

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 October 2017

Public Authority: Gwynedd Council

Address: Caernarfon
Gwynedd
LL55 1SH

Decision (including any steps ordered)

1. The complainant has requested various financial information in respect of external consultants. Gwynedd Council refused the request by virtue of section 12 of the FOIA. The Commissioner's decision is that Gwynedd County Council was entitled to rely on section 12 of the FOIA to refuse this request, and that it complied with its obligations to provide appropriate advice and assistance under section 16 of the FOIA. The Commissioner does not require the public authority to take the following steps to ensure compliance with the legislation.

Request and response

2. On 17 November 2017, the complainant wrote to Gwynedd Council ('the Council') and requested the following information:

"To date, how much has Gwynedd County Council paid to external consultants?"

Please give a breakdown of each payment, including amount and date."

The Council responded on 20 December 2017. It informed the complainant that the amount of information he had requested was very substantial and gathering it would be likely to involve a significant cost and diversion of resources. It further informed him that it would exceed the £450 cost limit and suggested the way forward was to try to narrow his request for either less information or restricting the information to a specific time period. Finally, it added that if he was unwilling or unable to refine his request, the Council would consider it in accordance with its

obligations under the FOIA but if it did exceed the cost limit, they may have to refuse the request.

3. Following an internal review the Council wrote to the complainant on 7 February 2017. It upheld its original decision that section 12 was engaged and provided an explanation of the processes involved to comply with the request.
4. It further informed the complainant that whereas historically it did not record this type of information in a manner which would enable it to comply with his request, in view of an increased number of requests for this information, it had reviewed its coding system with effect from April 2016 with a view to facilitate this type of request from 2016-2017 onwards. It further informed the complainant that the figure coded against Business Consultancy Advisors for the first 10 months of the 2016-2017 financial year was £71,000.

Scope of the case

5. The complainant contacted the Commissioner on 19 February 2017 to complain about the way his request for information had been handled. In particular, he expressed concern with the Council's reliance on section 12 of the FOIA and asked the Commissioner to consider whether its calculations were correct and what guidance she gives to Councils regarding their accounting arrangements. He also asked the Commissioner to consider whether the Council failed in its obligation to offer appropriate advice and assistance as required under section 16 of the FOIA.
6. The Commissioner considers that the scope of her investigation is restricted to whether the Council was correct to rely on section 12 of the FOIA to refuse the requested information and whether it fulfilled its obligation to provide appropriate advice and assistance to enable the complainant to refine his request.

Reasons for decision

Section 12 – cost of compliance exceeds the appropriate limit

7. 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."

8. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the '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 in accordance with the appropriate limit set out above.
9. 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.
10. The Council's internal review informed the complainant that the issue relates to how transaction information is entered and described. It confirmed that information is kept on a general ledger database and coded to objective cost centres of which there are 2082. These are then coded by subject headings or codes. For the time period in question, these subject headings had insufficient details to enable a breakdown of the exact detail requested without analysing each transaction manually.
11. It further explained that there are 10 subject headings which could potentially hold information relevant to the request. It further confirmed that this appeared to be the only practical way of producing a figure without asking each departmental unit to review its own transactional records and collate an answer which in itself would be likely to involve time and resources in excess of the appropriate limit.
12. The Council further explained if every invoice which could potentially involve an 'external consultant' were analysed for 2015-16, the Council would need to consider approximately 2344 transactions.
13. The Commissioner suggested a sample of one of the subject headings may be helpful in obtaining an estimate of the time involved. She also asked the Council to provide details and evidence in respect of the 2344 transactions.

In addition, the Commissioner asked the Council to provide details and evidence of what would be involved using the alternative method of contacting each departmental unit to review its own transactional records and collating the information.

14. The Council explained that the evidence provided related to transactions for the period 2015-16. It further explained that for this period, a number of items have been grouped together by its interrogating tool (Business Objects) and the list now contains 2,222 distinct items that would require investigation, 1,776 of which were generated directly by its Payments system, whilst others have been coded by journal, but which possibly may have been also generated from a payment.
15. The Council estimated that it would require between 2-5 minutes to analyse each transaction, which equates to a total of between 4,444 minutes (74 hours) and 11,720 minutes, (185 hours). The Council further confirmed that this is based on the fact that the invoices are hard copy documents held in storage boxes.
16. The Commissioner was further informed that even after the completion of this process, further processes were still necessary, since analysing the transaction would require a member of staff to have the batch and invoice number to hand from the listing as the batch would indicate which box to search through. Each box typically contains 20 batches, each, with upwards of 20 invoices per batch. On retrieval of the invoice, the member of staff would need to contact the person who had authorised the transaction to confirm whether or not the sum had actually been paid for consultants. The Council provided the Commissioner with a selection of invoices in support of its explanation.
17. The Commissioner considers that even based on the most conservative estimate of interrogating the 2,222 items outlined in paragraph 17 of this notice, that the task of complying with this request would be so far in excess of the cost limit, there is no need to consider the remaining processes. She is therefore satisfied that section 12 of the FOIA is engaged in respect of this method of complying with the request.
18. In terms of the alternative method of asking each department to provide this information, the Council informed the Commissioner that it would involve asking every service manager in the Council to analyse their own codes to ascertain whether or not any payments had been made to consultants, (approximately 150 members of staff).

The Council asked a manager of a relatively small unit to explain how he would approach this task. He confirmed that it would be necessary to contact the Council's Finance Department to request a spreadsheet itemising all expenditure with external bodies during the requested period. On receipt, it would then be necessary to individually scrutinise the Outlook file for finance invoices retained within the Unit as a back-up record, and match these with the list of company names and expenditure supplied by the Finance Department.

19. Following this, they would need to individually review the contents of the email files and attachments (screen print provided) to identify any invoices for expenditure on external consultants or invoices which may contain an element of consultancy work.
20. The Council confirmed to the Commissioner that for the financial year 2016 to 2017, this would involve reviewing the contents of approximately 185 email records and undertook a sample of 15 transactions. It took 3.25 hours for a member of staff to carry out this work which did not include the final step of ascertaining whether or not the payment was made to a consultant.
21. The sampling exercise itself indicated that it would take an average of 13 minutes to process each transaction. For the 2222 items described in paragraph 17 of this notice, the total estimate equated to 28,886 minutes (or 481 minutes).
22. The Commissioner has therefore concluded that this method would also be far in excess of the appropriate limit, and is satisfied that the Council was entitled to rely on section 12 of the FOIA to refuse to comply with this request for information.

Section 16 – duty to provide advice and assistance

23. Section 16(1) of the FOIA provides that a public authority should give advice and assistance to any person making an information request, so far as it would be reasonable to do so. Paragraph 14 of the section 45 Code of Practice takes this further and explicitly states that where a public authority is relying on section 12 of the FOIA that 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."
24. The complainant has specifically raised concerns that the Council failed to provide appropriate advice and assistance as to how he might refine his request.
25. Having raised this with the Council, it informed the Commissioner that it does not believe there were any ways the complainant could have refined his request other than that suggested.
26. The Commissioner notes that in its initial response to the complainant the Council suggested that he may refine it by asking for less information or by restricting the information to a specific time period.
27. The Commissioner notes that the complainant did not specify a time period in his request for information. She also notes that the estimates

provided earlier in this notice were based on expenditure for a period of just one financial year. It is therefore difficult to see how the Council could have provided any further advice and assistance to allow the complainant to narrow his request sufficiently to bring it within the cost limit. As such, the Commissioner has concluded that the Council did not breach section 16 of the FOIA in its response to this request for information.

Other matters

Accounting arrangements

28. In response to the complainant's query in relation to what guidance the Commissioner gives to Councils regarding their accounting arrangements, the Commissioner would point out that the section 46 Code of Practice deals specifically with the record keeping of public authorities, and whilst it makes recommendations for an effective record keeping system, public authorities are not required to comply with it.
29. Additionally, the Commissioner also notes that in response to a number of requests for similar information to this request, the Council reviewed its record keeping so that from the financial year commencing 2016 – 2017 it is now able to provide the requested information within the cost limit.
30. The Commissioner considers that the Council, having noted the demand for this type of information, took the appropriate steps to ensure that it could comply with requests of this nature from April 2016 onwards.

Right of appeal

31. 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

32. 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.
33. 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

Catherine Dickenson
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF