

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 January 2018

Public Authority: Barnsley Metropolitan Borough Council

Address: Barnsley MBC

PO Box 609

Barnsley

S70 9FH

Decision (including any steps ordered)

1. The complainant has requested information about anti-social behaviour and associated actions for the Measborough Dyke area in South Yorkshire. Barnsley Metropolitan Borough Council refused the request under section 12(1) of the FOIA – cost of compliance would exceed the appropriate limit, as the Council had received numerous similar requests from various individuals and believed the requesters to be acting in concert or in pursuance of a campaign (section 12(4)(b) of the FOIA).
2. The Commissioner's decision is that Barnsley Metropolitan Borough Council has correctly applied section 12(1) and section 12(4)(b) to the request.

Request and response

3. On 20 April 2017 the complainant wrote to Barnsley Metropolitan Borough Council (BMBC) and requested information in the following terms:

'For the Measborough Dyke area designated for licencing, during the period 1st October 2015 to the 30 September 2016 Please provide:

- A) the location of ASB each incident reported to BMBC (street or postcode will do)*
- B) the type of incident*
- C) the category of the ASB incident as defined in the BMBC Anti Social Behaviour Policy*
- D) the date of each incident*
- E) any action taken by BMBC for these incidents*
- F) how many 'community triggers' were implemented, their location and date*
- G) how many 'community protection orders' have been issued*

Please note that SY Police provide crime details street by street'

4. The Council responded on 25 April 2017. It refused the request, citing section 12(4)(b) of the FOIA as it believed that complying with the request would exceed the costs limit of £450, equivalent to 18 hours of time.
5. The Council based its reliance on 12(4)(b) – receiving 2 or more requests that appear to be acting in concert or in pursuance of a campaign, on the fact that it had received over 20 similar requests about the proposed Selective Licensing Scheme in the Wombwell, Measborough Dyke and Elsecar areas. It also explained that the Selective Licensing Scheme was still in the planning stages and that relevant information would be made available once the planning had been completed. The Council asked the complainant to refrain from making further requests until then.
6. Following an internal review the Council wrote to the complainant on 9 June 2017. It maintained the position in its original response to the complainant, but did supply copies of the information already released in connection with previous requests about the Selective Licensing Scheme.

Scope of the case

7. The complainant contacted the Commissioner on 8 June 2017 to complain about the way his request for information had been handled. He did not believe that his request would exceed the costs limit, and offered to attend council offices to extract the information himself.
8. The Commissioner considers the scope of the case to be whether BMBC was correct in its application of sections 12(4)(b) and 12(1) of the FOIA by deciding that this request was one of several requests submitted by individuals in connection with the proposed Selective Licensing Scheme, and which therefore fulfilled the appearance of acting in concert or in pursuance of a campaign whereby compliance with the aggregated requests would exceed the costs limit.

Reasons for decision

Section 12(4) – Aggregation of related requests

9. Section 12(4) of the Act states:

“The Minister for the Cabinet Office may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority –

- (a) by one person, or
- (b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,

the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them.”

10. Regulation 5 of The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (hereafter referred to as the Fees Regulations) states:

- (1) “In circumstances in which this regulation applies, where two or more requests for information to which section 1(1) of the 2000 Act would, apart from the appropriate limit, to any extent apply, are made to a public authority –
 - (a) by one person, or
 - (b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,

the estimated cost of complying with any of the requests is to be taken to be the total costs which may be taken into account by the authority, under regulation 4, of complying with all of them.

- (2) This regulation applies in circumstances in which –
 - (a) the two or more requests referred to in paragraph (1) relate, to any extent, to the same or similar information, and
 - (b) those requests are received by the public authority within any period of sixty consecutive working days.
 - (3) In this regulation, “working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.”
11. The Council has explained to the Commissioner that a single member of staff was employed to work solely on the proposals for a Selective Licensing Scheme. As background, under the Housing Act 2004, local authorities currently have powers to introduce selective licensing of privately rented homes to address problems in their area, or any part of them, caused by low housing demand and/or significant anti-social behaviour. The Council considered that the number of requests it was receiving about the scheme was becoming a problem to manage and preventing the staff member from undertaking work on it. It was therefore decided to explore if there was a way to reduce the requests by advising that the scheme was in its infancy and if given sufficient time, the Council would provide all relevant information. However the requests continued to be made and at this point the Council became aware of the provisions in section 12(4)(b).
 12. The Council has supplied the Commissioner with 35 requests received between 3 March 2017 and the complainant’s request received on 20 April 2017, all of which it considers relate to the Selective Licensing Scheme. This covers a period of 32 working days and therefore fulfils the requirement of Regulation 5(2)(b). The first refusal relying on 12(4)(b) was made to a request received on 20 March 2017, the 20th request within the cohort under consideration for aggregation purposes.

13. The next issue for the Commissioner to consider is whether some or all of the requests relate, to any extent, to the same or similar information. The Commissioner has issued guidance¹ on this matter that states:

'Regulation 5(2) of the Fees Regulations requires that the requests which are aggregated relate "to any extent" to the same or similar information. This is quite a wide test but public authorities should still ensure that the requests meet this requirement.

A public authority needs to consider each case on its own facts but requests are likely to relate to the same or similar information where, for example, the requestor has expressly linked the requests, or where there is an overarching theme or common thread running between the requests in terms of the nature of the information that has been requested.'

14. The Council has argued that the majority of the requests (24) were made via the 'whatdotheyknow' website, many in the same format and with similar wording. In addition, several complaints shared reference systems. Council believes that the requests were sent following meetings of local landlords at they were received in bulk on a weekend.
15. The Commissioner has reviewed all of the requests supplied by the Council and analysed them to the extent that a reasonable conclusion could be drawn about whether they relate to the same or similar information. Of the 35 requests, 13 all begin with the same sentence 'With reference to the document titled 'advanced notification to consult with Tenants, Residents, Landlords and Stakeholder regarding the proposal to implement pilot Selective Licensing Schemes' presented to the Council Meeting on 11 January 2017'. 19 of the requests relate to one or more of the geographical areas for potential inclusion in the Selective Licensing Scheme and 11 refer to information about the private rented sector. The Commissioner is therefore satisfied that the 35 requests provided by the Council for aggregation purposes fulfils the requirement of Regulation 5(2)(a) as they are all linked to information regarding the proposed Selective Licensing Scheme.
16. An analysis of the dates of when the requests were received by the Council does not show evidence of any specific pattern (i.e. submitted

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

on a weekend following meetings held by groups of landlords), as the Council alleges:

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
6	3	6	7	7	2	4

This may be because the dates provided by the Council are not the actual submission dates, but in any event the Commissioner considers the similarities between the requests to be sufficient for aggregation purposes, regardless of the day that they were submitted.

17. The Council also believes that some of the names used for the 'whatdotheyknow' submissions were fake, in order for landlords to avoid refusal of their requests under 12(4)(a) – where requests can be aggregated from the same person for consideration against the costs limit. Although there is some suggestion of one fake name, the Commissioner has not seen sufficient evidence to substantiate this claim.
18. The Commissioner notes that the introduction of a Selective Licensing Scheme has significant ramifications for landlords in the private rented housing sector, not least a financial cost, and it is therefore entirely understandable that local landlords wished to be fully aware of all the information being used to determine application of the scheme. The similarities between the requests, along with their submission via the 'whatdotheyknow' website and multiple requests from the same people provide reasonable evidence that requesters were acting in concert or in pursuance of a campaign. However the Commissioner has seen no evidence to suggest that any of the requests were made outside of the spirit or purpose of the FOIA.
19. The request submitted by the complainant was the eighth made by him between 5 March 2017 and 20 April 2017, all of which the Council deemed to be about the Selective Licensing Scheme. Although this request was not made via the 'whatdotheyknow' website, it started with the same sentence used by other requests sent via the website. It also related to information about a potential selective licensing area, and anti-social behaviour, demonstrating similarities for the purpose of inclusion in the aggregation of requests. The Commissioner therefore concludes that the complainant's request falls within section 12(4)(b) of the FOIA.

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

20. Section 1(1) of the Act states that:

“(1) Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him.”

21. Section 12(1) of the Act 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.”

22. Regulation 4(4) of the Fees Regulations states that the authority should calculate the cost of complying with a request at the rate of £25 per hour. If the authority estimates that complying with the request would cost more than the appropriate limit, it is not obliged to comply with the request. In the case of non-central government public authorities, a limit of £450 applies, which equates to 18 hours.

23. In estimating whether complying with a request would exceed the appropriate limit, regulation 4(3) states that an authority can only take into account the costs it reasonably expects to incur in:

- a. determining whether it holds the information;
- b. locating the information, or a document containing it;
- c. retrieving the information, or a document containing it; and
- d. extracting the information from a document containing it.

24. 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. In accordance with the First-Tier Tribunal in the case of *Randall v IC & Medicines and Healthcare Products Regulatory Agency EA/2007/0004*, the Commissioner considers that any estimate must be '*sensible, realistic and supported by cogent evidence.*'

25. The Council provided to the Commissioner a reasonably detailed breakdown of complying with the complainant's request. This included: an hour each for the initial meeting between council officers to discuss possible criteria of the request and possible exemptions and a meeting between council officers to outline the data requested; sourcing crude data from the computer system; pulling the data into an understandable format; and sampling of complaints. The Council estimated that to comply with the complainant's request alone would take 23 hours and 48 minutes.
26. Having reviewed the estimate, the Commissioner considers that some of the time allocated to specific activities is overestimated – for example two hours of meetings just to discuss the request. In reality it is highly unlikely that any public authority would spend this time on preparatory activities for each FOIA request received. In addition, the Council has included costs for the consideration of exemptions and this is not permitted under the Fees Regulations.
27. Although all of the requests included for the purposes of aggregation relate to the Selective Licensing Scheme, they are not all requests for the same volume of information. The complainant's request that is the subject of this decision notice is one of the more detailed and complex ones received, and the formula used by the Council to estimate time / costs would not apply to all the requests falling within the aggregated group.
28. However, despite the Commissioner's view that the Council has overestimated the time required to comply with the complainant's request, and that the estimate would not extend to all of the requests considered for aggregation purposes, the Commissioner still considers that combining the time taken to comply with the 35 requests received in connection with the Selective Licensing Scheme would exceed the 18 hours limit specified in Regulation 4(4) of the Fees Regulations. Therefore the Commissioner concludes that the Council was entitled to rely on section 12(1) of the FOIA in refusing the complainant's request.
29. Section 16 of the FOIA requires public authorities to provide advice and assistance to requesters where it would be reasonable to do so. This is often particularly relevant where requests have been refused due to the costs limit under section 12(1), as such advice and assistance may provide the requester with information about how to bring their request within the costs limit. In this case, as the complainant's request was the last out of 35 considered relevant for aggregation purposes, it can be assumed that the costs limit had already been met by earlier requests and that no changes to the complainant's request would bring it within the costs limit. The Commissioner notes that the Council did advise the complainant of the following in its review letter:

'We appreciate that landlords potentially affected by the proposed landlord licensing scheme clearly have a number of questions surrounding the scheme however, as previously advised the scheme is still only in the planning stages before consultation is undertaken therefore once the planning stage is complete information regarding statistics and reasoning for the scheme will be made'

30. The Council also provided the requester with copies of information already released under FOIA about the Selective Licensing Scheme. Taking this into account, and the advice above, the Commissioner concludes that the Council did not breach its duty under section 16 of the FOIA.

Other matters

31. As highlighted in the body of this decision notice, the Commissioner has concerns about the information supplied by the Council to estimate the time that would have been taken to comply with the complainant's request. Whilst this doesn't make any overall difference to the conclusion that the 35 requests considered for aggregation purposes would exceed the costs limit, the Commissioner draws the Council's attention to her guidance 'Requests where the cost of compliance exceeds the appropriate limit' which should be communicated to all relevant staff for future reference.

Right of appeal

32. 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

33. 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.
34. 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
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