

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 31 July 2017

**Public Authority:** Bedford Borough Council  
**Address:** Borough Hall  
Cauldwell Street  
Bedford  
MK42 9AP

#### Decision (including any steps ordered)

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1. The complainant has requested information concerning instances where Penalty Charge Notices have been served to persons who were rightfully and lawfully parked. The Council has refused to comply with the complainant's request on the grounds that it would exceed the appropriate limit provided by section 12 of the FOIA.
2. The Commissioner's decision is that Bedford Borough Council has correctly applied section 12 of the FOIA to parts one and two of the complainant's request on the grounds that to do so would exceed the appropriate limit. The Commissioner has also decided that the Council failed to provide the complainant with advice and assistance in respect of the remaining parts of his request and therefore it has breached section 16 of the FOIA.
3. The complainant requires no further action to be taken in this matter.

#### Request and response

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4. On 1 November 2016, the complainant wrote to Bedford Borough Council and requested the following information:
  1. "I request the information on how many times Bedford Borough Council have taken photographs of vehicles correctly parked, with a valid pay and display ticket with more than 50% of the valid time remaining since January 1<sup>st</sup> 2015 until 31<sup>st</sup> October 2016.
  2. I request the information on how many times Bedford Borough Council Officers have taken photographs of vehicles correctly parked, with a

valid visitors or residents permit with more than 50% of the valid time remaining since January 1<sup>st</sup> 2015 until 31<sup>st</sup> October 2016.

3. I request the information on how long these photographs were stored for, the medium these photographs are stores on and how many people within Bedford Borough Council have access to these photographs.
  4. I request the deletion policy of these photographs.
  5. I request the information on any outside body that has access to these photographs.
  6. I request to know Bedford Borough Council's policy on the criminal record vetting status of the people who have access to these photographs, and whether these checks have been carried out.
  7. I request to know why Bedford Borough Council feels the need to photograph correctly parked vehicles, how and when this policy was implemented, and who authorised the parking enforcement department to carry out this policy."
- The Commissioner has numbered the elements of the complainant's request to match the numbers used by the Council in its response.
5. The Council responded on to the complainant's request on 7 November by confirming that it holds the information the complainant had requested by providing the following statistics which correspond to each part of the request:
    1. 0
    2. 0
    3. N/A
    4. N/A
    5. N/A
    6. N/A
    7. N/A
  6. On 11 November 2016, the complainant wrote to the Council to express his dissatisfaction with the response it had made to his request. The complainant stated his belief that the information supplied to him was factually incorrect and he referred to a penalty charge notice ("PCN") – BF05574958 which had been issued by a civil enforcement officer on 19 October 2016 and cancelled on 26 November 2016. The complainant drew the Council's attention to the photographic evidence which was

sent with the PCN, which showed that it was taken at 9:01 am, whilst the vehicle was displaying a valid resident's permit for the period between 08:00 and 13:00 on that particular day.

7. The complainant challenged the figures provided by the Council on the grounds that PCN BF05574958 cannot be a one-off.
8. On 17 November 2016 the Council sent the complainant an acknowledgment of his complaint.
9. On 21 December 2016, the complainant telephoned the Council pointing out that he had not yet received a response to his request for internal review.
10. The Council immediately provided the complainant with its internal review response which it confirmed was sent to him on 18 November 2016.
11. The Council's review explained why its response to parts 1 and 2 of the complainant's request was '0', stating that photographs are only taken during the process of issuing a PCN and this happens only when vehicles are believed to be in contravention and incorrectly parked. The complainant was advised that, "it is the customer's responsibility to follow the statutory process of appealing the PCN if they believe that the PCN should not have been issued. The Council stated it was unable to comment on PCN BF05574958 due to the Data Protection Act.
12. On 21 December 2016, the complainant wrote again to the Council to express his dissatisfaction about its latest response. The complainant asked that the Council take his matter to the next stage of its complaints procedure.
13. On 24 January 2017, the Council wrote to the complainant to explain the outcome of its internal review. The Council accepted that there may be photographs on its system which show cars parked with more than 50% of the valid time remaining on the ticket or permit. The Council stated that, "whilst it is not common practice to take such photographs they may be taken in exceptional circumstances or due to human error", and, "...photographs are usually only retained in instances when a Penalty Charge Notice is issued".
14. The Council informed the complainant that 68,055 PCNs had been issued during the period specified in his request and that to locate photographs of cars with more than 50% time left on the ticket; each photograph would need to be examined. In view of this, the Council advised the complainant that it would need to spend in excess of 18 hours to examine each photograph, and therefore the Council will be unable to provide the number of photographs.

15. The Council responded to the remaining questions asked by the complainant as follows:

- Photographs are stored on the system for two years.
- Members of the Parking Services Team Manager - Complaints Resolution Team 1 have access to the system and photographs stored on it. Staff are employed in line with the Council's recruitment policies; no specific further 'vetting' is undertaken.
- No outside bodies have access to the photographs, however if requested by Police this information can be released.

### **Scope of the case**

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16. The complainant contacted the Commissioner on 9 February 2017 to complain about the way his request for information had been handled.
17. The complainant advised the Commissioner that he disputes the Council's assertion that it would take in excess of 18 hours to search for the information needed to answer the first two parts of his request. He asserted that all photographs are time and date stamped – as required under the Police and Criminal Evidence Regulations ("PACE") and that this data is recorded digitally. Because of this, the complainant holds the view that it would be possible to carry out a routine search of the metadata using Standard Generalised Mark-up Language ("SGML"), and such a search would take only 'milliseconds'.
18. The complainant also drew the Commissioner's attention to the fact that he has not asked for the photographs themselves, only the number of instances photographs were taken – questions 1 and 2 above, together with copies of the Council's access and retention policies.
19. In view of this complaint, the Commissioner's investigation was focussed on the Council's application of section 12 of the FOIA in order to refuse to comply with the complainant's request. This notice sets out the Commissioner's decision.

### **Reasons for decision**

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#### **Section 12(1) – where the cost of compliance exceeds the appropriate limit**

20. Under section 12(1) of FOIA a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying would exceed the appropriate limit.

21. The appropriate cost limit is set out in section 3(2) of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations) and this is currently set at £450.
22. The £450 limit must be calculated at the rate of £25 per hour. This effectively provides a time limit of 18 work hours. Additionally regulation 4(3) the Fees Regulations only allows for four activities which can be considered in relation to complying with the requests. These activities are:
  - Determining whether the public authority holds the information requested;
  - Locating the information or documents containing the information;
  - Retrieving such information or documents; and
  - Extracting the information from a document or other information source.
23. The cost of redacting relevant but exempt information may not be taken into consideration for the purpose of calculating the appropriate limit.
24. To support its reliance on section 12 of the FOIA, the Council has explained how it holds the information requested by the complainant.
25. The Council has advised the Commissioner that 68,055 PCNs were issued during the period specified in the complainant's request and it considers that it would take approximately 5 minutes for the Council to extract the information from each of file created by its computer system.
26. The Council explained that its figure of 5 minutes per file is derived from an exercise undertaken in 2016 which required the Council to extract information from parking files. That exercise took an average of 5 minutes to input the necessary data into its computer system and then make an assessment of the information produced in relation to each file considered.
27. The Council acknowledges that the information relevant to its earlier sampling exercise is different to that which the complainant now seeks. Nevertheless it asserts that any exercise to extract information from the 68,055 files would require a considerable amount of time.
28. The information which the complainant seeks is held entirely on the Council's computer system via a software program and the Council holds no manual files in respect of parking matters.

29. Whilst the Council concedes that it is possible to run searches of the software program, it assures the Commissioner that those searches would not produce the detail required by the complainant without considering each file separately.
30. The Council acknowledges that all of the photographs associated with a PCN are recorded digitally and it might therefore be possible to access the metadata associated with those photographs. That said however, the Council has advised the Commissioner that amount of time left on a PCN would not be recorded as metadata and this is a key component of the complainant's request.

*The Commissioner's decision*

31. The Commissioner has considered the representations made by the Council which she considers to be both plausible and persuasive.
32. She finds that the Council holds recorded information which can be used to provide the complainant with the statistics required to answer the first and second parts of his request. This information is held electronically together with associated metadata.
33. That said, the Commissioner has decided that the Council does not hold metadata which records the time remaining on a pay and display ticket where there is more than 50% of the valid time remaining or where the vehicle displays a valid visitors or residents permit with more than 50% of the valid time remaining.
34. In order to compile the statistics required to answer the first and second parts of the complainant's request, the Commissioner has decided that it would be necessary for the Council to visually inspect each of photographs associated with the 68,055 PCNs issued during the period specified by the complainant.
35. To undertake this activity, even allowing only 1 minute per photograph, would take the Council in excess of 1000 hours of work. It is clear that this estimate exceeds the appropriate limit specified in the Fees Regulations and therefore it is easy for the Commissioner to conclude that the Council is entitled to rely on section 12 of the FOIA to refuse to answer parts one and two of the complainant's request.

**Section 16 – duty to provide advice and assistance**

36. The Council accepts that it "overlooked" the remaining parts of the complainant's request: It has advised the Commissioner that it has no specific policy concerning the destruction of photographs associated with the issuing of PCNs. Rather; its practice is to destroy such photographs immediately where no PCN is issued or where a recipient of a PCN has

successfully challenged it. Otherwise, PCN-related data is stored on the Council's computer system for two years.

37. In terms of part 7 of the complainant's request, the Council has advised the Commissioner that it has no policy or practice which requires its officers to photograph vehicles which are complying with parking restrictions. Where officers have taken such photographs, the Council has described these as "errors" and the Council has assured the Commissioner that it endeavours to resolve these as soon as they become apparent.
38. When the Council responded to the Commissioner's enquiry the Council also sent the complainant copies of the following policies:
  - Data Protection Policy
  - Electronic Document Retention Policy
  - Computer User Security Classification Policy
  - Document Security Classification Policy
  - Personnel ICT Security Policy
39. The Commissioner considers the above policies to be relevant to the complainant's request and therefore the Council should at least have offered these to him under its duty to provide advice and assistance. The Council's failure to do this amounts to a breach of section 16 of the FOIA.
40. Given that the Council has now sent the policies to the complainant, the Commissioner considers there are no steps for the Council to take in respect of its breach of section 16.

## Right of appeal

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41. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

42. 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.
43. 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**