

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 August 2021

Public Authority: Castle Point Borough Council
Address: Kiln Road
Thundersley
Benfleet
Essex
SS7 1TF

Decision (including any steps ordered)

1. The complainant requested from Castle Point Borough Council ("the Council") information relating to financial contributions that the Council has received under Section 106 Agreements over the past 10 years. The Council disclosed some of the requested information but refused to provide the remainder under section 12 (exemption where cost of compliance exceeds appropriate limit) of the FOIA.
2. The Commissioner's decision is that the Council was entitled to apply section 12, and that it has complied with the requirement of section 16.
3. The Commissioner does not require the Council to take any steps.

Request and response

4. On 30 January 2020, the complainant wrote to the Council and requested information in the following terms:

"Please can you send me a list with all of the financial contribution section 106 agreements that have been included as conditions for planning permissions over the past 10 years. Please could you list the reference, location and financial amount with each permission including a grand total.

Please can you also send me a list of the projects that those monies have been used for including the locations, financial amounts for each project and any surplus that remains. Please can you also send me a list of projects that any surplus is allocated to with budgets for each."
5. The Council responded on 12 February 2020. It disclosed information - in respect of the first part of the request - in the form of a schedule.
6. Various correspondence then took place in which the complainant disputed that the Council had disclosed the requested information in full.
7. The Council provided a revised response on 6 April 2020, in which it disclosed an updated schedule with one record that had previously been missed. In this response the Council also refused to comply with the second part of the request under section 12 of the FOIA.
8. On 25 June 2020, the complainant requested an internal review.
9. Following an internal review, the Council wrote to the complainant on 7 July 2020. It maintained the application of section 12.

Scope of the case

10. The complainant contacted the Commissioner on 15 July 2020 to complain about the way his request for information had been handled, and argued specifically that the Council was not entitled to apply section 12.
11. The scope of this case and of the following analysis is the determination of whether the Council was entitled to apply section 12, and whether the Council complied with section 16.

Reasons for decision

Section 12 – Exemption where cost of compliance exceeds appropriate limit

12. Section 12(1) of the 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.

13. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004¹ (“the Regulations”) sets the appropriate limit at £450 for the public authority in question. Under the Regulations, a public authority may charge a maximum of £25 per hour for work undertaken to comply with a request. This equates to 18 hours work in accordance with the appropriate limit set out above.

14. A public authority is only required to provide a reasonable estimate, rather than a precise calculation, of the cost of complying with the request, and in putting together its estimate it can take the following processes into consideration:

- determining whether the information is held;
- locating the information, or a document containing it;
- retrieving the information, or a document containing it; and
- extracting the information from a document containing it.

Is section 12 engaged?

What information is sought?

15. Section 106 Agreements (made under Section 106 of the Town and Country Planning Act) impose obligations on an applicant as a condition of the granting of planning permission. One type of obligation may be the payment (of a specified sum) to the Local Planning Authority in order to finance other activities, such as other developments, or the improvement of local services.

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

16. The request seeks information relating to payments that the Council - as the Local Planning Authority - has received as part of any such Section 106 Agreement. This information is sought for a period of 10 years prior to the date of the request.
17. The Commissioner understands that the Council has disclosed some information in response to the first part of the request (being the references for the relevant Section 106 Agreements, the paid financial contributions, and the amounts of those contributions spent to date), but has refused to provide the additional detail sought by the second part of the request (being the specific projects that the contributions have been spent on, including their locations, costs, and any surplus funds).

The Complainant's position

18. The complainant argues that the information sought by the request - relating as it does to monies received by the Council - should be stored by the Council in a manner that allows it to be easily retrieved, and that it is implausible that it should be contained within the hardcopy minutes of meetings.

The Council's position

19. The Council has argued that the details sought by the request are not centrally stored, such as in a database. Instead, they will be contained across approximately 120 sets of Planning Committee meeting minutes for the 10-year period which are stored only in hardcopy form, and the associated Section 106 Agreements, which are also only stored in hardcopy form.
20. To comply with the request, an officer familiar with the subject matter would need to manually review each of the 120 sets of minutes to extract the relevant details; in conjunction with this the officer would need to manually review the associated Section 106 Agreements - of which there are 20 involving financial contributions.
21. The Council considers that these actions would take approximately 260 hours, based on it taking an officer two hours to review each set of minutes. This estimate does not include the time required to review the Section 106 Agreements, or the time already spent creating the schedule. However, the Council has advised that it has not undertaken a sampling exercise - due to limited access to Council premises in the Covid-19 pandemic.

The Commissioner's view

22. The Commissioner has considered the Council's submissions, and recognises that the compilation of the specific details sought by the request would require the manual review of minutes for the 10-year period specified by the request and of the 20 identified Section 106 Agreements. The Commissioner understands that this manual review would be required because the details sought by the request are not referenced in a way that allow them to be easily retrieved.
23. The Council has provided the estimated total time and cost that it considers compliance with the request would take. Although the Commissioner has noted the estimates that the Council has provided, it is recognised that these are not based on a sampling exercise.
24. However, and notwithstanding this, it is evident that compliance with the request would require the manual review of 120 sets of minutes, and it is noted that, to remain below the appropriate limit of 18 hours, the officer would have less than 9 minutes to retrieve and consider the content of each set. Therefore, even if the Commissioner viewed the estimate of two hours to review each set of minutes to be excessive, an estimate of much shorter duration per set of minutes would still result in a total estimate well in excess of the limit.
25. This calculation does not take into consideration the required time to retrieve and consider the content of each of the Section 106 Agreements, or the time already spent collating the information already identified (and provided in the form of a schedule). The Commissioner therefore finds it highly plausible that compliance with the request would significantly exceed 18 hours.
26. On this basis, the Commissioner is satisfied that the Council has estimated reasonably that compliance with the request would exceed the appropriate limit, and that section 12 therefore applies. The Council was not, therefore, obliged to comply with the complainant's request.

Section 16(1) – Duty to provide advice and assistance

27. Section 16(1) of the FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the Section 45

Code of Practice² ("the Code") issued by the Secretary of State, it will have complied with section 16(1).

28. The Code advises that, where an authority is not obliged to comply with a request for information because, under section 12(1) and the regulations made for that section, the cost of complying would exceed the appropriate limit, it should provide the requestor with reasonable advice and assistance.
29. The Commissioner's guidance³ states that the minimum a public authority should do in order to satisfy section 16(1) is indicate if it is able to provide any information at all within the appropriate limit. Communicating this to a complainant may avoid further and futile attempts to refine the request to bring it under the appropriate limit. If the requestor understands the way in which the estimate has been calculated to exceed the appropriate limit, it should help them decide what to do next.
30. In this case, the Council has informed the Commissioner that it considers it complied with section 16 by providing the complainant with that information that it has been able to collate within the appropriate limit - namely a schedule of the Section 106 Agreements and some detail about those agreements.
31. Having considered the information sought by the request and particularly the form in which it is held, the Commissioner recognises that any advice and assistance which the Council could provide to refine the request is limited by the difficulty in identifying the relevant information across the 120 sets of minutes.
32. The Commissioner therefore accepts that the Council has provided the most reasonable advice and assistance that it is able to - through the collation and disclosure of the information provided in the schedule. Relatedly, the Commissioner also notes that the complainant has indicated to her that he may elect to make a new refined request based on the content of this schedule.
33. Having considered the above, the Commissioner finds that the Council has complied with section 16.

² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/235286/0033.pdf

³ https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

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: 0203 936 8963

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

Daniel Perry
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
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SK9 5AF