

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 October 2016

Public Authority: Maidstone Borough Council
Address: Maidstone House
King Street
Maidstone
ME15 6JQ

Decision (including any steps ordered)

1. The complainant has requested information with regards to parking tickets given to emergency services vehicles. Maidstone Borough Council (the council) refused the request under section 12 of the FOIA as it considered for it to provide the information would exceed the appropriate cost limits.
2. The Commissioner's decision is that the council is able to rely on section 12 of the FOIA to refuse the request. He is also satisfied that it has provided adequate advice and assistance as per section 16 of the FOIA.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 1 February 2016, the complainant made the following request to the council:

"I notice from your email address, that you also deal with FOI requests – in which case could you kindly tell me how many parking tickets have been issued by MBC to emergency services (Police, Fire and Ambulance) vehicles in the past 2 years, with a breakdown by service and vehicle type."

5. The council provided its response on the 26 February 2016, it advised that it held the information but refused the request under section 12 of

the FOIA as it considered providing the information would exceed the appropriate costs limit.

6. The council suggested that it may be able to provide the information if the category of information was narrowed, such as providing a specific location over a reduced period of time.
7. On the 29 February 2016 the complainant asked the council to explain how it came to the conclusion that it would take over the appropriate limit to respond and also suggested making 24 monthly requests to gain the information. The council advised that doing this would constitute repeat requests and would be refused.
8. On the same day, the complainant asked the council to supply the information it could gather up to the 18 hours of permitted time or supply the reasoning behind its estimate.
9. The council responded to advise it is not obliged to search up to the limit. It also explained that the information requested is not held in a way where it can search for PCN's issued to emergency services vehicles only. In order for it to gather the information, it would need to check every single PCN issued individually over the time period (that being two years) to see whether the photographs attached or officer's notes indicate whether it was an emergency services vehicle.
10. It then asked the complainant to confirm whether he would like the council to search for a month's worth of information or if he wanted to narrow the request to a specific location.
11. The complainant appears to have interpreted the council's response to mean that it would take it 2.5 days to provide the information and so responded to the council stating that if 2 years' worth would take 2.5 days, then 1 year would presumably take 1.25 days. He therefore considered it to be reasonable to amend his request to one years' worth of information.
12. The council responded stating that there may be some confusion over the refusal notice as limiting the request to 1 year would not take it under the appropriate limit. The council's refusal was because it would take over the permitted 2.5 days, not up to.
13. The complainant then requested an internal review as he considered that 1 year would be under the appropriate limit based on what the council has told him.
14. The council provided its internal review on the 17 March 2016 upholding its refusal explaining that even reducing the timeframe for the information to 1 year would still exceed the appropriate limit.

Scope of the case

15. The complainant contacted the Commissioner on 22 March 2016 as he was not satisfied with his request being refused.
16. The Commissioner considers the scope of the case is to determine whether the council is able to rely on section 12 of the FOIA to refuse the request.
17. He will also consider whether the council has complied with section 16 of the FOIA – in providing appropriate advice and assistance.

Reasons for decision

Section 12 of the FOIA – Appropriate Limit

18. 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.
19. 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. A public authority can charge £25 per hour of staff time for work undertaken to comply with a request which, in this case, amounts to 18 hours work in accordance with the appropriate limit set out above.
20. If a public authority estimates that complying with a request may cost more than the cost limit, it can consider the 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.
21. In determining whether the council has correctly applied section 12 of the FOIA in this case, the Commissioner has considered the council's rationale provided to him during his investigation.
22. The council has told the Commissioner that although it would hold the requested information, in order to supply it, it would need to locate,

retrieve and extract it and this has been determined to take over the permitted 18 hours.

23. The council has confirmed to the Commissioner that it ran a sampling exercise of 10 records to see how long it would take to obtain the information from its electronic case management system (CMS). The officer responsible for doing this timed how long it takes to:
 - i. Open the individual record on its CMS,
 - ii. Review the case evidence to ascertain whether the vehicle photographed was an emergency vehicle,
 - iii. Log the results in a corresponding spreadsheet
 - iv. Close down the file and move on to the next case record.
24. The council recorded that the above took between 60 – 90 seconds per record.
25. For the two year period requested, the council has told the Commissioner that there are 65,793 cases which would have to be reviewed and so if it took 60 seconds per case, this amounts to 1096.55 hours of officer time equating to a cost of £27,413.75.
26. For providing the information for the one year, there are 32,800 cases and again basing this on 60 seconds to review each case. This amounts to 546.67 hours of officer time, equating to a cost of £13,666.66.
27. The council has explained to the Commissioner that the reason it would have to review every case within the time period is because although the data is held electronically, its system is only able to automatically search the following criteria:
 - Ticket number
 - Vehicle registration
 - Surname
 - Postcode
 - Car Make
 - Car Colour
28. The system does not have the option to search for emergency vehicles, so an officer would have to carry out the manual search method described above in order to provide the information.

29. On reviewing the council's response, the Commissioner is satisfied that the council's explanations are reasonable and because its system does not have the search criteria for emergency vehicles, a manual search of the system is the only way that the information could be obtained.
30. Therefore on review of the above, the Commissioner is satisfied that for the council to provide the requested information would take over the appropriate limit and so finds section 12 of the FOIA to be engaged.

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

31. Section 16(1) 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 any 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 section 45 of the Code of Practice¹ in relation to the provision of advice and assistance in that case.
32. 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."
33. The Commissioner has reviewed the council's correspondence with the complainant and notes that it has indicated, as mentioned in paragraphs 6 and 10 above, that it may be able to supply the information if the request was refined to a month's worth of information or narrowed to a specific location.
34. The Commissioner considers that the council has given appropriate advice and assistance in this case and therefore it is now for the complainant to refine his request with the council if he chooses.

¹ <https://www.gov.uk/government/publications/code-of-practice-on-the-discharge-of-public-authorities-functions-under-part-1-of-the-freedom-of-information-act-2000>

Right of appeal

35. 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

36. 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.
37. 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
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SK9 5AF