

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 June 2014

Public Authority: Royal Borough of Greenwich
Address: The Woolwich Centre
Wellington Street
Woolwich
SE18 6HQ

Decision (including any steps ordered)

1. The complainant has requested information about the status or future of Greenwich Theatre. The Royal Borough of Greenwich (the "Council") advised that to comply with the request would exceed the appropriate limit. The Commissioner's decision is that the Council is entitled to rely on section 12 as a basis for refusing to provide the information, but that it committed some procedural breaches.

Request and response

2. On 15 October 2013, the complainant wrote to the Council and requested information in the following terms:

"I wish to apply under FOi for an e copy of all e mails and reports received by officers and members within the last 3 months on the subject of status or future of Greenwich Theatre".
3. The Council acknowledged the request on 18 October 2013, but it did not respond until 3 January 2014. In its response it advised that it may hold information but that it would exceed the appropriate limit to ascertain this. It suggested that the complainant send a "*new request for a more narrow category of information*" but did not explain how the information may be held or how he might go about this.

4. Following an internal review the Council wrote to the complainant on 7 February 2014. It maintained reliance on section 12.

Scope of the case

5. The complainant first contacted the Commissioner on 5 January 2014 having received his refusal notice. The Commissioner advised him that he needed to go through the Council's internal review process (details of this procedure were not included in the Council's refusal notice). He did so and came back to the Commissioner on 12 February 2014 to complain about the way his request for information had been handled.
6. The Commissioner will consider the application of section 12, and other procedural issues, below.

Reasons for decision

Section 10 – time for compliance

7. Section 10(1) of FOIA provides that a public authority should comply with section 1(1) within 20 working days. Section 1(1)(a) initially requires a public authority in receipt of a request to confirm whether it holds the requested information.
8. The request was submitted on 15 October 2013 and the complainant did not receive a response until 3 January 2014. The Commissioner therefore finds that the public authority has breached section 10(1) by failing to comply with section 1(1)(a) within the statutory time period.

Section 17 – refusal of request

9. Section 17(1)(c) provides that, when refusing a request, a public authority should give an applicant a refusal notice which:

"states (if that would not otherwise be apparent) why the exemption applies".

10. Having waited three months for a response the complainant was advised:

"I can confirm that we may hold information falling within the description specified in your request. However we do not have tools that allow a computerised word search of this type. We therefore estimate that the cost of complying with your request would exceed the appropriate limit of £450. This represents the estimated cost of

one person spending 4 working days in determining whether we hold the information, and locating, retrieving and extracting the information. The appropriate limit has been specified in regulations, and under section 12 of the Freedom of Information Act 2000 we are not obliged to comply with your request and we will not be processing your request further.

If you were to make a new request for a more narrow category of information, it may be that we could comply with that request within the appropriate limit”.

11. The Commissioner does not consider this to be an adequate response. The Council does not explain how the limit has been exceeded or give an adequate breakdown of any calculations. Given that it took three months to be given this, the Commissioner considers this to be particularly poor response.
12. Section 17(7) of the FOIA provides that when issuing a refusal notice this must:
 - “(a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and*
 - (b) contain particulars of the right conferred by section 50”.*
13. No details regarding the internal review process were included for the complainant and neither were details of his entitlement to redress via the Commissioner.
14. The Commissioner concludes that the Council breached sections 17(1)(c) and 17(7)(a)(b).

Section 12 – the appropriate limit

15. Section 12 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.”

16. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the “Fees Regulations”) sets the appropriate limit at £450 for the public authority in question. Under these Regulations, a public authority can charge a maximum of £25 per hour for work undertaken to comply with a request. This equates to 18 hours work.

17. 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:

- (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.

18. In its internal review, the Council provided a submission to the complainant explaining why the cost limit would be exceeded. This included the following:

"It is reasonable to assume that information will be held by the Council regarding Greenwich Theatre as it would touch upon many Council functions these might include: cultural and educational promotion, property portfolio management, grants and funding, town centre management, planning and development. Given the wide spectrum on contacts that may be made to the Council regarding Greenwich Theatre it is not possible to confirm or deny whether the Council holds information that meets your specification without:

- i. carrying out searches to identify whether the Council holds emails and reports received by officers and members within the last 3 months which refer to Greenwich Theatre.*
- ii. scrutinising the output of these searches to determine whether the subject of such emails and / or reports is the status or future of Greenwich Theatre".*

19. It explained that to locate relevant information it would need to carry out searches of its email system and its file management system.

Email system

20. In respect of its email system the Council advised that it holds in excess of 43.5 million emails in approximately 7,000 user accounts. It further explained that its email system does not allow for global searches to be run across all email accounts. Therefore, in order to identify those emails that may contain information, each account would need to be accessed by someone with appropriate access rights, and a search undertaken to include relevant wording and dates, ie items related to "Greenwich Theatre" sent between 15 July 2013 and 15 October 2013. It estimated that it would take on average 30 minutes per user account to capture any relevant information and that this would exceed 2,300 hours.

21. It then went on to narrow this estimate on the following basis:

"For the purposes of developing a reasonable, sensible and realistic estimate I have assumed that there may be a subset of officers and members that are more likely to have contacts regarding Greenwich Theatre than others; for indicative purposes I have taken the figure of 250 officers and / or members. On this basis the time it is likely to take one person to locate information or documents which may potentially contain the information you have requested held [sic] 250 officers and /or members within the email system is likely to be 125 hours or 17.8 working days".

22. In subsequent correspondence with the Commissioner it elaborated on this response. It explained how it had estimated 250 accounts on the basis of certain staff in certain directorates being more likely to hold information than others, including all 51 of its members. It also gave the following working example:

"An initial search was conducted by one member of staff; this identified 94 emails held by that individual that could potentially contain information meeting the request criteria. This first piece of work took in excess of 3 hours and indicated that wider searches would be required and that it was highly probable that to fully comply with the request would exceed the appropriate limit. The development of estimate was also informed by previous exercises that have involved coordinating, tracking and recording the outcomes of extensive cross service email searches and collating and scrutinising information to respond to Freedom of Information Requests and Data Subject Access requests. Whilst we recognise that developing an estimate of the time required to process a request is considered on a case by case basis we are mindful that a recent exercise to locate material that potentially met the criteria of - all emails containing a defined phase between specified dates six months apart in the last year against 8 named user accounts - took in excess of 22 hours".

File management system

23. In respect of its file management system, it explained that it holds in excess of 27.5 million electronic files and that its file management system allows for global searching of key words within file contents by staff with administrator level rights. In order to identify reports that may fall within the scope of the request it would need to run a global search of all electronic files using relevant wording and dates, as above. Based on previous experience, it estimated that this process was likely to take longer than 40 hours.

24. It then went on to narrow this estimate on the following basis:

"For the purposes of developing a reasonable, sensible and realistic estimate I have assumed that there may be subsets or packages of files that are more likely to contain the words "Greenwich Theatre" than others; for indicative purposes I have taken the figure of 2.75M files. On this basis the time it is likely to take one person to undertake the following would be in excess of 4 hours:

- *identify suitable subsets of packages of files to search.*
- *identify and initiate searches within those packages of files.*
- *capture listings of the output of the queries".*

Conclusion

25. The Commissioner is disappointed that the Council initially failed to provide the complainant with an estimate of the work involved in complying with this request. However, from the evidence he has seen during the course of his investigation, the Commissioner is satisfied that the Council has now provided adequate explanations to demonstrate that it would exceed the appropriate limit to locate, retrieve and extract the requested information. Section 12(1) does therefore apply and the Council is not required to comply with the request.

Section 16 – advice and assistance

26. Section 16 places a duty on public authorities to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made requests for information to it.

27. Under section 16(2) a public authority is considered to have met that duty if it follows the section 45 code of practice (the "code"). The code

sets out what is expected from a public authority in terms of advice and assistance when a request is refused under section 12¹.

28. Paragraph 14 of the code states that where a public authority is not obliged to comply with a request because it would exceed the appropriate limit to do so, then it:

"...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-focussing their request, information may be able to be supplied for a lower, or no, fee."

29. In its refusal notice the Council didn't provide a breakdown, merely suggesting to the complainant that he 'narrow' his request without any suggestion as to how he could do so. However, in its internal review it does provide more detail and then suggests to the complainant that he could narrow the parameters of his request by identifying the type of information he requires along with specific services, officers or members. The Commissioner finds this to be an adequate suggestion.

Other matters

30. Although they do not form part of this notice the Commissioner wishes to highlight the following matters of concern.

31. In its internal review the Council included a cost estimate for the following activities:

- Collating emails
- Scrutinising emails
- Seeking consent prior to disclosure
- Assembling the information

32. The Commissioner would like to draw the Council's attention to the activities which are caught by the Fees Regulations, as listed at paragraph 19 above; none of these activities appear to fall within these criteria. However, as the cost limit would be exceeded in any event the Commissioner has not considered their inclusion in the body of this notice.

¹ <http://www.justice.gov.uk/downloads/information-access-rights/foi/foi-section45-code-of-practice.pdf>

Right of appeal

33. 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: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

34. 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.
35. 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

Jon Manners
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF