

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 September 2021

Public Authority: Bridgend City Borough Council
Address: Civic Offices
Angel Street
Bridgend
CF31 4WB

Decision (including any steps ordered)

1. The complainant made seven requests for information relating to a fire at a property in Bridgend (the property).
2. The Commissioner's decision is that Bridgend City Borough Council (BCBC) was correct to aggregate the requests and that it was entitled to rely on section 12(1) of the FOIA.
3. The Commissioner does not require BCBC to take any steps as a result of this notice.

Request and response

4. On 16 April 2020, the complainant wrote to BCBC and requested information in the following terms:

"Please could you release the following information about the premises at [address redacted]:

Following last night's fire at the premises I have been contacted by a number of concerned residents who live in the locality and on that basis of public interest could you please answer the following questions,

- 1) *Have any Cllr referrals been put in about the building and its condition since May 2017?*

- 2) *If yes, which Cllr made the referral, what was the wording of the referral placed and when was it placed?*
- 3) *What was the outcome of that referral please? What action was undertaken by the council. (please provide details of any enforcement action)*
- 4) *Have any referrals been received from any Borough Cllrs in the last 12 months about the cctv cameras in the town, in light of this being the second building that has gone up in flames in the town?*
- 5) *If so what were the details of that referral please? Who placed it, when was it placed and what was the question asked in that referral?*
- 6) *What was the outcome of that referral?*
- 7) *Have bcbs staff or any Cllrs for the wards covering town made any contact with South Wales Police over any of the following topics in the last 3 years:*

Arson on buildings in town.

The cctv camera system.

Drugs being grown, sold or any related crimes such as knife crimes/burglaries etc related to drugs

If so please provide details of any communications sent and received on these matters."

5. BCBC responded on 15 May 2020, it refused to provide the requested information citing section 12(1) of the FOIA.
6. BCBC explained to the complainant that it may be able to supply some information if she could refine or reduce her request to more manageable proportions and resubmit the request so that it brings the cost within the appropriate limit. It also suggested that if the complainant wished to pay for a full search and retrieval fee, it may be prepared to consider the request under section 13 of the FOIA which allows it to charge a fee where the estimated costs exceed the £450.
7. On 21 May 2020 the complainant responded to BCBC explaining that she believed information had been provided previously to other individuals and is aware that BCBC keep an electronic register of referrals so the information can easily be obtained. She also explained that she had specified a geographical area of the town centre for the request and to

check only the referrals of the BCBC councillors who cover the 3 town wards and confirmed this was six councillors and not 54. In this correspondence the complainant asked BCBC to review its decision.

8. BCBC provided a response to the complainant's request for a review on the 28 May 2020, explaining that after making further enquiries with their Democratic Services Department it can advise the following:

"Councillors can make referrals outside of their wards and frequently do, therefore if you narrow your request to ask for referrals made by the 6 councillors in the town centre wards, this may not capture all of the information you require.

To provide any accurate information out of the system, the search parameters have to be very narrow and even then it is not always successful. Councillors regularly ask for referrals to be chased however if the unique identifying number for the referral is not provided by the councillor they may not be found.

Democratic Services have also undertaken a search for [address redacted]. This only disclosed two referrals, one of which was about [address redacted] (not a specific property) and the other which was about a different area of the borough, but the individuals address was in [address redacted].

The section has also advised that when they run statistics for a particular councillor, it will advise them how many referrals were made by that councillor during a specific period of time but it will not provide the unique identifying referral numbers for those referrals to allow the section to find them easily.

They have also advised that not all councillors use the member referral system to raise issues with officer, therefore the Democratic Services cannot confirm that no issues were raised by specific councillor about a particular building as they may have gone to a council department directly with their issue".

Scope of the case

9. The complainant contacted the Commissioner on 2 July 2020 to complain about the way her request for information had been handled.

10. The Commissioner has therefore considered whether BCBC was correct to aggregate the seven requests and whether it was entitled to apply section 12(1) of the FOIA to the requests.

Reasons for decision

Aggregation of requests

11. As set out in the Commissioner's guidance¹, at paragraph 39, it states that when a public authority is estimating whether the appropriate limit is likely to be exceeded, it can include the costs of complying with two or more requests if the conditions laid out in regulation 5 of the Fees Regulations can be satisfied. Those conditions require the requests to be:
- Made by one person, or by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign;
 - Made for the same or similar information; and
 - Received by the public authority within any period of 60 consecutive working days.
12. The Commissioner is satisfied that the seven requests in this case satisfy the three points of criteria for aggregation. The Commissioner will therefore go on to consider BCBC's application of section 12 of the FOIA.

Section 12 - cost of compliance

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

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

14. The limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 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 creates an appropriate limit of 18 hours for this public authority.
15. The Regulations allow a public authority to charge the following activities at a flat rate of £25 per hour of staff time:
 - 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. In its initial response to the complainant, BCBC explained that the council's member referral system cannot provide accurate information on subject matter or narrative. It explained that it would require a manual check of every member referral since May 2017 to ascertain whether the referral related to the building or not.
17. In its response to the complainant BCBC explained that there was a total of 3953 referrals received for the period of May 2017 to April 2018. It stated that it estimated it would take at least 1 minute to check each referral and therefore to retrieve and provide the information for this one year alone would exceed 18 hours.
18. During the Commissioner's investigation BCBC confirmed that the figure of 3953 was for all councillor referrals and the information relating to the property cannot be retrieved from the system. The only way to obtain the information is to undertake a manual check of each referral held on the system which as advised would exceed 18 hours.
19. The Commissioner asked BCBC to provide a screenshot of the system to show how the referrals were being recorded and if they could be searched.
20. BCBC provided a screenshot to the Commissioner explaining that the issue with the search facility is that it will only provide accurate information if a ticket number of the original query is put in. It explained

that if a search was provided for example "*pothole*" it wouldn't necessarily bring up all the referrals that deal with potholes. BCBC confirmed that it had tested this and it brought up 191 referrals, however the real figure would be in the thousands. It explained that the system is built on a ticket generating system with the ticket number as the main identifier not the subject.

21. From the information and evidence provided by BCBC, it appears to the Commissioner that the referrals would have to be manually checked in order to establish which councillor referrals related to the property.
22. The Commissioner does not find it unreasonable to assume it would require a member of BCBC staff 1 minute to carry out a manual check of a referral to establish whether that referral related to the property. As BCBC has confirmed that 3953 referrals were received from May 2017 to April 2018, the time to check each referral would exceed the cost limit set out in the Fees Regulations.
23. The Commissioner is satisfied that BCBC has provided adequate explanations to demonstrate that it would exceed the appropriate limit to locate and retrieve the information requested. The Commissioner is therefore satisfied that section 12(1) of the FOIA applies in this case.

Section 16 Advice and Assistance

24. Section 16(1) of the FOIA provides that a public authority is required to provide advice and assistance to any individual making an information request where it would be reasonable to do so. In general, where section 12(1) is cited, 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, albeit the Commissioner does recognise that where a request is far in excess of the limit, it may not be practical to provide useful advice.
25. In its response dated 15 May 2020 BCBC advised the complainant of the following:

"It may be that we can supply some information if you can refine or reduce your request to more manageable proportions and resubmit your request so that it brings the cost within the appropriate limit."

26. The Commissioner is satisfied that BCBC has tried to explain how it holds its information and provided advice and assistance to the complainant. The Commissioner is therefore satisfied that BCBC has complied with its duties under section 16 of the FOIA.

Right of appeal

27. 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

28. 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.
29. 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

**Gerrard Tracey
Principal Adviser
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**