

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 June 2016

Public Authority: Dudley Metropolitan Borough Council

Address: Council House
Priory Road
Dudley
West Midlands
DY1 1HF

Decision (including any steps ordered)

1. The complainant has made four separate requests to Dudley Metropolitan Council (the council) for information in relation to employment tribunal claims. The council provided some information but refused the remaining relying on section 12 of the FOIA as it considered providing any further information would exceed the appropriate cost limit. It also refused some information under section 40(1) of the FOIA as it was the complainant's own personal data.
2. The Commissioner's decision is that the council is able to rely on section 12 of the FOIA to refuse these requests. As section 12 has been found to be engaged, the Commissioner has not gone on to assess the application of section 40(1) of the FOIA.
3. The Commissioner has also found that the council breached section 10(1) of the FOIA to the first request, as its response was provided outside the required 20 working days response time following the request being made.
4. As the council has since provided its response, he does not require it to take any steps.

Request and response

5. The complainant made four separate requests to the council. Each request was recorded by the council under the following separate references: 10740, 11438, 11262 and 11630.

Request 10740

6. On 23 January 2015 the complainant requested the following information from the council:

"I write to you under the Freedom of Information Act 2000. To request that you furnish a list of all Tribunal claims made against Dudley MBC. Giving the date, nature of claim – discrimination, Unfair Dismissal, Disability..., the department or service of the claimant, Age, Gender, Ethnicity and the outcome of the claim."

7. On 20 February 2015, the council advised that there would be a delay in providing a response to this request and that it is aiming to respond by 24 February 2015.
8. The complainant responded to the council advising that if he does not receive a response within the 20 working day timeframe, he will refer the matter to the Commissioner for a delayed response.
9. The council responded to the request on the 25 February 2015 providing the complainant with two PDF documents relating to Equal Pay Claims and Employment Tribunal Cases over the last five years.

Request 11262

10. On the 28 April 2015, the complainant then made the following request to the council, which the council recorded under reference FOI 11262:

"I write further to my previous request for information to request under the FOI 2010 Act for you to furnish a list in chronological order of all Employment Tribunal claims giving date of acknowledgement, date of outcome – settlement/ full hearing, type of claim (age, race, disability, sex, religious discrimination, wage, unfair dismissal), department of the Dudley MBC."

11. On the 14 May 2015, the council wrote to the complainant stating that the spreadsheet that it had provided for the previous request - FOI 10740 – contained all of the requested information except for the date of outcome and that the date on the spreadsheet was the date of acknowledgement. It asked the complainant to confirm if the council only needs to add the 'Date of Outcome' to this spreadsheet to satisfy his request.
12. The complainant responded on the same day stating:

"I would be grateful if you comply with my request in full. I have previously made a request for all ET claims and I was provided with a list from 2001 – 2013 however, did not give details as

given in my most recent request which I have clarified on several occasions now.

Again, please provided all ET claim 'list in chronological order of all Employment Tribunal claims giving, date of acknowledgment, date of outcome and the outcome – settlement/ full hearing, type of claim (age, race, disability, sex, religious discrimination, wage, unfair dismissal), department of the Dudley MBC.

13. On the 8 October 2015, the complainant wrote to the council stating that his request had not yet been complied with. The council responded to advise that a response had been issued on the 17 June 2015, providing the information.

Request 11438

14. On 15 May 2015, the complainant requested the following information from the council:

"I would like to request of all of the investigations undertaken by Dudley MBC in relation to all staff giving: the department and title of member making the request, nature of the request, day, month and year of the request, the age, race, ethnicity and gender of the member of staff being investigated, the length of the investigation (start and completion date) the position, race, gender, age and ethnicity of the investigation officer and the outcome of those investigations.

Lastly, I would be grateful for a list of all the private investigation service Dudley MBC has used giving: the number of times used, nature of the investigation, length of the investigation, the year used (number of times within each year used), the cost for each of the investigations."

15. The council responded on the 29 June 2015 refusing the request under section 12 of the FOIA – it considered that to provide the information would exceed the appropriate limit. However, it did provide some information that was previously provided at a Tribunal hearing and a spreadsheet containing some investigation data.
16. On the 10 July 2015, the complainant requested an internal review of the council's refusal of his request. The council responded on the 4 September 2015 stating that it had provided all of the information that can be provided within the cost limits and upheld its application of section 12 of the FOIA.
17. Its review also found that it should have refused the information that was in relation to the complainant under section 40(1) of the FOIA –

Information that is the personal data of the requestor is exempt from disclosure under the FOIA.

18. Lastly, the council advised the complainant that if he was to narrow the scope of his request, it may be able to provide some further information.

Request 11630

19. Prior to 8 October 2015 the complainant made his fourth request, on 15 July 2015, to the council, which the council recorded under reference FOI 11630:

"I write to you formally to request under the FOI Act 2000 a list of all the Employment Tribunal Claims that Dudley MBA has made application for costs. Giving the date of the claimant's claim application, the nature of the claim, the department of the claimant, the race of the claimant, the sex of the claimant, the date of the costs application, total amount of costs sort to recover per claim, the total amount of expenditure per claim, outcome of costs application and detailed assessment."

20. The council responded to the request on the 10 August 2015 refusing to provide the information relying on section 12 of the FOIA as it determined that the cost of locating and retrieving the requested information exceeds the appropriate limit.
21. The council added that if the complainant was able to make a new request for a narrower category of information, it may be able to comply with the request within the appropriate limit. It suggested that it may be able to supply the requested information from 2008 onwards.
22. The complainant requested an internal review on the 9 November 2015 as he considered that his request had not been complied with and he had not received a response. He complained to the Commissioner on the 8 November 2015 about the council's responses to his requests.
23. On the 10 November 2015, the council carried out an internal review. In its review, the council advised that it had responded to the request on the 10 August 2015 by issuing a refusal notice under section 12 of the FOIA. It also maintained its refusal of the request.

Scope of the case

24. The complainant contacted the Commissioner again to complain about the way his requests for information have been handled. Advising the Commissioner that:

- a) He is not satisfied with the time it took the council to respond to his request 10740;
 - b) He has not received all the information requested for 10740 and 11262.
 - c) He is not satisfied with the council refusing his third request 11630 and 11438 under section 12 of the FOIA.
 - d) He is not satisfied the council refused his own personal data under section 40(1) of the FOIA with regards to request 11438.
25. The Commissioner, during his investigations, contacted the council to establish its position with regards to its responses to the two requests it recorded under the references 10740 and 11262 asking whether it holds more information than that provided.
26. The council has told the Commissioner that it has provided the complainant with information it holds from the last five years for those two requests, but to provide any more information past this timeframe would exceed the appropriate cost limits under section 12 of the FOIA.
27. The Commissioner has explained to both parties that his main consideration for this case is to determine whether the council is able to rely on section 12 of the FOIA to refuse to provide any further information with regards to all four requests than that already provided.
28. Following this, he will then determine whether the council breached section 10(1) of the FOIA with regards to time the council took to respond to the request 10740. And the Commissioner will only go on to consider whether the council is able to rely on section 40(1) to refuse the complainant his own personal data for request 11438 if he finds section 12 of the FOIA is not engaged.

Reasons for decision

Section 12 of the FOIA – Appropriate limit

29. 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.
30. 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.

31. 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.
32. In determining whether the council has correctly applied section 12 of the FOIA in this case, the Commissioner has considered the council's rationale as provided to the Commissioner during his investigation.
33. The council in its explanations to the Commissioner has told him that it provided the complainant with some information because this information was readily available due to it already being prepared following a tribunal case which involved the complainant.
34. With regards to its application of section 12 of the FOIA, the council has explained to the Commissioner that the information held dating back more than 5 years for requests 10740 & 11262, the information held prior to 2008 for request 11630, and the information held prior to 2009 for request 11438, is held off site at its storage contractors. This information is held in manual form in boxes of legal files, retained as historical information.
35. The council has identified that its storage contractor currently holds 568 boxes of legal files that could potentially hold information within the scope of the request.
36. The Commissioner asked the council whether these boxes of legal files are labelled in a way that it could quickly discard any irrelevant boxes. The council confirmed that these were the boxes identified as possibly containing the relevant information. For it to further determine what information is held and to extract it, the files inside each box would need to be reviewed.
37. A public authority may choose to support its claim of section 12 by providing evidence of the random or representative sampling exercise it has carried out. For example, in cases where the public authority holds a large number of files, it may be useful to choose a random selection of

those files in order to calculate an average for the time it would take to locate, retrieve and extract the relevant information.

38. Also, a public authority does not have to make a precise calculation of the costs of complying with a request; instead only an estimate is required. However, it must be a reasonable estimate.
39. The council has told the Commissioner that it has carried out a sampling exercise on ten of these boxes which resulted in there being an average of six files per box. So it estimates that there would be 3,408 files that would need reviewing.
40. As these are all paper files, they would need to be manually reviewed to identify any relevant information for extraction. The council considered that even if the majority of files could be reviewed quickly with an average of 5 minutes per file to extract all of the required information, this would amount to 284 hours at a cost of £7,100, far exceeding the appropriate limits.
41. The Commissioner sees that even if the council were able to review and extract the relevant information at an average of 1 minute per file, this would still take it over 56 hours at a cost of £1420.
42. On top of having to review the files in order to extract the relevant information, the council has told the Commissioner that it would need to retrieve the boxes of legal files from its storage contractors. To do this would incur a further cost to the council.
43. The council obtained quotes from its storage contractors for the cost of having the information sent to them. Its cheapest quote was for £800.97. This was worked out at having 14 deliveries of 40 boxes at a cost of £17.50 per delivery (totalling £245). A box retrieval cost of 0.67pence per box (totalling £79.89) and a handling fee of 0.31 pence per box (totalling £176.08).
44. The council has stated to the Commissioner that due to the complainant requesting 'all information' section 12 is engaged. If the complainant was to refine his requests to a reasonable timeframe, as previously suggested to him, it may be able to provide him with further information.
45. The council points out that the above estimates are for obtaining the information held from its historical records. The estimates do not include the time it would also take to review/ extract the information it holds electronically in its more recent records.
46. The Commissioner sees that, on review of the council's explanations, to provide all the information it potentially holds outside what has already

been provided for any of the requests, would exceed the appropriate cost limits for the council to comply with any of the complainant's requests.

47. Therefore the Commissioner has determined that the council is able to rely on section 12 of the FOIA with regards to these four requests.
48. The council has, in its correspondence to the complainant, explained that it may be able to supply some further information if he refines his requests to a timeframe that would fall within the cost limits. It would now be for the complainant to contact the council further to establish what could be provided within the cost limits should he wish to do this.
49. As the Commissioner has found section 12 of the FOIA to be engaged, he has not gone on to consider the council's application of section 40(1) of the FOIA to some of the information requested in request 11438.

Section 10(1) of the FOIA

50. Section 10(1) of the FOIA states that a public authority has to respond to a request within the required 20 working days following receipt of the request.
51. For the complainant's request 10740, made on the 23 January 2015, the council did not provide its response until the 25 February 2015 which is outside the required 20 working days and therefore a breach of section 10(1) of the FOIA.
52. As the council has now responded, the council does not require it to take any steps.

Other matters

53. Although the Commissioner has found that section 12 of the FOIA is engaged to the complainant's requests, he notes that the council did provide some information to the complainant as part of its responses.
54. It appears that in doing this, it may have caused some confusion to the complainant in that he did not feel he had received all of the information.
55. When refusing a request under section 12, it is usually recommended that a public authority refuses the request out right and then – if applicable – suggests what information it may be able to provide within the cost limits. If the complainant confirms they are happy to receive

this information as a refined request, then the public authority could supply the information agreed upon.

56. In doing it this way, for future requests, it may reduce any confusion for the requestor as to why they are receiving some information to a request that has been refused under section 12 of the FOIA. It may be worth the council reviewing paragraphs 31 to 33 of the Commissioner's guidance on section 12¹ with regards to this.

¹ https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

Right of appeal

57. 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

58. 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.
59. 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