

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 July 2013

Public Authority: Sedgemoor District Council
Address: Bridgwater House
King Square
Bridgwater
Somerset
TA6 3AR

Decision (including any steps ordered)

1. The complainant has requested all documents relating to land and property owned or previously owned by Sedgemoor District Council ("the council") in an area of specified land since 1974. The council refused to provide the information citing section 12 of the Freedom of Information Act 2000 ("the FOIA"), on the basis that the cost of complying would exceed the appropriate limit.
2. The Commissioner's decision is that the council has correctly applied section 12 of the FOIA. The Commissioner is also satisfied that advice and assistance has been duly provided under section 16 of the FOIA, and that the time for compliance specified within section 10 of the FOIA has been adhered to.
3. The Commissioner does not require any steps to be taken.

Request and response

4. On 17 October 2012, the complainant wrote to the council and initially requested information in the following terms:

"As a local authority, I hereby request access to recorded information to include emails, meeting minutes between officers or Members and other parties or all or some of these, research or reports and such other written records to provide a verifiable account of all matters relating to land at Northgate acquired or transferred and held or sold by Sedgemoor District Council since

1974 until the present (but excluding planning applications available on the SDC website). Such recorded information might be supplied by providing a hard copy, or an electronic copy of the information, or by providing me with an opportunity to inspect a record containing the information, or by a mixture of these. A digest or summary of the information is not sufficient and is not required."

5. The council contacted the complainant on 24 October 2012 to advise that his initial request would exceed the costs limitations provided by the FOIA. It asked him to consider refining his request.

6. The complainant submitted a refined request on 1 November 2012 for:

"...all documents relating to land and property in the area bordered by Mount Street to the south, by Northgate to the east, by Anson Way to the north and by Camden Road to the west, currently in the ownership of SDC (Whether by transfer from another authority or by purchase) or previously owned by SDC to the present day, and to include land leased to or by the said authority. "

7. The council advised the complainant on 29 November 2012 that the refined request would still exceed the costs limitations provided by the FOIA, and was therefore being refused.

8. The complainant requested an internal review on 29 November 2012.

9. The council completed its internal review on 21 December 2012. It stated that it wished to maintain its position.

Scope of the case

10. The complainant contacted the Commissioner on 31 January 2013 to complain about the council's refusal of his requests. In addition to this, the complainant expressed concern about the length of time that the council had taken in engaging with his requests.

11. The Commissioner considers that the scope of this case is the determination of whether the council has correctly applied section 12 of the FOIA to the requested information. He will also consider whether the

council has provided appropriate advice and assistance, and whether the council has acted within the appropriate time limitations.

Reasons for decision

Section 12 – The cost of compliance

12. Section 12(1) of the FOIA 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."

13. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Regulations") sets the appropriate limit at £450 for the public authority in question. Under the Regulations, a public authority may charge a maximum of £25 per hour for work undertaken to comply with a request. This equates to 18 hours work in accordance with the appropriate limit set out above.

14. A public authority is only required to provide a reasonable estimate or breakdown of costs and in putting together its estimate it can take the following processes into consideration:

- determining whether it holds the information;
- locating the information, or a document which may contain the information;
- retrieving the information, or a document which may contain the information; and
- extracting the information from a document containing it.

15. In his assessment of whether the council has correctly relied upon section 12 of the FOIA, the Commissioner has considered the submission provided by the council to him on 5 July 2013, as well as the correspondence between the council and the complainant.

16. The council has provided the Commissioner with a representative sample of the types of records that would fall within the complainant's broad request. These are:

- Deeds and documents relating to the Council's current and former land ownership;
- Documents relating to the building of the swimming pool;
- Documents relating to the demolition of the pool;
- Grass cutting records;
- Dog fouling prosecutions;

- Records regarding the emptying of dog bins;
 - Records regarding the procurement and erection of play equipment;
 - Records regarding the erection of signs;
 - Records regarding inspections of play equipment;
 - Reports relating to the swimming pool;
 - Health and safety risk assessments for the pool;
 - Insurance claims;
 - Pool sampling records;
 - Financial records for the pool;
 - Contracts for the pool;
 - CCTV records;
 - Minute books;
 - Records relating to the demolition of the old council offices;
 - Documents relating to a temporary post office currently situated on the site;
 - Documents relating to events held on the land;
 - Refuse collection records; and
 - Complaints.
17. In order to comply with the complainant's refined request, the council would need to search these, and other relevant records, in order to identify information which pertains to the geographical area specified by the complainant. Additionally, the records would be contained in digital and manual formats depending on the age of the record, as well as held in different locations (ie. council premises and off-site archive stores). Accordingly, the council have been unable to provide a comprehensive estimate of the total costs associated with complying with the refined request in full, but have provisionally assessed that the total would be significantly larger than the limitations provided by section 12 of the FOIA. The council have undertaken a sampling exercise with one type of record (the council's minute books), in order to provide an illustrative example to the Commissioner.
18. The minute books from 1974 to 2001 are held in manual format and are not indexed, meaning that each page therefore needs to be reviewed individually. There is approximately one minute book per municipal year. The council found that to review one minute book for information pertaining to the complainant's refined request took approximately one hour. Since the refined request would require each minute book to be searched, it would take approximately 27 hours to search the 1974 to 2001 minute books alone.
19. Having considered the above, the Commissioner is satisfied that compliance with the refined request would far exceed that costs limitations provided by the FOIA. The council was therefore correct to apply section 12 of the FOIA to the complainant's refined request.

Section 16 – The duty to provide advice and assistance

20. Section 16(1) imposes an obligation on a public authority to provide advice and assistance to a person making a request, so far as it would be reasonable to do so. Section 16(2) states that a public authority is to be taken to have complied with its section 16 duty in any particular case if it has conformed with the provisions in the Section 45 Code of Practice (“the Code of Practice”) in relation to the provision of advice and assistance.
21. Whenever the cost limit has been applied correctly, the Commissioner will consider whether it would be possible for a public authority to provide advice and assistance to enable the complainant to obtain information without attracting the costs limit in accordance with paragraph 14 of the Code of Practice.
22. In this case, the Commissioner notes that the advice and assistance that the council provided can be seen through their communication with the complainant. On the 24 October 2012 the council advised the complainant that his initial request would be very likely to exceed the 18 hours allowed under the FOIA, and whether he would consider refining his request:

“...as the request goes back to 1974 and pre-dates electronically stored documents and the email archiving system it would necessitate searching through all the paper records held in various departments throughout the Authority. I have been informed that this would exceed that time limit. Would you be happy to narrow down your request; perhaps to a certain time period, or to particular information that you hope to have access to?”

23. The council further requested that the complainant consider refining down his request on the 1 November 2012:

“Following our telephone conversation today regarding this request, I did go back to the various departments to see if I could narrow this down for you, however, in order for us to be able to assist with your request appropriately, I do need to have your clarification in writing. Is there a particular period of time you are interested in or a particular piece of information you are interested in for example?”

24. Following the complainants submission of a refined request (recorded in paragraph 6) on 1 November 2013, the council asked him on 2 November 2012 to confirm whether it was the ownership of land that he was interested in, and by inference, copies of the appropriate titles.

24. The complainant replied to this on 16 November 2012 by stating:

"I expected to see copies of background correspondence as well as titles (which are available on the Land Registry website)."

25. The council subsequently issued a refusal notice on the 29 November 2013, and stated:

"Unfortunately, your request is still extremely wide ranging and not time related so I am unable to provide a response as to do so would exceed the 18 hours allowed under the Act. Information held would be held in a number of departments including Legal and Development Services and includes information held in hard copy saved prior to documentation being stored electronically and in electronic form."

26. The Commissioner notes that the council has made reasonable attempts to elicit an actionable request from the complainant, and twice requested in writing that he attempt to specify a period of time or a type of information that he was interested in. Upon the council ultimately asking the complainant whether it was issues of land ownership, and therefore the council's titles that he was interested in, the complainant did not provide an actionable response, stating only that he expected to receive background correspondence as well as titles.

27. In this case, the Commissioner is satisfied that the council provided advice and assistance in accordance with section 16 of the FOIA. The complainant was offered several opportunities to narrow his request in response to the council's advice and assistance, but not did elect to provide a constructive and actionable request that the council could act upon.

Section 10 – The time for compliance with a request

28. Section 10(1) of the FOIA states that on receipt of a request for information a public authority should respond to the applicant within 20 working days.

29. In cases where the costs associated with a request are likely to exceed the limitations provided by section 12 of the FOIA, then the public authority must fulfil its obligations under section 16 of the FOIA and provide appropriate advice and assistance to the applicant. In such a

case, the public authority must ensure that they provide a response; whether it is the information requested, a refusal notice, or appropriate advice and assistance; within 20 working days of receiving the applicant's communication.

30. The Commissioner has identified that the council contacted the complainant on 24 October 2012, which was within 20 working days of his initial request of 17 October 2012. Upon the complainant then submitting a refined request on 1 November 2012, the council contacted the complainant on 2 November 2012 to attempt to further refine the request into an actionable form, again within 20 working days of his refined request. The complainant subsequently responded with a statement on the 16 November 2012, to which the council issued a final refusal notice on 29 November 2012, which again was provided within 20 working days.
31. The Commissioner is therefore satisfied that the council has acted within the time restrictions provided by the FOIA.

Right of appeal

32. If 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

33. 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.
34. 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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Wycliffe House
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