

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 July 2020

Public Authority: South Lakeland District Council
Address: South Lakeland House
Lowther Street
Kendal
Cumbria
LA9 4DQ

Decision (including any steps ordered)

1. The complainant has requested information regarding a tendering process. South Lakeland District Council did not comply with the request, citing section 12(1) (Cost compliance exceeds the appropriate limit) of the FOIA.
2. The Commissioner's decision is that South Lakeland District Council has not applied section 12(1) of the FOIA appropriately.
3. The Commissioner requires South Lakeland District Council to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response, not citing section 12(1) of the FOIA.
4. South Lakeland District Council must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the FOIA and may be dealt with as a contempt of court.

Request and response

5. On 8 January 2020, the complainant wrote to South Lakeland District Council (the council) and requested information in the following terms:

"Under the Freedom of Information Act, I am making a new request for information.

Please release the following information to me:

All files/documents relating to the Council's involvement in the works carried out to All Hallows Church House LA9 4LJ.

The full Tender Process

The criteria used/ Invitation to Tender

Expressions of interest, showing each Tender applicant by name during this whole process.

How the Council scored each applicant and, again, shown by name.

The reason the Council chose Quadriga.

Please let me have the requested information within the next seven working days."

6. The council responded on 13 January 2020, providing a history of requests and internal reviews the complainant had made previously, including a disclosure it made to the complainant in April 2018.
7. The council provided its substantive response on 15 January 2020. It referred to its email of 13 January 2020 and the disclosure it had made in April 2018, listing the disclosed information as follows:

"Appendix 1 - Project Team - Quadriga Contracts Ltd.

K29541 Schedule of Works V.2 - Quadriga Contracts Ltd.

Programme of Works.

Quadriga Contracts Ltd - Cover Letter.

Schedule 1 - ITT Part 2 - Quadriga Contracts Ltd.

Schedule 2 - Canvassing Collusive Certificate - Quadriga Contracts Ltd.

Schedule 3 - Form of Tender - Quadriga Contracts Ltd.

TWIMC Broker Letter."

8. The council further explained that in line with the response dated 13 January 2020, to provide the information requested would mean accessing detailed information held in electronic and paper format. The

council estimated that the cost of complying with these questions would exceed the appropriate limit under section 12(1) of the FOIA. It also explained that public authorities are not obliged to comply with requests for information if they estimate that the cost of complying with the request would exceed the appropriate limit. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 set an appropriate limit of £450 for public authorities, which equates to 18 hours work at a statutory rate of £25 per hour. The council estimated that it would take a minimum of 20 hours or £500 to comply with your request.

9. The Commissioner did not consider it would be necessary for the council to carry out a further internal review and informed the complainant and the council of this.

Scope of the case

10. The complainant contacted the Commissioner on 16 January 2020 to complain about the way her request for information had been handled. She explained that following her request for information dated 4 April she had emailed the council on 26 July 2019, requesting that under the FOIA, they conduct an internal review to release all tender documents to her. This is part of a complaint that is with the Local Government Ombudsman in connection with work that the council had arranged to be carried out to a property owned by her daughter-in-law. The complainant also explained that the council had refused to carry out an internal review under their Review Policy supported by the guidelines from ICO, as her request was not made within the 40 working days of the original FOI response provided.
11. The complainant therefore made a new request for information on 8 January 2020, which is the subject of this notice. She informed the Commissioner that she did not agree that supplying the information she had requested would exceed the appropriate cost limit.
12. The Commissioner will consider whether the council has applied section 12(1) appropriately.

Reasons for decision

Section 12 – Cost of compliance exceeds appropriate limit

13. Section 12(1) of FOIA states that a public authority does not have to comply with a request for information if it estimates that the cost of compliance would exceed the appropriate cost limit.
14. This limit is defined by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the Fees Regulations) as £600 for central government departments and £450 for all other public authorities. This means that the appropriate limit will be exceeded if it would require more than 24 hours work for central government, legislative bodies and the armed forces and 18 hours work for all other public authorities. In the present case the appropriate time limit is 18 hours.
15. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the costs it reasonably expects to incur in carrying out the following permitted activities in complying with the request:
 - determining whether the information is held;
 - locating the information, or a document which may contain the information;
 - retrieving the information, or a document which may contain the information; and
 - extracting the information from a document containing it.
16. Section 12 provides that public authorities are only required to estimate the cost of compliance with a request. The Commissioner considers that the estimate must be reasonable and has followed the approach set out by the Information Tribunal in *Randall v Information Commissioner and Medicines and Healthcare Products Regulatory Agency* (EA/2006/004, 30 October 2007) which states that a reasonable estimate is one that is "*sensible, realistic and supported by cogent evidence*".
17. Section 12(1) requires a public authority to estimate the cost of complying with the request, rather than provide an exact calculation. The Commissioner must therefore consider whether the cost estimate provided by the council is reasonable. If it is, then section 12(1) is engaged and the council is not obliged to comply with the request.

Aggregation of requests

18. Multiple requests within a single item of correspondence are considered to be separate requests for the purpose of section 12. In the present case this means that there are six requests to be considered. If they relate to the same overarching theme, public authorities can aggregate two or more separate requests in accordance with the conditions laid out in the Fees Regulations. Any unrelated requests should be dealt with separately for the purposes of determining whether the appropriate limit is exceeded.
19. In the Commissioner's guidance¹ on exceeding the cost limits, she explains that:

'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'.
20. The Fees Regulations wording of "relate, to any extent, to the same or similar information" makes clear that the requested information does not need to be closely linked to be aggregated, only that the requests can be linked.
21. Although the council did not address this point, having reviewed the wording of the complainant's request, the Commissioner is satisfied that there is an overarching theme. This is because the six requests are for information about a specific tender

Would compliance with the request exceed the cost limit?

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

22. The council confirmed to the Commissioner that other than the redacted documents already released in 2018, it held an additional 366 pages over 47 documents.
23. The council also explained that, based on an estimate of 5 minutes to review each page and consider whether it falls within the scope of the request, it estimated that this would take one officer 31 hours to complete.
24. Additionally, the council explained that the 366 pages would then have to be checked further to identify duplications and check that redactions have been applied correctly. It explained that based on an estimate of 3 minutes per page it would take one officer a further 18 hours to complete this task.
25. The council therefore estimated it would take one officer a total of 49 hours to supply the requested information at a total cost of £1,225. To put it another way, the council has estimated that it would take one officer just over 1 hour per document to access, read, decide and apply appropriate redaction and then check the document to ensure that complete redaction had been applied. The council explained this meant that compliance with the request would exceed the appropriate limit, as defined by the Fees Regulations.
26. Considering the four tasks set out in the Fees Regulations, the Commissioner notes that it is only the final task that the council may include in its cost estimate. This is because it has already confirmed that it has determined that the information is held, where it is located and retrieved the relevant documents. All that remains therefore is to extract the information from those documents.
27. The Commissioner is not convinced by the council's position that it is necessary for an officer to spend 5 minutes per page to extract the relevant information, and then a further 3 minutes per page to essentially double check that this has been done correctly. Taking the council's estimate as a whole, the Commissioner considers that the council is suggesting that it would take an officer 8 minutes per page to extract the requested information.
28. It has not been made clear to the Commissioner what information the council considers needs to be redacted from the documents in order to extract the information within the scope of the request. In the absence of a sampling exercise or any other similar cogent evidence to support the estimate, it is difficult for the Commissioner to understand how it

can take an officer over 1 hour per document, or 8 minutes per page, to extract the relevant information.

Conclusion

29. The Commissioner notes that the council has explained that there are 366 pages over 47 documents, and that this roughly equates to 7 pages per document.
30. Although the council has explained that it considered that it would take a total of 49 hours to comply with the request, it has not provided any information regarding how it calculated this estimate nor has it supplied the Commissioner with the results of a sampling exercise. Based on the evidence available, the Commissioner does not consider that an hour to extract the requested information from a document, which is on average 7 pages long, is a credible estimate of time.
31. In addition to this, the complainant informed the Commissioner that she is aware that the council has supplied much of the requested information to the Local Government Ombudsman in response to a complaint concerning the tender in question here. The council has acknowledged that some information was provided to the complainant in November 2019 as directed by the Ombudsman. However, it has not referenced whether some or all of the requested information has previously been compiled for the purposes of the Ombudsman's investigation. As such, in addition to not having supplied the Commissioner with a sampling exercise or any other cogent evidence to support the time estimate, she is also unconvinced that the council has identified the quickest way of finding the requested information.
32. The Commissioner therefore cannot accept that the council has provided a reasonable estimate of the time needed to comply with the request. She therefore does not consider that the council is entitled to rely on section 12 of the FOIA to refuse this request.
33. The Commissioner therefore requires the council to issue a fresh response, not relying on section 12.

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

Laura Tomkinson
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF