

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 June 2015

Public Authority: Birmingham City Council
Address: Council House
Victoria Square
Birmingham
B1 1BB

Decision (including any steps ordered)

1. The complainant has requested information about taxi drivers who have been allowed a licence to work despite previous convictions. Birmingham City Council (the council) refused the request relying on section 12(1) of the FOIA as it considered providing the information would exceed the appropriate limit.
2. The Commissioner's decision is that section 12(1) of the FOIA is engaged. He has also determined that the council has complied with section 16 of the FOIA with regards appropriate advice and assistance.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 3 February 2015 the complainant requested information of the following description:

"Under the Freedom of Information Act I'd like to know about hackney carriage and private hire drivers who have been allowed to ply their trade in Birmingham, in spite of previous convictions. I'd like to know for all currently licenced in Birmingham, what they have been convicted of."

5. The council responded on the 3 February 2015 refusing the request under section 12(1) of the FOIA as it considered that to provide the

information would exceed the appropriate limit. The complainant requested an internal review of the decision the same day.

6. The council provided its internal review decision on the 11 February 2015. It maintained its decision.

Scope of the case

7. The complainant contacted the Commissioner on 13 March 2015 as he was not satisfied with the council refusing his request.
8. The Commissioner considers the scope of the case is to determine whether the council is correct to rely on section 12(1) of the FOIA to refuse the request.

Reasons for decision

Section 12(1) of the FOIA

9. Section 12 of the FOIA states that a public authority does not have to comply with a request for information if it estimates that the cost of complying with the request would exceed the appropriate limit.
10. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations") sets the appropriate limit at £450 for the council.
11. A public authority can charge £25 per hour of staff time for work undertaken to comply with a request in accordance with the appropriate limit set out above. If a public authority estimates that complying with a request may cost more than the cost limit, it can consider time taken 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.
12. In determining whether the council has correctly applied section 12 of the FOIA in this case, the Commissioner has considered the council's rationale it provided to the Commissioner during his investigation.

13. The council, in its explanation to the Commissioner, has told him that following a review of its computer records it found that the time it would take to extract the information was well in excess of the 18 hours allowed under the FOIA.
14. However following a paper exercise to look at the reports on matters that relate to this request, the council found it was possible to significantly speed up the search process compared to interrogating its computer records.
15. But because the complainant has not limited his request to a specific timeframe, such as records over the last two years, the council has explained that it would have to search all 35 of its lever arch files of committee reports dating back to 2001.
16. The council established that its officers can look at their private records quickly and determine if offences are listed in the committee report. Then they can cross reference this with the minutes from the committee to determine if the application was refused or granted.
17. Those that were granted could then be extracted and redacted. The council has specified to the Commissioner that it has not included the time it would take to redact information in its determination of section 12 of the FOIA.
18. For those that are refused, the council has advised the Commissioner, that there is an appeal process through the Magistrates and Crown Court and some taxi drivers get reinstated following this process. Therefore each and every driver needs to be entered into the database to see if they are licenced.
19. The council has told the Commissioner that it ran a sampling exercise on one of the 35 lever arch files to see how long it would take to extract the information required.
20. It found that the lever arch file contained 12 committees worth of papers and it took 50 minutes to extract the relevant data. This revealed that there were 53 drivers who were relevant to the request who needed to be cross referenced with the computer that holds the information on who is licenced and the council found that it took 8 minutes to process three records.
21. The council has told the Commissioner that it would therefore take 141 minutes to check the 53 taxi driver's licences from this one lever arch file.
22. Adding the 141 minutes and 50 minutes, explained above, this would amount to slightly over three hours of officer time per lever arch file.

23. Basing its calculations on three hours per file, then it would take the council 105 hours to search and extract the information from the 35 lever arch files and run the licence checks on its system in order to provide the complainant the information required to respond to his request.
24. The council has also explained to the Commissioner that it does not hold a criminal record database recording a record of criminal investigations for each driver. Therefore the confidential committee reports are the only place where the sought information is recorded.
25. The complainant has noted that other council's have managed to provide similar information to other information requests. The Commissioner can see how this could make the complainant question the council's application of section 12(1) of the FOIA.
26. It may be that other council's hold and record this sort of information in a different way to the council and this may affect those other council's ability to provide such information on request. But in considering section 12 of the FOIA, the Commissioner can only consider the way in which the council, that the information has been requested from for this request, holds the information required.
27. On this basis, the Commissioner, after reviewing the council's explanations on how it would need to search for and extract the information required and the time this would take, is satisfied with the council's reasons as to why it would take it over the appropriate limit to provide the information requested and therefore finds section 12(1) to be engaged with this request.

Section 16(1) of the FOIA- Advice and Assistance

28. Section 16 of the FOIA imposes an obligation for 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 not conformed with the provisions in the section 45 Code of Practice¹ in relation to the provision of advice and assistance in that case.

¹ <https://www.justice.gov.uk/information-access-rights/foi-guidance-for-practitioners/code-of-practice>

29. Paragraph 14 of the section 45 Code of Practice 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-focusing their request, information may be able to be supplied for a lower, or no, fee."

30. The council has told the Commissioner in its reasoning for applying section 12(1) of the FOIA to this request that for it to be able to respond to the request it would have to search all of its 35 lever arch files, which have records dating back to 2001. 14 years of records.

31. The Commissioner has viewed the council's initial response to this request and notes that it explained to the complainant that:

"For example in 2014 this would involve reviewing 325 reports and at least 3 minutes to review each file, which equates to 975 minutes (16.25 hours). However to provide comparable data for previous years, would exceed the appropriate limits set out by the Act."

32. On this, the Commissioner sees that the council has indicated to the complainant information it may be able to provide within the appropriate limit should he look to refine his request.
33. The Commissioner is therefore satisfied that the council has complied with section 16 of the FOIA.

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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

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

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