

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 September 2022

Public Authority: Kent County Council

Address: County Hall
Maidstone
Kent
ME14 1XQ

Decision (including any steps ordered)

1. The complainant has requested information from Kent County Council ("the Council") about payments made by the Council regarding its wholly owned trading vehicles. The Council provided some information to the complainant and also referred the request to one of its holding companies, which provided the complainant with some further information, however the Council itself refused to disclose the requested information, citing section 12(1) of FOIA as a basis for non-disclosure.
2. The Commissioner's decision is that the Council has correctly applied section 12(1) of FOIA to the complainant's request. The Commissioner has also decided that the Council has complied with its duty of advice and assistance as set out in section 16 of FOIA.
3. The Commissioner therefore requires the Council to take no further steps.

Request and response

4. On 23 February 2021, the complainant wrote to the Council and requested information in the following terms:

"For each of the last 3 calendar years, please provide the payments made to each person with significant control (as listed on the Companies House website) for each of your wholly owned trading vehicles. I would

like the total annual sum paid to each person, it does not need to be broken down.”

5. The Council responded on 25 June 2021 providing some information to the complainant. The Council made the complainant aware that the issue was complicated, and for it to search for all the information requested by the complainant would exceed the cost limit as set out in section 12 of FOIA. It directed the complainant to the names of the companies and where to find the relevant financial information about them.
6. The complainant sought an internal review on 23 July 2021. She stated that she believed the Council should hold the relevant information as the 7 companies listed were wholly owned by the Council.
7. The Council responded to this on 6 September 2021. The reviewer stated that they considered that the Council’s response was reasonable and also cited the complainant’s additional question in her internal review request:-

“Although the 7 trading companies you have listed are separate legal entities, you also say that they are wholly owned by the council. I would expect that the council is involved in the appointment of the directors and Non-Executive directors and that, in carrying out its due diligence oversight of the companies, the council holds information about the payments made to the directors and Non-Executive directors. It is the information that the council has that I have asked for.”
8. The Council stated that, by way of advice and assistance, it had contacted its holding company KentHoldCo Ltd in respect of the above question and the original request.
9. KentHoldCo Ltd responded to the referred request on 14 October 2021, providing information about payments to directors and other roles.

Scope of the case

10. The complainant first contacted the Commissioner on 27 August 2021 to complain about the way their request for information had been handled.
11. Although they have now been provided with some information by KentHoldCo Ltd, they have informed the Commissioner that they still consider that the Council, as the owner of the companies, should hold all the requested information in detail and that this should be disclosed to the complainant.

12. The Commissioner has considered the Council's handling of the complainant's request.

Reasons for decision

Section 12 – cost of compliance

13. Section 12(1) of the 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" as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations").
14. Section 12(2) of the FOIA states that subsection (1) does not exempt the public authority from the obligation to comply with paragraph (a) of section 1(1) (the duty to inform an applicant whether it holds information of the description specified in the request) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit. The Council relied on section 12(1) in this case.
15. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 at £600 for central government, legislative bodies and the armed forces and at £450 for all other public authorities. The appropriate limit for the Council is £450.
16. 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 imposes a time limit of 18 hours for the Council.
17. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the cost 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 containing it;
 - retrieving the information, or a document containing it; and
 - extracting the information from a document containing it.
18. A public authority does not have to make a precise calculation of the costs of complying with a request; instead only an estimate is required.

However, it must be a reasonable estimate. In accordance with the First-Tier Tribunal in the case of *Randall v Information Commissioner & Medicines and Healthcare Products Regulatory Agency EA/2007/0004*, the Commissioner considers that any estimate must be "sensible, realistic and supported by cogent evidence". The task for the Commissioner in a section 12 matter is to determine whether the public authority made a reasonable estimate of the cost of complying with the request.

19. Section 12 is not subject to a public interest test; if complying with the request would exceed the cost limit then there is no requirement under FOIA to consider whether there is a public interest in the disclosure of the information.
20. Where a public authority claims that section 12 of FOIA is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit, in line with section 16 of FOIA.

Would the cost of compliance exceed the appropriate limit?

21. As is the practice in a case in which the public authority has informed the complainant that it holds the information, the Commissioner asked the Council to provide a detailed estimate of the time/cost taken to provide the information falling within the scope of this request.
22. In its submission to the Commissioner, the Council stated that the original request was for each of the last 3 calendar years, the payments made to each person with significant control (as listed on the Companies House website) for each of the wholly owned trading vehicles (as a total annual sum paid to each person).
23. As the Council explained in an email to the complainant on 25 June 2021, the only "persons" listed as having significant control over the various companies (Invicta Law Limited, Edseco Ltd, Commercial Services Kent Limited, Kent County Trading Limited, Gen2 Property Limited, Commercial Services Trading Limited and Cantium Business Solutions Limited) were Kent Holdco Ltd and Kent County Council.
24. This means that as well as being sole shareholder of these businesses, Kent County Council also contract with all of these services to provide services. In its capacity as Shareholder, the Council receives a range of payments which include repayments of loans and transfer of dividend as well as disbursing a large volume of transactions to the seven companies, as well as contract payments and an array of other payments.

25. For the Council to have fully researched and provided a list of all and any payments that may have been made as a result of being the person of significant control would have exceeded the cost/time limit set out in section 12 of FOIA as follows:
- There were over 400,000 transactions between Kent County Council and the seven companies over the 3 year period requested, covering over £300 million in value.
 - The Council did not code or file these transactions in such a way as to distinguish between activity that could be described as due to being a person with significant control and general contractual payments (as that would not form part of the Council's key financial management information)
 - For the same reason, a sampling exercise would not have provided an accurate result.
26. Therefore, the only way to comply with the request would have been to review all 400,000 transactions. These could have been downloaded and reviewed, but the Council stated that even reviewing each transaction description to ascertain whether it was a result of acting as a person with significant control at just 10 seconds per transaction would have taken 139 8-hour days, which clearly would have exceeded the cost/time limit.
27. Based on the information provided, the Commissioner considers that the Council estimated reasonably that it would take more than the 18 hours or the £450 limit to respond to the request. The Council has therefore correctly applied section 12(1) of FOIA to the complainant's request.

Section 16(1) – The duty to provide advice and assistance

28. Section 16(1) of 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 practice in providing advice and assistance, it will have complied with section 16(1).
29. The Commissioner notes that the Council referred the request to KentHoldCo Ltd in September 2021 and the complainant was provided with some of the requested information as a result of this.

30. The Commissioner is therefore satisfied that, in the circumstances, the Police met its obligations under section 16 of FOIA.

Right of appeal

31. 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

32. 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.
33. 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

Deirdre Collins
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Wycliffe House
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