

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 July 2014

Public Authority: Oxford City Council
Address: St Aldate's Chambers
St Aldate's
Oxford
OX1 1DS

Decision (including any steps ordered)

1. The complainant submitted a multi-part request to Oxford City Council (the Council) requesting information relating to a hostel for homeless people. The Council cited section 12 of FOIA (cost of compliance exceeds the appropriate limit).
2. The Commissioner has investigated and found that the Council was entitled to rely on section 12(1) of FOIA in respect of those parts of the request to which it considered that that section applied.
3. The Commissioner requires no steps to be taken as a result of this decision.

Background

4. The Commissioner understands that the property that is the subject of the request in this case is a homeless persons' hostel in central Oxford. The Council explained that the hostel is operated by one of the organisations in Oxford that provide services for street homeless people and that their main funder is Oxfordshire County Council.

Request and response

5. On 28 January 2014 the complainant wrote to Oxford City Council and requested information in the following terms and as reproduced here in its entirety:

"If you may kindly disclose all the information this authority has a duty to disclose, under the FOI act, on followings:

1- Copies of Inspection appointments pen down on Environmental Heath team inspection diary for last five months of 2013. IF multiple diaries in use, please at least provide [name redacted] diary showing scheduled appointments for said period.

2-Copies of pocket book pages containing notes and measurements taken , and any documents, photographic evidence, and any other form of recording of data gathered during the December 18th inspection of [property name redacted] or in relation with purposes of that inspection.

3- Record of Statutory overcrowding calculations , any counts of number of persons sleeping in the dwelling , and the number of rooms available as sleeping accommodation, used for figuring out the extent of overcrowding, measurements of floor space , area, etc. relied on to work out the ratios, ratios found, and finding on which the final assessment of the actual level of overcrowding at the premises was computed in terms of statutory overcrowding standards in order to find if the premises is a dwelling to Household(s) where the level of overcrowding exceeds the statutory limit as defined in part X of 1985 act and whether or not the dwelling is overcrowded for the purposes of the said act; and whatever data relied on in addition by regulations that provides for the exclusion from computation any area, or brought into computation at a reduced figure, of floor space in a part of the room(s) that is of less than a specified height not exceeding eight feet.

4- Please admit or deny the document titled Service Request Worksheet dated 7th november , as disclosed in response to FOI – [reference redacted], is the only piece of information that this authority had a duty to disclose under FOI act in response to a request which was asking for " If you may kindly provide me with whatever records held in connection with or with reference to that investigation, inspection and subsequent assessments and decisions including copies of all records,notes, emails, photos, correspondences, minutes, letters, phone calls, inspection reports, , as well as any notice,warning or like given out to those in control of the said premises" and if there were materials not disclosed why not all requested materials were disclosed.

5- all Emails , minutes and other correspondence between [names redacted] and any other member staff involving with Health and safety issues surrounding [property name redacted] for a period of five months to date.

6- Copies of all inspection Notices sent out to each body prior to Dec 18th inspection.

7- Please admit or deny :

7a-this local authority is aware of the disproportionate size of individuals dependening on substance misuse residing in [property name redacted] for weeks , months and years.

7b- this local authority is aware that those individuals are being catered for on the premises with injection equipments.

7c- this authority is aware of overdose incidents on the premises.

7d- this authority has no active licensing or control measures on running an opium house.

7e- this authority knows of no rehabilitation, or other drug recovery services and facilities delivered on the premises.

8- What measures were taken after I notified [name redacted] on 31/05/2013 of member staff in charge of [property name redacted] admitting cannabis use is a common events on the premises and it raises no eyebrow.

9-What measures were taken after I notified [name redacted] of a overdose death on the premises.

10-What measures were taken after I notified the authority that those in control of the premises are falsifying their health and safety reports.

11-What measures were taken upon your authority learning that residents bared from entry to premises over night have subsequently been exposed to all sort of risk and safety issues.

12- All records held by or held in behalf of this authority by any other body in connection with substance misuse and related health and safty issues, incidents , overdose , casualty, death etc. at the premises in question since 2004.

13- All data relied on and all computation and calculation made for carrying out HHSRS assessment of the said dwelling and working out level of health and safety hazard at the said dwelling”.

6. The Council responded on 30 January 2014 with an initial view that section 12 is engaged and that some of the matters raised fall outside of the scope of the FOIA. In the circumstances the Council invited the complainant to meet with council officers to discuss the matter.
7. In the course of subsequent correspondence, the complaint revised point 12 of the request as follows:

"12- All records held by or held in [sic] behalf of this authority by any other body in connection with substance misuse and related health and safety issues, incidents , overdose , casualty, death etc. at the premises in question since 2010".

8. Following the Commissioner's intervention, the Council sent the complainant its substantive response on 9 April 2014. It told him that in the Council's view:

"points 4, 7, 8, 9, 10 and 11 are questions and enquiries rather than requests for information the Council holds in either electronic or hard copy form, and, as such, they are outside the scope of the Freedom of Information Act".

9. It confirmed its view that responding to the remaining points would exceed the FOI time limit.
10. The complainant requested an internal review on 7 May 2014. In expressing his dissatisfaction with the Council's response, the complainant asked the Council to provide him with a breakdown of the total time it estimated it would take to respond to his request for information *"broken down per requested question"*.

Scope of the case

11. The complainant first contacted the Commissioner on 4 March 2014 to complain about the way his request for information had been handled. The Commissioner acknowledges that although at that time the Council had corresponded with the complainant, it had not provided a response that was in accordance with section 17 of the FOIA.
12. The complainant contacted the Commissioner again on 3 June 2014 to complain about the way the Council had handled his request for information.
13. In response to the Commissioner's intervention, the Council wrote to the Commissioner clarifying its position having completed its internal review

and confirming that it considers section 12 of FOIA applies to points 1, 2, 3, 5, 6, 12 and 13 of the request.

14. With respect to the remaining aspects of the request, the Council told the Commissioner that it remains of the view that those matters – namely points 4, 7, 8, 9, 10 and 11 - fall outside the scope of the FOIA.
15. Taking into account the complainant's grounds for requesting an internal review, the Commissioner considers the scope of his investigation to be in respect of those parts of the request to which the Council applied section 12 of FOIA (cost of compliance exceeds the appropriate limit) - points 1, 2, 3, 5, 6, 12 and 13 of the request.

Reasons for decision

Section 12 cost of compliance

16. 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".

17. This limit is set in the fees regulations at £600 for central government departments and £450 for all other public authorities. The fees regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 18 hours in this case.
18. In estimating whether complying with a request would exceed the appropriate limit, Regulation 4(3) states that an authority can only take into account the costs it reasonably expects to incur in:
 - determining whether it holds the information;
 - locating the information, or a document containing it;
 - retrieving the information, or a document containing it; and
 - extracting the information from a document containing it.
19. The four activities are sequential, covering the retrieval process of the information from the public authority's information store.
20. As is his practice in a case such as this, during the course of his investigation the Council was asked to provide the Commissioner with:

"a detailed estimate of the time/cost taken to provide the information falling within the scope of this request".

21. In response, the Council provided the Commissioner with arguments in support of its citing of section 12. For example it explained the nature of the search of electronic folders that would be required in order to respond to point 5 of the request, estimating:

"This means a minimum of 16 hours for this task due to the size of the email accounts and the quantity of the records kept by the officers".

22. The Commissioner recognises that there is no statutory requirement under section 17 for the refusal notice to include an estimate of the costs involved, or any other explanation of why the cost limit would be exceeded. However, in the Commissioner's view, it is beneficial to a public authority to do so, for example to enable the requestor to assess the reasonableness of the estimate.
23. In this case, although the Council told the complainant that it considered that complying with the request would exceed the cost limit, the Commissioner is disappointed to note that it failed to provide the complainant with an estimate of the actual work involved in complying with his request.
24. In the absence of an estimate of the work involved, or a detailed explanation as to why the exemption applies, the Commissioner considers it understandable that the complainant finds the Council's response unsatisfactory.
25. However, from the evidence he has seen during the course of his investigation, and in consideration of the wide-ranging nature of the request, the Commissioner is satisfied that the Council has 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 a public authority to provide advice and assistance to someone making an information request, including helping an applicant refine a request so that it can be answered within the appropriate costs limit.
27. The Commissioner considers that the best way to meet this requirement in a case involving the costs exemption will usually be to include a breakdown of the costs involved in meeting the request, and an

indication of what could be provided under the limit, as part of the refusal notice.

28. The Commissioner acknowledges that the Council advised the complainant that he may wish to review his request in order to bring it within the cost limit. In that respect it told him:

"In particular, you may wish to review points 1, 3 and 12, which are especially wide-ranging requests".

29. Although highlighting those aspects of the request that it considered should be reviewed, in the Commissioner's view in the absence of any breakdown of costs or practical advice about how to reduce his request, the Council failed to provide adequate advice and assistance to the complainant.

Other matters

30. Notwithstanding his finding that the Council failed to provide adequate advice and assistance to the complainant with respect to refining his request in order to bring it within the appropriate limit, the Commissioner recognises the efforts that the Council has made to address any issues and concerns the complainant may have about the hostel. In that respect he notes that the Council has extended an invitation to the complainant on more than one occasion to meet with council officers. The Commissioner welcomes this approach.

- 31.

Right of appeal

32. 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

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

Jon Manners
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