

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 November 2013

Public Authority: Stoke on Trent City Council
Address: Civic Centre
Glebe Street
Stoke-on-Trent
ST4 1HH

Decision (including any steps ordered)

1. The complainant has requested information on the number of consultants engaged by the Council. In particular he was interested in details relating to any consultants employed to review budget savings for, what was then, the next financial year. The Council refused the request under section 12 on the basis that providing the information would exceed the cost limit for handling requests.
2. The Commissioner's decision is that the Council was correct to refuse the request under section 12.
3. However the Commissioner requires the public authority to provide advice and assistance to the complainant with a view to helping him refine his request and bring it within the appropriate limit.
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 4 December 2012, the complainant wrote to Stoke on Trent City Council and requested information in the following terms:

Please provide me with the following information under the terms of the FOI Act.

How many consultants are currently engaged by the city council or anybody in which it is responsible and at what cost?

How many consultants have been engaged by the city council or anybody in which it is responsible over 2012/2013 year and at what cost, if different from the above?

How many consultants/experts have been engaged by the city council or anybody in which it is responsible specifically regarding reviews relating to budget saving for the 2013/2014 budget? Please give the details of such engagement including tendering process, cost, length of engagement, role/project, name of expert, consultant/organisation.

6. The Council responded on 9 January 2013. It stated that the Council did not hold the information in the format requested by the complainant and that to collate the information would exceed the appropriate limit of £450 as set out in the regulations that accompany FOIA. The Council offered to reconsider the request if he refined it so that it sought a smaller amount of information and directed him to a page of its website which showed the amount of information that the Council forecast it would spend on consultants during the financial year of 2012 to 2013.
7. Following an internal review the Council wrote to the complainant on 7 February 2013. It stated that it upheld its application of section 12 to refuse the request.

Scope of the case

8. The complainant contacted the Commissioner on 6 March 2013 to complain about the way his request for information had been handled.
9. The Commissioner considers that the issue which needs to be decided is whether complying with the request would exceed the appropriate limit and therefore should have been refused under section 12 and, if so, whether the Council provided appropriate advice and assistance in accordance with section 16 of FOIA.

Reasons for decision

Section 12

10. Section 12(1) of FOIA states that a public authority is not obliged to comply with a request if the authority estimates that the cost of doing so would exceed the appropriate limit.
11. The appropriate limit is set out in the regulations which accompany FOIA. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004, known as the Fees Regulations, establish an appropriate limit of £450 for non-central government public authorities such as the Council. If a public authority estimates that the cost of complying with a request would go over that threshold it is not required to provide the information. Where costs relate to the amount of staff time involved, the costs have to be estimated on a basis of £25 per person per hour. This means that an appropriate limit of £450 equates to 18 hours work.
12. There are restrictions placed on what activities a public authority can take account of when estimating the time or cost of complying with a request. In broad terms these include locating and retrieving the documents holding the information and then extracting the information from those documents.
13. In this particular case the complainant made his request in three parts. In such circumstances the Council is entitled to consider the overall cost of complying with all three elements when estimating whether the cost would exceed the appropriate limit. This is permitted by regulation 5 which provides that where a public authority receives two or more requests by the same person which relate, to any extent, to the same or similar information, and those requests have been received within sixty days of one another, the public authority can take account of the total cost of complying with those requests.
14. In order to consider the cost of locating and retrieving information a public authority really needs to establish what information has actually been requested. In this case the complainant's requests refer to the number of consultants engaged by the Council. The Council interpreted the term 'consultants' to mean the actual number of individuals working for a consultancy firm that were involved in any project. It was on this basis that the Council had estimated the appropriate limit.
15. The Council explained to the Commissioner that it considered the most reliable source of information on the number of consultants engaged and their cost was its Finance Department. The time it would take to identify the different consultancy firms engaged would be minimal. However the

only way to identify the actual number of consultants deployed by each firm would be to examine the invoices submitted by those companies. This would involve searching for each of those firms on its creditors system to locate the invoices. Then each invoice would have to be examined to extract the number of individual consultants it related to. Some of those invoices had been electronically scanned onto the system, but others were only held manually.

16. During the Commissioner's investigation the Council carried out a sampling exercise from which it estimated that it would take around 180 hours to go through all the invoices in this way. As this meant complying with either of the first two elements of the request would exceed the appropriate limit by a long way, the Council had not gone on to consider the cost of complying with the third part.
17. The Commissioner accepts that the Council's estimate of the cost of identifying the number of individual consultants is a reasonable one. However the Commissioner had earlier asked the complainant for clarification as to what he meant by the term 'consultants'. The complainant had confirmed that, as the Commissioner suspected, he was in fact referring to the number of consultancy firms, not the number of individuals used by each of those firms.
18. The Commissioner accepts that the Council's reading of the request was an objective one and that it acted in good faith when it interpreted the request as it did. Nevertheless he also finds that the complainant's interpretation of the term 'consultant' was an objective one as well. Where there are two objective readings of a request the Commissioner will deal with the request on the basis of the interpretation intended by the individual making the request. It follows that it is not necessary to identify and examine each invoice to answer questions about the number of consultancy firms engaged by the Council at a given point in time or the overall cost of those engagements. It therefore seems probable that the council could have dealt with the first two elements of the complainant's request, certainly at the time of the request, within the appropriate limit.
19. However as explained at paragraph 13, a public authority is entitled to consider the cost of dealing with all the requests when estimating the appropriate limit. Therefore the Commissioner has gone on to consider whether the cost of complying with the third element of the request would take the total cost over the appropriate limit.
20. The complainant has asked for details of the contracts of consultants engaged in "... reviews relating to budget saving for 2013/2014 budget...". Neither the Commissioner nor the Council are very clear as to the full range of activities that could fall within this description. The

Council has explained that if it had addressed this part of the request at the time it was made, it would probably have recognised that it needed to seek further clarification from the complainant. However as it had originally dealt with the request solely on the basis that complying with the first two elements would have exceeded the appropriate limit it had not focussed on the third part.

21. Even though it is not clear what types of consultancy work are described by the third element of the request, it is clear that answering it would involve identifying the different purposes for which each consultancy firm was engaged.
22. The Council has already identified the number of consultants it hired over the year. The Council also holds a Corporate Procurement Register which contains some details on every contract the council has entered into over a financial year. A version of that register, for a six month period, is published on the Council's website at <http://www.stoke.gov.uk/ccm/navigation/council-and-democracy/finance/transparency/>. The Commissioner understands that the list of consultants held by its Finance Department could be cross referenced against the information held on the Corporate Procurement Register to identify all the contracts between the Council and the different consultants. Although the Corporate Procurement Register provides a brief description of the contract the Council does not consider this is detailed enough to rely on for the purposes of identifying whether the contract relates to reviews for budget savings. It would therefore be necessary to approach the council officer shown as being responsible for that contract. The Council advised that as some contacts would have left the council by the time of the request, identifying the relevant contact may not be as straight forward as first appears. Once identified that officer would then need to search their records of that contract to determine the precise purpose of that engagement.
23. The Council conducted a sampling test based on determining the precise nature of five contracts listed on the Corporate Procurement Register. From that exercise it estimated it would take 35 minutes to look at each contract which is broken down as follows;
 - Identifying the person responsible for the contract and sending them an email = 10 minutes
 - Locating the file and examining the contract = 15 minutes
 - Collating the responses and replying = 10 minutes

24. From the information held by its Finance Department, the Council had already identified 100 consultancy firms with whom it had placed contracts over the relevant period. It appears the Council has assumed that it had only placed one contract with each consultant. It follows that there would be at least 100 contracts to identify and examine taking 35 minutes each. This gives a total time of $100 \times 35 = 3500$ minutes or just over 58 hours.
25. The Commissioner is not entirely convinced that it would take 10 minutes to identify and contact the relevant officer for each contract. Nor is he absolutely clear what the Council means when it refers to 'collating responses'. Nevertheless even if the time taken to consider each of the contracts was streamlined to 20 minutes it would still take 2000 minutes or 33 hours to look at all 100 contracts.
26. Furthermore the Commissioner recognises that even after it had identified all the relevant contracts the Council would still need to locate and retrieve the information on the procurement exercise for each of the contracts. The Commissioner is also aware that some consultants may have been engaged in more than one contract.
27. In light of the above the Commissioner is satisfied that the time it would take to comply with the third element of the request would, even on a conservative estimate, exceed the appropriate limit.
28. Where a public authority refuses a request under section 12 it is obliged under section 16 of FOIA to provide advice and assistance with a view to assisting the applicant refine his request so as to bring it within the appropriate limit. The Commissioner will now consider whether the Council has complied with that duty.

Section 16

29. Section 16(1) states that it shall be the duty of a public authority to provide advice and assistance, so far as it is reasonable to expect the authority to do so, to a person who has made a request for information.
30. Section 16(2) provides that a public authority which has provided advice and assistance in accordance with the code of practice produced under section 45 of FOIA, will be taken to have complied with its duty under section 16(1). The section 45 code is issued by the Secretary of State for Justice and sets out the practice that public authorities are expected to follow when complying with their duties under FOIA. Where a request has been refused under section 12 the code advises a public authority to provide an indication of what if any information could be provided within the cost ceiling. The Commissioner considers that this includes providing

the applicant with information which will enable them to make a refined, narrower request. It is not sufficient to simply advise the applicant to make a narrower request.

31. In light of this the Commissioner finds that the Council failed to provide the complainant with appropriate advice and assistance. The Commissioner requires the Council to explain what information on the number of consultants ie consultancy firms, it can readily provide. It is also required to provide further information aimed at helping him narrow the scope of the third element of the request. For example, this may involve explaining to the complainant what tasks are involved in identifying the nature of each contract.
32. During the course of the Commissioner's investigation the Council made him aware of the role played by the private company Capita. Capita is described on the Council's website as it procurement savings partner. The Commissioner gathers that Capita brings its expertise to the Council's procurement process with the aim of securing better deals. It appears that the Council does not refer to Capita as a consultant for its own administrative purpose. However based on his understanding of Capita's role the Commissioner considers Capita is to all intents and purposes a consultant and that its role as procurement savings partner should be considered when providing advice and assistance to the complainant.
33. Finally the Commissioner expects the Council to take the opportunity to clarify exactly what sort of consultancy work the complainant is interested in in the third part of his request, ie what is meant by "reviews relating to budget saving".

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

Pamela Clements
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