

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 September 2019

Public Authority: Medway Council
Address: Unit 4 Wynns Venture,
Centre Broad Street
Cannock
WS11 0XL

Decision (including any steps ordered)

1. The complainant has requested information from Medway Council ("the Council") regarding the costs for a court hearing and how many times, within a specific timeframe, did the Council fail to send adjournment notices.
2. The Commissioner's decision is that the Council was entitled to refuse the request under section 12(2) of the FOIA, and that it complied with its duty to provide advice and assistance in accordance with section 16(1).
3. The Commissioner does not require the Council to take any further steps.

Request and response

4. On 27 December 2018, the complainant wrote to the Council and requested information in the following terms:

"...The Council's costs in challenging my appeal were obviously greater than the estimate you gave in the Freedom of Information response attached to your letter of 4th September 2018. Please inform me of the Council's actual costs for the hearing. You may treat my request as a Freedom of Information request."

5. The complainant also made the following request on the same day, which related to the Council failing to send adjournment notices for court hearings in relation to council tax disputes:

"I wish to know in how many cases Medway Council failed to send adjournment notices in the calendar years 2017 and 2018. Again, you may treat this request as a Freedom of Information request..."

6. The Council responded on 28 January 2019. For the first request, it provided some information falling within the scope of the request. For the second request, the Council denied holding the requested information.
7. The complainant was satisfied with the Council's response to the first request. However, he requested an internal review in relation to his second request. Following an internal review the Council wrote to the complainant on 20 February 2019. It maintained its original position that it did not hold the requested information, relying on section 1 of the FOIA - General right of access to information held by public authorities.

Scope of the case

8. The complainant contacted the Commissioner on 5 February 2019 to complain about the way his request for information had been handled.
9. During the Commissioner's investigation, the Council advised both the complainant and the Commissioner that it was changing its response to the second request. It informed the Commissioner, that on review of the request, it should have applied section 12 of the FOIA - cost of compliance exceeds appropriate limit.
10. The Council explained that it was *"unable to confirm whether we hold the requested information or not"* without exceeding the appropriate costs limit.

11. The Commissioner considers the scope of the case to be whether the Council was correct in applying section 12(2) of the FOIA to refuse the second request, and whether it fulfilled its obligation under section 16(1) to provide advice and assistance to the complainant to refine the request and bring the cost under the appropriate limit.

Reasons for decision

Section 12 – cost of compliance exceeds the appropriate limit

12. Section 12(2) of the FOIA says that a public authority is exempted from its duty under section 1(1)(a) of the Act to confirm or deny whether it holds information which has been requested, in circumstances where the estimated cost of complying with that paragraph alone would exceed the appropriate limit.
13. The estimate must be reasonable in the circumstances of the case. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004¹ (the Fees Regulations). The appropriate limit is currently £600 for central government departments and £450 for all other public authorities. Public authorities can charge a maximum of £25 per hour to undertake work to comply with a request; this equates to 18 hours work in accordance with the appropriate limit of £450 set out above, which is the limit applicable to the Council. An authority may include the time taken to carry out the following processes in making its estimate:
 - determine whether it holds the information
 - locate the information, or a document which may contain the information
 - retrieve the information, or a document which may contain the information, and
 - extract the information from a document containing it.

¹ <http://www.legislation.gov.uk/ukxi/2004/3244/contents/made>

14. Section 12 explicitly states that public authorities are only required to estimate the cost of compliance with a request (in this case, in confirming or denying whether information is held), and not to give a precise calculation. However, following the line taken by the First-tier Tribunal in *Randall v Information Commissioner and Medicines and Healthcare Products Regulatory Agency* (EA2007/0004)² the Commissioner considers that such an estimate must be one that is sensible, realistic and supported by cogent evidence.
15. By way of background to the case, the complainant requested to know how many times the Council had failed to inform people of an adjourned court case date in cases where court action was taken with regard to council tax. The Council explained that for it to obtain this information, it would have to access the account for each of its properties to obtain the information.
16. The Council has explained to the Commissioner as follows: *"the Council does not generally issue an adjournment notice, this is a matter for the Court. Medway Council is not obliged to issue adjournment notices to customers and would only be expected to do so in instances where an individual had not attended the hearing where an adjournment was granted. Notwithstanding, following a review of this matter, the Council now believes that the requested information may be held within the narrative of individual case files"*.
17. The Council's position is that, while some information falling within the scope of the request may be held, it cannot determine this without exceeding the appropriate costs limit due to the large number of files it would need to search.
18. The Council explained to the Commissioner that it has approximately 114,849 domestic properties, each with at least one council tax account attached to it. It added that in a given year, it receives up to 4 million documents pertaining to such accounts.
19. The Council initially estimated that it would take an officer approximately 45 minutes to review each case file to determine if the Council had failed to provide an adjournment notice. As it would take approximately 45 minutes to review each case and there are 114,849 properties, the total amount of time to search these accounts would be 86136.75 hours, which is in excess of 3000 days.

² <http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i136/Randall.pdf>

20. The complainant however argued that *"it is only those properties and council tax accounts where Medway Council have taken court action that concern me and that will be a tiny proportion of the council tax accounts they deal with"*.
21. During the Commissioner's investigation, she asked the Council to explain why it could not complete a narrower search for the information requested, since it was likely that it would only have taken court action in relation to specific council tax accounts.
22. The Council explained to the Commissioner that even if they refined the search to "Council tax issues for 2017 and 2018", for the period 1/1/17 to 31/12/17 the Council/Court issued 15,254 summonses in respect of non-payment of council tax, and for the period 1/1/18 to 31/12/18 the Council/Court issued 15,200 summonses in respect of non-payment of council tax.
23. The Council considers that it would take an officer approximately five minutes to review the document notes for each case to find out whether it had failed to send an adjournment notice in any specific case. Due to the number of cases that the Council holds, its position is that the search time would exceed two thousand hours.
24. The Commissioner notes that the Council has not provided any sampling exercise it has carried out. Nevertheless, she notes the quantity of data to be searched. She also notes the time it would take for the Council to review each individual case file and the amount of days that this task would take. The Commissioner considers that to locate any information falling within the scope of the request, due to the number of documents likely to be held on each individual file, this is a realistic estimate.
25. The Commissioner therefore considers that the Council estimated reasonably that the request could not be answered within the cost limit and thus the Council is entitled to rely on section 12(2) of the FOIA to refuse the request.

Section 16 – duty to provide advice and assistance

26. Section 16 of FOIA states:

"(1) It shall be the duty of a public authority to provide advice and assistance, so far as would be reasonable to expect the authority to do so, to persons to propose to make, or have made, requests for information to it.

(2) Any public authority which, in relation to the provision of advice or assistance in any case, conforms with 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."

27. The Commissioner's view, therefore, is that where a public authority refuses a request under section 12(2) of FOIA, compliance with the section 45 Code of Practice³ will fulfil its duty under section 16(1) to provide advice and assistance on how the scope of the request could be refined.

28. Paragraph 2.10 of the section 45 Code of Practice states:

"Where it is estimated the cost of answering a request would exceed the "cost limit" beyond which the public authority is not required to answer a request (and the authority is not prepared to answer it), public authorities should provide applicants with advice and assistance to help them reframe or refocus their request with a view to bringing it within the costs limit".

29. In addition, paragraph 6.9 states that *"public authorities should consider what advice and assistance can be provided to help the applicant reframe or refocus their request with a view to bringing it within the cost limit"*.

30. In this case, the Council stated in its updated response to the complainant that it may be able to provide a response to a refined request. However, it went on to say that it could not guarantee that a revised request would fall within the appropriate limit.

31. The Commissioner notes that the Council has not advised the complainant how the request could be refined in order to bring it within the costs limit.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf

32. However, on review of the explanations provided by the Council, even if the request was revised to cover a narrow time-frame, it would appear that the number of files which the Council would still need to review; that is, those where action has been taken in respect of council tax, would be very large in order to identify if a customer had not been informed of their adjournment date. In view of the number of files to be searched, it appears there is no obvious way for the request to be refined so that it falls within the cost limit.

33. The Commissioner is satisfied in this case that as the Council considered what advice and assistance could be offered to the complainant this is sufficient to meet the requirements of section 16 of the FOIA. The Commissioner therefore considers that it has complied with its statutory obligation under section 16 to provide advice and assistance.

Right of appeal

34. 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@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

35. 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.
36. 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
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Wycliffe House
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