

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 January 2018

Public Authority: Wiltshire Council

Address: County Hall
Bythesea Road
Trowbridge
BA14 8JN

Decision (including any steps ordered)

1. The complainant has requested information relating to 'lessons learned' from Wiltshire Council ("the Council").
2. The Commissioner's decision is that the Council has correctly refused the request under section 12(1) of the FOIA – Cost of compliance exceeds appropriate limit, and has also provided the complainant with advice and assistance in accordance with section 16 of the FOIA.
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 26 April 2017, the complainant wrote to the Council and requested:

"access to all of your lessons identified or lessons learned data within your organisation, relating to projects, change or transformation... I would be grateful if you could forward the data in excel format please."

5. The Council responded on 4 May 2017. It refused to provide the requested information. It cited the following exemption as its basis for

doing so: section 12 of the FOIA - Cost of compliance exceeds appropriate limit.

6. The complainant subsequently exchanged some correspondence with the Head of Programme Office ("HPO") at the Council, after which the HPO explained that, following internal discussions, the Council's view remained that the request could not be responded to within the appropriate costs limit.
7. On 13 July 2017, the complainant formally requested an internal review, stating that, with reference to section 16 of the FOIA – Duty to provide advice and assistance – he considered that the Council "*should provide a response to the applicant on how the request may be bounded.*"
8. The Council considered that it was not required to conduct an internal review, in view of the time that had elapsed since the original request. However, it issued a further response to the complainant on 20 July 2017. It maintained its position, and also stated that in its view it had met its obligations to provide him with advice and assistance in accordance with section 16 of the FOIA.

Scope of the case

9. The complainant contacted the Commissioner on 24 July 2018 to complain about the way his request for information had been handled.
10. The Commissioner considers that the scope of the case has been to consider whether the Council has correctly withheld the information under section 12(1) of the FOIA - Cost of compliance exceeds appropriate limit, and whether it has complied with section 16 of the FOIA – Duty to provide advice and assistance.

Reasons for decision

Section 12 – cost of compliance exceeds appropriate limit

11. Section 12(1) allows a public authority to refuse to comply with a request for information if the authority estimates that the cost of compliance would exceed the 'appropriate limit', as defined by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations.")
12. This limit is set in the Fees Regulations at £600 for central government departments and £450 for all other public authorities. The Fees Regulations also specify that the cost of complying with a request must

be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 18 hours for the Council.

13. 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:
 - determining whether it holds the information;
 - locating a document containing the information;
 - retrieving a document containing the information; and
 - extracting the information from a document containing it.
14. The four activities are sequential, covering the retrieval process of the information by the public authority.

The Council's position

15. The Council has confirmed that it does hold information which would fall within the scope of the request.
16. It has explained that it considers the scope of the request to be extremely broad, and has presented arguments which focus on the difficulty in locating, retrieving and extracting all of the information which would be captured by the scope of the request.
17. The Council has explained that, while there is a Programme Office at the Council, it does not centrally manage or record all projects, change or transformation programmes.
18. It has stated: "*as... projects are carried out by many different Service Areas across the Council... the only option available to determine whether the information is held, locate it and retrieve it is to manually search through the documentation held in each Service Area.*"
19. The Council has explained that even in the event of the scope of the request being limited to the Programme Office, there would be seven years of records to be read through in order to locate which reports contain lessons learned. It considers that other teams would have to conduct similar searches. In the case of the Programme Office, the Council also explained that project documentation prior to 2009 is held and stored on shared drives.
20. The Council has stated that there are "*at least seven Service Areas that hold information related to projects, change and transformation programmes.*" It has carried out a sampling exercise from two Service Areas.

21. The first Service Area, the Programme Office, was able to locate one report from a particular project in 2013 after searching for 45 minutes. The length of time taken was due to having to search *"two versions of Sharepoint with 12 programme layers, each containing between 3 and 12 sub-programme layers to identify the correct document."*
22. The second Service Area, 'Commissioning – Community Projects', carried out an investigation which found that it holds 12 electronic project folders which contain 29 sub folders. It also holds an archive folder which contains 24 project folders with 93 sub folders; a total of 36 project folders, containing 122 sub folders. The Head of Service has estimated that *"it would take one officer 30 minutes to search through each folder to determine whether the requested information is held, locate, retrieve and extract it."*
23. The Council has therefore estimated that it would take in excess of 18 hours for the Council to locate, retrieve and extract the information captured by the scope of the request.

The Commissioner's decision

24. The Commissioner notes that the information request is broad in scope, since it neither restricts the information requested to a particular time period nor to a particular Service Area within the Council.
25. In the case of the Programme Office, she considers that it is regrettable that particular lessons learned reports, such as the one located by the sampling exercise, are not more readily available. However, she accepts the Council's explanation as to why this is the case.
26. The Commissioner accepts that, since lessons learned data is not stored centrally, it would exceed the appropriate time limit in total if each Service Area of the Council searched through all of the likely repositories where information is likely to be held.
27. The Commissioner has therefore determined that the request was correctly refused under section 12(1).
28. The Commissioner would therefore expect the Council to focus its efforts in responding to the request on providing advice and assistance to the requester, in accordance with section 16 of the FOIA.

Section 16 – Duty to provide advice and assistance

29. Section 16 of the FOIA states that:

- (1) It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the

authority to do so, to persons who propose to make, or have made, requests for information to it.

- (2) Any authority which, in relation to the provision of advice or assistance in any case, conforms to the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case.
30. Section 16 refers to the 'code of practice'; that is, *The Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of the Freedom of Information Act 2000*, issued under section 45 of the Act ("the Code").
31. As stated in the Code, one of its aims is to *"protect the interests of applicants by setting out standards for the provision of advice which it would be good practice to make available to them."*
32. Paragraph 14 of the Code states:
- "Where an authority is not obliged to comply with a request for information because, under section 12(1) and regulations made under section 12, the cost of complying would exceed the "appropriate limit" (i.e. cost threshold) the authority should consider providing an indication of what, if any, information could be provided within the cost ceiling."*
33. In this case, the Commissioner has been asked to consider whether the Council has conformed with the requirements of the Code; that is, has complied with its duty under section 16(1) of the FOIA.
34. The Commissioner has therefore considered the Council's responses to and dealings with the complainant.

The Council's responses

35. In its response to the complainant dated 4 May 2017, the Council stated: *"You may wish to refine your request by narrowing its scope, for example, you could reduce the time period that your request covers or reduce the overall scope of the request. Wiltshire Council may be able to provide lessons learned from completed projects in the last year if you wish to make a new request."*
36. Following the complainant's receipt of this response, he emailed the Council on 5 May 2017 stating: *"I am happy to work with you to narrow it, but would welcome your advice on areas where I am likely to get a positive response. If you believe it would be helpful, I am also happy to narrow the scope to projects/programmes delivered within the last 12 months."*

37. There then followed an exchange of emails and, the Commissioner understands, telephone calls between the parties. Ultimately, and frustratingly for the complainant, the Council concluded that it could not provide the breadth of information requested by the complainant within the appropriate costs limit. The Council explained this in an email dated 7 July 2017.
38. This indicates to the Commissioner that the Council did not conclude that limiting the request to 'lessons learned' data from the previous 12 months, as suggested by the complainant, would mean that it could be responded to within the appropriate costs limit. She understands that this is due to the information being stored by a number of different Service Areas, as explained previously.
39. Indeed, this was explained to the complainant in an email dated 27 June which explained that: "*Any lessons learned reports are presently held by each internal service*" as well as being reiterated in the email of 7 July, which stated that lessons learned were not stored centrally.
40. In an email dated 13 July 2017, requesting an internal review, the complainant suggested that he could limit the scope of his requests to lessons learned from the top 20 projects by value from the last three years.
41. Subsequently in its further response of 20 July 2017, which upheld its original response to the request, the Council stated to the complainant: "*we are happy to progress any refined request you wish to make, but any refined request would be subject to our normal consideration of whether exemptions apply.*"

The Commissioner's decision

42. ICO guidance¹ in this area states as follows, on page 18-19:

"A public authority should inform the requestor of what information can be provided within the appropriate limit. This is important for two reasons: firstly, because a failure to do so may result in a breach of section 16. Secondly, because doing so is more useful than just advising the requestor to 'narrow' the request or be more specific in focus. Advising requestors to narrow their requests without indicating what information a public authority is able to provide within the limit, will

¹ https://ico.org.uk/media/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

often just result in requestors making new requests that still exceed the appropriate limit”.

43. It is evident in this case that the complainant was unsure, following the initial response, how to narrow down his request in order to be provided with information. It is also evident that the complainant had expected a broad range of lessons learned data to be readily available.
44. It is perhaps unfortunate in this case that the Council initially suggested that the complainant might narrow down his request by time period, since it became apparent, following the HPO's consultations with his colleagues, that this would not bring the request within the costs limit, due to the number of information repositories needing to be searched.
45. However, since this difficulty was explained to the complainant during subsequent correspondence, the Commissioner considers that the complainant would have gained some understanding of how to make a more focused request which did not rely on numerous Service Areas being searched.
46. Turning to the wording of the Code, the Commissioner considers that the Council's responses demonstrate that it "*consider[ed] providing an indication*" of what could be provided within the costs ceiling.
47. In view of the broad initial request which is under consideration in this notice, the Commissioner considers that the advice and assistance in this case was reasonable.
48. The Commissioner is satisfied that the Council provided the complainant with sufficient advice and assistance to have complied with section 16 of the FOIA in this case. She therefore does not require the Council to take any steps.

Right of appeal

49. 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

50. 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.
51. 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

Alun Johnson
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