasonable advice and assistance.

The council's response of 16 May 2013 (the date it was provided to the complainant by the Commissioner)

49. The Commissioner finds further breaches of section 17(1) and 17(5) because as well as being an internal review of the original request, this response was also the council's initial refusal of the request forming the subject of this complaint i.e. the request made on 24 September 2012. The refusal was made outside of the 20 working day statutory time limit.
50. The Commissioner finds a further breach of section 16(1) because of the council's failure to offer reasonable advice and assistance in relation to the new request that was made on 24 September 2012.

Other Matters

51. There is no statutory time period for conducting internal reviews but the Commissioner's guidance is that they should not generally take longer than 20 working days. In this case, the complainant requested an internal review on 23 September 2012, but a copy of the council's internal review was not made available to him until 16 May 2013. The Commissioner understands that the council had incorrectly thought that the Commissioner would realise that the council had only sent the review to him and that the Commissioner would forward it on, however, even allowing for that misunderstanding, the internal review was not provided to the Commissioner until January 2013. The Commissioner

trusts that the council will in future ensure that it conducts internal reviews in a more timely manner and that they are sent directly to the complainant once completed.

Right of appeal

52. 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

53. 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.
54. 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

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