

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 May 2020

Public Authority: Desborough Town Council
Address: High Street
Northamptonshire
NN14 2QS

Decision (including any steps ordered)

1. The complainant has requested information with regards to a Library and Community Hub, a Trust and two named Councils. Desborough Town Council (the council) refused both the initial request and refined request under section 12(1) of the FOIA – appropriate limit.
 2. The Commissioner's decision is that section 12(1) of the FOIA is engaged and that the council has provided appropriate advice and assistance as per section 16 of the FOIA. The Commissioner also found that the council breached section 10(1) of the FOIA with regards to the time it took to respond to the complainant's initial request.
 3. As a response has been provided and the refusal upheld, the Commissioner does not require the council to take any steps.
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Request and response

4. On 26 July 2019 the complainant made the following information request to the council:

"All correspondence sent to Desborough Library and Community Hub

All correspondence received from Desborough Library and Community Hub

All information held in relation to Desborough Library and Community Hub

All information held in relation to Desborough Library

All correspondence sent to Northamptonshire County Council in relation to Desborough Library or Desborough Library and Community Hub

All correspondence received from Northamptonshire County Council in relation to Desborough Library or Desborough Library and Community Hub

All correspondence sent to Kettering Borough Council in relation to Desborough Library or Desborough Library and Community Hub

All correspondence received from Kettering Borough Council in relation to Desborough Library or Desborough Library and Community Hub

All emails from staff and cllrs received or sent in relation to Desborough Library or or Desborough Library and Community Hub

All correspondence sent to the Maud Elkington Trust

All correspondence received from the Maud Elkington Trust

All correspondence in relation to any meetings between councillors that took place on the 25th July 2019

I would expect all written documents, (emails, letters, documents and any other form), any audio and visual documents stored and any other information stored and shared."

5. The council acknowledged receipt of the request on the 29 July 2019 and refused the request on the 8 October 2019 under section 12(1) of the FOIA as it determined it would take over the appropriate limit to provide the information.

6. On 16 October 2019 the complainant refined his request:

"I will shorten my request to all electronic documents to the following. I believe a search for community hub or DLCH should help shorten the process and as majority wont[sic] be in paper copies they wont[sic] be unfiled in boxes.

- *All correspondence sent to Desborough Library and Community Hub*
- *All correspondence received from Desborough Library and Community Hub*
- *All information held in relation to Desborough Library and Community Hub*
- *All correspondence sent to Northamptonshire County Council in relation to Desborough Library and Community Hub*
- *All correspondence received from Northamptonshire County Council in relation to Desborough Library and Community Hub*
- *All correspondence sent to Kettering Borough Council in relation to Desborough Library and Community Hub*
- *All correspondence received from Kettering Borough Council in relation to Desborough Library and Community Hub*
- *All emails from staff and cllrs received or sent in relation to Desborough Library and Community Hub*
- *All correspondence sent to the Maud Elkington Trust since 1st Jan 2017*
- *All correspondence received from the Maud Elkington Trust since 1st Jan 2017*
- *All correspondence in relation to any meetings between councillors that took place on the 25th July 2019"*

The complainant contacted the Commissioner on the 1 November 2019 dissatisfied with the council's response to his request, providing a copy of the council's most recent response, issued on that same day, refusing the refined request, again under section 12(1) of the FOIA. The council

also stated that it can provide advice and assistance, if required, to help refine the request.

7. Upon the Commissioner's advice, the complainant requested an internal review on the 7 November 2019 questioning how it was established that responding to this request would take over the appropriate limit. He also asked the council how much information it would be able to provide under the appropriate limit.
8. As the complaint had received no response to his internal review request, on 20 December 2019 the Commissioner asked the council for an update on the matter.

Scope of the case

9. On 9 January 2020 the complainant contacted the Commissioner further as he had not received a response to his internal review request. The complainant also complained about the time the council has taken to respond to him.
10. Due to the length of time that had elapsed since the request was originally made and the subsequent delays in the responses provided by the council to the requestor, the Commissioner has accepted this case for investigation without firstly requiring the internal review to be carried out.
11. The Commissioner considers the scope of the case is to determine whether the council can rely on section 12(1) of the FOIA to refuse the complainant's revised request of 16 October 2019.
12. She will also go on to consider whether the council has provided appropriate advice and assistance in accordance with section 16 of the FOIA and whether it has responded in the permitted timeframes of the FOIA.

Reasons for decision

Section 12(1) of the FOIA – Appropriate Limit

13. Section 12(1) of the FOIA states that a public authority does not have to comply with a request for information if it estimates that the cost of complying with the request would exceed the appropriate limit.

14. The Freedom of Information and Data Protection (Appropriate Limit and Fees) regulations 2004 ("the Fees Regulations") sets the appropriate limit at £450 for the council.
15. A public authority can charge £25 per hour of staff time for work undertaken to comply with a request in accordance with the appropriate limit set out above. This equates to 18 hours of office time. If a public authority estimates that complying with a request may cost more than the cost limit, it can consider time taken in:
 - a) Determining whether it holds the information;
 - b) Locating the information of a document which may contain the information;
 - c) Retrieving the information, or a document which may contain the information, and
 - d) Extracting the information from a document containing it.
16. In determining whether the council has correctly applied section 12 of the FOIA in this case, the Commissioner asked the council, with reference to the four activities above, to provide a detailed estimate of the time/cost it would take for it to provide the information, and confirm that the estimate has been based upon the quickest method for gathering the information.
17. The Commissioner also asked the council, when providing these calculations, to include a description of the nature of work that would need to be undertaken, explaining that an estimate for the purposes of section 12 has to be 'reasonable'. Thus, it is not sufficient for a public authority to simply assert that the appropriate limit has been met; rather the estimate should be realistic, sensible and supported by cogent evidence.
18. The council has told the Commissioner that the complainant's revised request for electronic records would take over the appropriate limit because there are over 3000 documents, returned from the search results, that may potentially fall within the scope of the request.
19. In addition to these documents, the council has told the Commissioner that there are hundreds of emails that would also need to be sifted through to determine if any or all are relevant.
20. The council has explained that this is because the council is headquartered in the Desborough Library building. The council has leased office space in the library for approximately five years and holds its meetings in the library. One of the key phrases searched was

'Desborough Library' and with this being the address of the council it has therefore made it impossible for the council to be able to exclude irrelevant documents, which contain the address, automatically without having to carry out a manual check.

21. The council has confirmed that running this keyword search accompanied by a manual review of the documents located is the quickest method it can use.
22. The council has estimated that it would take approximately 42.08 hours to be able to provide the requested information to the second, refined request. This works out to approximately spending 1.19 minutes on reviewing each document. This reviewing time would include the time to locate and extract any documents that are relevant.
23. The Commissioner does not see this estimated time to be excessive when considering that each document needs to be manually reviewed.
24. The Commissioner has calculated that for the council to be able to manually check all of its 3000 electronically held documents within the required 18 hour timeframe, it would need to review 2.7 documents every minute. Or 1 document every 22.22 seconds.
25. This does not include the time it would take the council to gather any relevant information held in councillors' email's which the council has advised there are hundreds of potential documents.
26. Based on the above, the Commissioner does not see that the council would physically be able to review each document in under 22 seconds in order to determine which of the 3000 electronically held documents and hundreds of emails are relevant to the scope of the request.
27. It appears the fact that the council's address contains some vital words in the key word search, that being Desborough Library, has hindered its ability to reduce the amount of documents being returned in the search results, and so a manual cross check of all the documents are required which in turn increases the amount of time required to locate the relevant information.
28. Based on the above, the Commissioner has determined that the council can rely on section 12(1) of the FOIA to refuse the request as it would take it over the appropriate limit to provide the information.

Section 16 of the FOIA – Advice and assistance.

29. Section 16 of the FOIA imposes an obligation on public authorities to provide advice and assistance to a person making a request, so far as it is reasonable to do so. Section 16(2) states that a public authority is to be taken to have complied with its section 16 duty in any particular case if it has confirmed with the provisions in section 45 of the Code of Practice¹ in relation to the provision of advice and assistance.

30. Paragraph 14 of Section 45 of the Code of Practice states that where a public authority is not obliged to comply with a request because it would exceed the appropriate limit to do so, then it:

"...should consider providing an indication of what, if any, information could be provided within the cost ceiling. The authority should also consider advising the applicant that by reforming or refocusing their request, information may be able to be supplied for a lower, or no, fee."

31. The council has told the Commissioner that it did suggest the following to the complainant on 19 November 2019:

"If you wish, you may consider listing the items in order of importance to you and I can then calculate each element in turn and let you know what might be provided within the limits of the legislation. What I am not at liberty to do I believe is make that selection for you."

32. Also, just prior to responding to the Commissioner's investigation letter, the council responded further to the complainant on 2 April 2020 again confirming section 12 of the FOIA. It also stated that:

"...given that the Council's current office address is Desborough Library a simple word search would not work so I would again have to work through large numbers of documents manually in order to comply."

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/235286/0033.pdf

33. It further stated:

"... please let me know if the council can provide advice or assistance to help you refine the request so that it can be dealt with under the appropriate limit."

34. The Commissioner on consideration of this is satisfied that the council has offered the complainant with appropriate advice and assistance should he want to refine his request.

Section 10(1) of the FOIA – Time for compliance

35. Section 10(1) of the FOIA requires a public authority to respond to an information request within 20 working days following the receipt of the request.

36. The Commissioner has reviewed the timeline from the initial request being made on the 26 July 2019. The council did not issue its refusal until 8 October 2019. This response being outside the required 20 working.

37. The complainant's refined request was made on the 16 October 2019 and the council issued its refusal notice to that request on the 1 November 2019. This being within the required 20 working days timeframe.

38. The Commissioner therefore finds that the council breached section 10(1) of the FOIA in its response time to the initial request of 26 July 2019 only.

39. As a response has since been provided. The Commissioner does not require the council to take any steps.

Other Matters

Internal Reviews

40. Although a public authority is not obliged under the FOIA to carry out internal reviews, Section 45 Code of Practice² recommends them to be conducted as a matter of best practice.
41. It also recommends that they are carried out within 20 working days of an internal review being requested by a complainant, and no later than 40 working days.
42. In this case, the Commissioner accepted the case for investigation without the council firstly carrying out an internal review as it had taken longer than the recommended timeframes to carry one out, even after the Commissioner had written to the council on 21 November 2019 and 20 December 2019 asking that it to.
43. The Commissioner expects the council to review Part 5. of Section 45 Code of Practice, which explains the expectations placed on public authorities with regards to internal reviews under the FOIA.
44. The Commissioner's Regulatory Action Policy³ is published on her website. Significant or repeated unreasonable delays in dealing with internal reviews will be monitored by our Enforcement team. In some instances regulatory action may be necessary.
45. The Commissioner hopes that the council will act as recommended by the Section 45 Code of Practice with regards to future internal review

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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

³ <https://ico.org.uk/media/about-the-ico/documents/2259467/regulatory-action-policy.pdf>

Reference: FS50887081



requests in order to avoid any potential actions being taken by the Commissioner on this.

Right of appeal

46. 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

47. 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.

48. 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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