

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 12 November 2019

**Public Authority:** Sefton Council  
**Address:** Bootle Town Hall  
Oriol Road  
Bootle  
LS20 7AE

#### Decision (including any steps ordered)

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1. The complainant requested information about traffic counts prior to the introduction of a 20 miles per hour speed limit in a specified area. Sefton Council (the 'Council') interpreted the request as being for five streets for which it had previously provided related information. Following further correspondence from the complainant, in which it became apparent that he required the information for more streets than had been initially considered by the Council, it subsequently cited section 12(1) of FOIA, the cost of compliance, but chose to provide the information for 67 counts up to the cost limit, despite not being obligated to do so.
2. The Commissioner's decision is that the Council should have interpreted the request as being for information for the "*whole of L23*" from the outset, as stated by the complainant in his request, and therefore should have cited section 12(1) in response to his original request. By failing to consider its section 16 obligations in relation to objectively interpreting the request from the outset, and by failing to offer the complainant advice and assistance as to how he might refine his request to bring it within the section 12(1) cost limit, the Council has breached section 16(1) of FOIA.
3. However, as the intended objective interpretation of the request was subsequently reiterated by the complainant, and as the Council has provided its revised response, the Commissioner does not require the Council to take any retrospective steps in relation to its section 16 obligations. Further, as the Council chose to provide information up to the cost limit in response to the intended objective interpretation of the request (which it is not obligated to do), and as the complainant has not

complained about the Council's reliance on section 12(1), the Commissioner does not require any section 16 step in respect of this matter.

## **Background**

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4. The Commissioner understands that the 'before' traffic counts relate to vehicle speeds and volumes prior to the introduction of a 20 miles per hour speed limit put in place on residential streets across the borough falling under Sefton Council's remit. The Council wished to establish what impact the new limits and associated signage had on vehicle speeds. In each area, a number of Automatic Traffic Counts ('ATCs') were placed. The 'after' counts relate to vehicle speeds and volumes following the introduction of the new limit on streets where the counts had been in place previously so a comparison could be made.
5. The complainant is interested in those streets within the L23 postcode area.
6. It is apparent that there has been previous correspondence and FOI requests between the complainant and the Council on this topic prior to the submission of the request set out below. As this case has entailed a significant amount of exchanges between the Council and the complainant, the Commissioner considers it helpful to the understanding of the issues to summarise the key points here. Further detail follow in the 'Request and response' section below.
7. The Commissioner has not had sight of these earlier requests or correspondence but, from the correspondence and details available to her, she understands that the complainant was already in receipt of the requested information for Myers Road East, and that the Council provided the complete 'before' surveys for five other streets within the L23 area in response to the complainant's request of 13 April 2018. In response to the complainant's email of 31 August 2018, stating that he had required ATC data that included individual vehicle speeds, the Council provided this information for the five L23 streets on 13 September 2018.
8. The Commissioner notes that the Council included the following statement as part of its 13 September 2018 response:

*"It could well be that there are other surveys which have been undertaken in the L20<sup>1</sup> area in previous years but these have not been included in the 'before' information we have sent you as they were not one of the five roads used in the comparison."*

9. The complainant then contacted the Council again on 22 November 2018, as set out in this notice, stating that he required the 'before' count information for the whole L23 area. This resulted in the Council treating his email as a new request and citing section 12(1) of FOIA; it said there were 119 ATCs in scope and that to provide them all would exceed the cost limit. However, it sent the requested information for a total of 67 'before' ATC counts within the L23 area from 2003 onwards, up to the cost limit.

## **Request and response**

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10. On 13 April 2018, the complainant wrote to the Council and requested information in the following terms:

*"Further to your email dated 08/11/2017, when you advised me to submit future Freedom of Information Act requests direct to you.*

*To keep this request as relevant, short and as clear as I can, I'll address any comments or issues on matters that I see as outstanding in a separate email, hopefully later today.*

*I have searched Sefton Council's website, but I cannot find the information that I require.*

*Where I can provide context to the information that I now require, I will quote from earlier emails. This may help you in identifying the information in question.*

*1. In your email dated 18/5/2017, in response to my question as to why traffic counts had been sited in various locations, you stated "The locations of the measuring devices throughout the Borough were chosen on the basis of locations where 'before' counts existed and also using a split of different types of roads to give a representative indication of vehicle speeds."*

*I now require those "before" traffic counts, for the whole of L23.*

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<sup>1</sup> [This is a typographical error on the Council's part and should have read L23].

*2. In your email dated 12/9/2017, you stated "In due course the counts which have been taken across the Borough, will be subject to a report to the Cabinet Member Locality Services."*

*I require sight of that report, together with any response or correspondence to that report; be they a report or minutes or emails or memos etc.*

*3. As a result of my objection to the traffic calming proposals for Little Crosby, I have been advised that an officer from Sefton Council, possibly [name redacted], either attended a Cabinet Meeting and that meeting was minuted, or produced a documented response to my objection for the benefit of a Cabinet Meeting.*

*I require sight of that document or minute, and any other documented response to my objection.*

*My preference for the receipt of the above information is via email, or hyperlink to Sefton Council's website."*

11. The Council responded on 14 May 2018 and provided the requested information for each part of the request; it asked the complainant whether he required copies of the complete 'before' surveys in relation to part one of the request. He confirmed that he did; the Council sent him this information for five L23 streets on 12 June 2018.
12. Following further email contact with the Council on 31 August 2018, the complainant reiterated that he required ATC data that included individual vehicle speeds. He also queried whether all the 'before' ATC data for L23 had been provided.
13. On 13 September 2018 the Council replied. Amongst other points, it advised it had provided the 'before' and 'after' information requested (in relation to the five streets); it said:

*"With regards to the point about the 'before' data. I think we are into semantics here. In one of the many previous items of correspondence, the Council indicated that before and after comparisons would be undertaken on a number of roads throughout the Borough to help determine the impact that the 20mph zones have had on traffic speed and it is these roads that we have then referred to for 'before and after' surveys. For the area you are interested in before and after surveys for the Ilford,*

*Mariners, Moorside, St Michael's and Victoria Roads have been supplied."*

*It could well be that there are other surveys which have been undertaken in the L20<sup>2</sup> area in previous years but these have not been included in the 'before' information we have sent you as they were not one of the five roads used in the comparison."*

14. The complainant contacted the Council again on 22 November 2018 as follows:

*"Further to your email dated 13/9/18, and the five attachments.*

*Before responding, I have taken advice on Sefton Council's repeated failure to satisfy my FOIA request dated 13/4/18.*

*I am advised that it would be prudent to provide Sefton Council with one last opportunity to fully satisfy my above mentioned request for data.*

*My FOIA request dated 13/4/18 is simple and clear with regard to the data that I require.*

*It is not for Sefton Council to assume to know what I am interested in when I make a FOIA request.*

*Obviously, I disagree with your view that this is an issue of semantics; while Sefton Council's narrow view of what constitutes before & after data is irrelevant to me.*

*If it is the case that the six data sets that have already been provided to me, represent ALL of the the [sic] ATCs that were undertaken prior to the introduction of the 20mph scheme in L23, given that you state that other surveys could well have been undertaken in L23 (was L20 a typo?), then I require an explicit statement to that effect.*

*If it is not the case that only six data sets exist for the data which I have requested, then I require the balance of the data sets for the ATCs that were historically undertaken - that means prior to the introduction of the 20mph scheme in L23 - at any and all locations in the L23 postcode.*

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<sup>2</sup> [As before, this is a typographical error on the Council's part and should have read L23].

*Should I not receive the balance of the data that I have requested, or the above mentioned explicit statement, within the statutory period that the legislation provides, I will make a formal complaint to the relevant authority without further correspondence with Sefton Council."*

15. The Council treated the above email as a new request. It responded on 19 December 2018 citing section 12(1) of FOIA – cost of compliance exceeds appropriate limit. However, it chose to provide the complainant with the 'before' information, working backwards from the most recent data up to the cost limit, which it is not obliged to do under FOIA. This amounted to 67 ATCs of the 119 identified.
16. The complainant requested an internal review on 27 February 2019, which the Council provided on 27 March 2019. It maintained its original position as regards section 12(1) and said:

*"If you consider this to be a continuation of your original request of 13th April 2018 rather than a new one, I can confirm that the Council has exceeded 18 hours of work in extracting, collating and aggregating data to supply to you in response to your request of April last year. If, however, your request of 22nd November is to be handled as a new request, then the Council will, as outlined at the start of this e-mail, undertake the work it can within compliance costs, namely to provide the data relating to the 70 ATCs<sup>3</sup> conducted in the years back to 2003 in the L23 postcode area."*

17. On 2 April 2019 the complainant responded; his reply included the following statements:

*"For the avoidance of doubt, any continued requests made to Sefton Council, after the request made on 13 April 2018, for that data to be provided to me in the manner in which I sought it, which means not curtailed in any way, was a reiteration of that request to Sefton Council officers who seemed intent on misreading that very simple request in order to provide me with as little data as they could possibly attempt to justify.*

*To be clear, I have not made any subsequent request for that same data, and I do not agree that [responding officer's name*

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<sup>3</sup> The Council has clarified that while 70 ATC counts was stated in its internal review, the actual figure it could provide within the cost limit was 67 ATC counts. The total number of ATCs from 2003 onwards in the L23 area amounts to 119.

redacted] *had any right attempt to impose upon me his view of the meaning of my request, or to view any subsequent reiteration as a new request.*

*I have shown extreme patience and goodwill in this particular matter.*

*You offer that Sefton Council will provide the data that I require, going back to 2003, but under the reference [number redacted]. If I accept that proposal, to my mind, I would be complicit in having allowed Sefton Council to cover up the fact that it failed to meet my request of April 2018.*

*I see no reason why Sefton Council should not immediately provide me with the data that I sought, without prejudice to any complaint that I may make to the Information Commissioner; but you appear to be offering an either or scenario which, if I read your comments correctly, I would find unethical."*

## Scope of the case

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18. The complainant contacted the Commissioner on 9 April 2019 to complain about the way his request for information had been handled. His complaint concerns only **part one** of his request. He said:

*"I first requested the data, that is the subject of this complaint, on 13 April 2018. The council presumed to know why I wanted the data in question, and so sent me curtailed data; that curtailed data did not satisfy my request.*

*There has been much communication on this matter, to and fro, with me reasserting my request.*

*This culminated in the council subsequently refusing my request, while at the same time allocating a different reference number to their handling of my request.*

*It transpired that the council wanted to treat my reiteration of my request, as a new request. I am very concerned at that, and I see it as an abuse of process..."*

19. Having reviewed the case correspondence, together with the internal review result, the Commissioner wrote to the complainant on 16 July 2019 seeking clarification about what initially appeared to her to be two requests (ie made on 13 April 2018 and 22 November 2018). The complainant maintained that he had only submitted one request (ie that

of 13 April 2018) and said that the Council had erred in treating his correspondence of 22 November 2018 as a new request.

20. Following further written exchanges seeking to clarify the complainant's specific grounds of complaint, the Commissioner wrote to him on 2 September 2019 advising that she intended to consider the following points:

- The potential delay in the Council citing section 12.
- Why the Council treated the complainant's email of 22 November 2018 as a new request as opposed to the complainant's view that it was a "continuation" of his original request of 13 April 2018.
- Why the Council initially said it held five ATCs when it later advised it held 119, and why it did not provide the 67 ATCs within the cost limit in its initial response.

21. The Commissioner asked the complainant to confirm to her whether he agreed to the scope; he did not reply. She therefore initially proceeded as above and wrote to the Council seeking its responses on the above points.

22. Having done so, the Commissioner wrote to the complainant on 15 October 2019, setting out her findings. She invited the complainant to withdraw his complaint; he declined. He stated that he wished the Commissioner to consider the Council's late application of section 12 and its section 16 advice and assistance obligations in her decision notice.

23. The Commissioner has therefore considered whether the Council should have cited section 12 earlier. In so doing, she has also determined whether the Council correctly interpreted the request of 13 April 2018 and whether it complied with its section 16 obligations.

## Reasons for decision

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24. Although the complainant has not complained about the Council's reliance on section 12(1) of FOIA *per se*, (rather the timing of it being cited), the Commissioner considers it useful to first briefly explain the circumstances in which section 12 can be utilised by public authorities.

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

25. Section 1(1) of FOIA 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."*

26. Section 12(1) of 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."*

27. The Fees Regulations set the appropriate limit at £450 for the Council; they also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that the appropriate limit for the Council equates to 18 hours.

28. 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.

29. In this case, the complainant is challenging the timing of the Council citing section 12, which occurred on 19 December 2018 in response to his later email of 22 November 2018, and not in response to his original request of 13 April 2018.

#### *The complainant's position*

30. The complainant argues that his request of 13 April 2018 is clear in that he asked for the 'before' counts for the "whole of L23" and not just for the five streets within L23 that the Council provided in response to this request.

31. He also considers that he has made only one request for this information, ie that of 13 April 2018, and that his later email of 22 November 2018, which reiterates that he wanted the information for the whole of L23, should not have been treated as a new request by the Council.

*The Council's position*

32. The Commissioner has spoken to the responding officer from the Council, who explained that the complainant has submitted a significant amount of correspondence on the subject of ATCs, both general correspondence and FOIA requests. He said that prior to the complainant's request of 13 April 2018, the focus of that correspondence had been on the 'after' count information. In more recent correspondence, the Council had provided the complainant with the 'after' counts for five streets in the L23 area and said it interpreted the request of 13 April 2018 as being for the corresponding 'before' counts for those same streets such that the complainant could draw a comparison. It therefore responded to the 13 April 2018 request with the 'before' counts for these five L23 streets only.
33. Subsequently, following the complainant's email of 22 November 2018, the Council supplied him with 67 'before' ATC counts for the L23 area, working up to the cost limit. At this point, the Council cited section 12(1) of FOIA, the cost of compliance exemption.
34. The Council said it had treated the email of 22 November 2018 as a new request based on its interpretation of the original request of 13 April 2018 as being for the five streets only – in its view the email of 22 November 2018 broadened the initial request to being for the 'before' counts for all the applicable streets in the L23 area.

*The Commissioner's view*

35. During her investigation, the Commissioner has had the opportunity of liaising with both parties to appreciate their positions, which has resulted in her being able to see the situation from 'both sides'.
36. Section 1(3) of FOIA states that:

*"Where a public authority—*

*(a) reasonably requires further information in order to identify and locate the information requested, and*

*(b) has informed the applicant of that requirement,*

*the authority is not obliged to comply with subsection (1) unless it is supplied with that further information."*
37. Section 16 of FOIA places a duty on a public authority to provide "reasonable" advice and assistance to those making and wishing to make information requests.

38. In the Commissioner's view, this duty requires a public authority to seek clarification of requests which are unclear or which are capable of multiple objective readings.
39. When viewing the request in isolation rather than as an extension to earlier correspondence, the Commissioner's view is that the Council should have interpreted the request of 13 April 2018 as the complainant had intended from the outset. In her view, this is clear from the wording of the request, (ie as being for the 'before' counts for the "whole L23" area). However, she does consider the Council's explanation as to why it interpreted the request as it did or be understandable given the circumstances surrounding this particular request. She also notes that, once it became apparent to the Council that the complainant had requested the 'before' counts for more than the five streets provided, it revisited the information held and provided him with 67 of the 119 'before' ATCs in scope of the request up to the cost limit – something it was not obliged to do.
40. The Commissioner's guidance on section 12<sup>4</sup> states at paragraphs 32 and 33:

*"As a matter of good practice, public authorities should avoid providing the information found as a result of its searching and claiming section 12 for the remainder of the information. It is accepted that this is often done with the intention of being helpful but it ultimately denies the requestor the right to express a preference as to which part or parts of the request they may wish to receive which can be provided under the appropriate limit.*

*In practice, as soon as a public authority becomes aware that it intends to rely on section 12, it makes sense for it to stop searching for the requested information and inform the complainant. This avoids any further and unnecessary work for the public authority as it does not need to provide any information at all if section 12 is engaged."*

41. She further notes that the Council has offered to meet with the complainant to try to ensure it furnishes him with the specific information he requires, something it is not obliged to do under the FOIA, and that the complainant has declined. Whilst noting the complainant's reasons for not wishing to meet with the Council, the

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<sup>4</sup> [https://ico.org.uk/media/for-organisations/documents/1199/costs\\_of\\_compliance\\_exceeds\\_appropriate\\_limit.pdf](https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf)

Commissioner nevertheless considers that the Council has attempted to resolve the situation.

42. The Commissioner has considered all the views put forward to her and has concluded that the Council should have interpreted the request of 13 April 2018 as being for the 'before' counts for the whole of L23 and, therefore, it should have cited section 12(1) at that point. As explained above, the Council was not then obliged to provide *any* further information at that stage, given that to comply with the request would exceed the cost limit. The Commissioner notes that the Council subsequently provided the 67 counts, working up to the 18 hour cost limit, however, if it wished to offer this as an option to the complainant, it should have liaised with him to ascertain whether this would satisfy his request. If the complainant had not been happy with this option then it would not have been necessary for the Council to disclose that information.
43. It follows that the Commissioner does not consider the email of 22 November 2018 to be a new request; she agrees that the complainant was merely reiterating what he required from his original request of 13 April 2018.
44. However, given the Council's decision to provide information for the 67 'before' counts up to the cost limit, together with its offer to meet with the complainant, she does not consider that the complainant has been disadvantaged by the Council's interpretation of the initial request. Further, the complainant has been provided with information that the Council was not obligated to give him.

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

45. Section 16(1) of FOIA provides that a public authority is required to provide advice and assistance to any individual making an information request. In order to comply with this duty, a public authority should advise the requester as to how their request could be refined to bring it within the cost limit. However, the Commissioner accepts that where a request is far in excess of the cost limit, it may not be possible to provide any useful advice.
46. The Commissioner's guidance states that where it is reasonable to provide advice and assistance in the particular circumstances of the case, the minimum a public authority should do in order to satisfy section 16 is:
  - either indicate if it is not able to provide any information at all within the appropriate limit; or
  - provide an indication of what information could be provided within the appropriate limit; and

- provide advice and assistance to enable the requestor to make a refined request.
47. In this case, once the Council had cited section 12(1) in response to the complainant's email of 22 November 2018, it advised that the cost limit of £450 would be exceeded to provide the 'before' counts for the whole L23 area, and estimated it would cost £743.75 to comply with the request. At this stage, the Council should have offered the complainant advice and assistance in accordance with section 16 of FOIA as to how he might refine his request to bring it within the cost limit. By failing to do so, the Council has breached section 16(1) of FOIA.
48. Further, as it transpired that the Council did not find the request to be sufficiently clear (given its interpretation that the complainant was only seeking information for five streets rather than the whole L23 area), the Commissioner considers that the Council was under an obligation to seek clarification. As the Council failed to do so, it breached its section 16 duty.
49. As the situation has now been clarified, the Commissioner does not require any retrospective step.

### **Other matters**

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50. Given the points highlighted by this notice, the Commissioner would ask the Council to ensure that it interprets FOIA requests objectively from the outset. Where there is any doubt, the Council should seek clarification from complainants in accordance with sections 1(3) and 16 of FOIA.
51. For future FOIA requests, the Council should also ensure that it liaises with requesters when considering the cost limit and that it does not just provide information it selects itself, working up to the cost limit to provide this. It should also ensure that where it cites section 12, it also considers its section 16 obligations and informs requesters accordingly.

## Right of appeal

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52. 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](mailto:grc@justice.gov.uk)

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

53. 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.

54. 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 .....**

**Carolyn Howes**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**