

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 June 2022

Public Authority: Liverpool City Council

Address: Municipal Buildings
Dale Street
Liverpool
L69 2DH

Decision (including any steps ordered)

1. The complainant requested information from Liverpool City Council (“the Council”) relating to grants and loans made by the Council and Mayor. The Council refused to provide the requested information citing section 12 (cost limit), section 21 (information accessible by other means), section 22 (information intended for future publication) and section 40(2) (personal information).
2. The Commissioner’s decision is that the Council was entitled to refuse to comply with the request in accordance with section 12(1) of the FOIA.
3. However, he finds that the Council failed to provide reasonable advice and assistance and therefore failed to meet its obligations under section 16(1) of the FOIA.
4. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Provide the complainant with advice and assistance to help them submit a request falling within the appropriate limit.
5. The 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 Act and may be dealt with as a contempt of court.

Request and response

6. On 29 March 2021, the complainant wrote to the Council and requested information in the following terms:

“Please provide a spreadsheet with a list of all grants and loans the Council and Mayor have made since 2010.

Please provide the following information in it;

1. The name of the beneficiary.
 2. The amount given to the beneficiary.
 3. The date it was given.
 4. Whether or not it was a loan or non-repayable grant.
 5. The terms of the loan/grant.
 6. How much each beneficiary has repaid.”
7. The Council responded on 30 September 2021. It refused to provide the requested information citing section 21 (information reasonably accessible by other means) section 22 (information intended for future publication), section 40(2) (personal information) and section 12 (cost limit) as its basis for refusing to provide the requested information.

Scope of the case

8. The complainant contacted the Commissioner on 30 September 2021 to complain about the way their request for information had been handled.
9. The scope of this case and the following analysis is to determine if the Council has correctly cited section 12(1), section 21, section 22 and section 40(2) of the FOIA in response to the request.

Reasons for decision

Section 12 – cost of compliance

10. 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 cost limit.

11. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations') at £450 for public authorities such as the Council.
12. 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.
13. 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.
14. 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 decision in the case of *Randall v IC & Medicines and Healthcare Products Regulatory Agency EA/20017/00041*, 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.
15. 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 the FOIA to consider whether there is a public interest in the disclosure of the information.
16. Where a public authority claims that section 12 of the 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 the FOIA.

The Council's position

17. In its response to the request, the Council refused to provide the complainant with information within the scope of "those elements of [the complainant's] request which seek information relating to loans granted by the City Council to third party organisations". It appears from this

wording that the council cited section 12 only in relation to some parts of the request. For the reason explained below, however, the Commissioner has considered section 12 in relation to the entire request.

18. The Council stated that it has issued a total of 45 loans including 20 loans for social care and 25 loans to third party organisations. The Council explained that as each loan is managed individually there is no centralised database detailing the terms of each loan, the duration of the loans or other specific requirements of each loan. It stated that there is no operational or legislative obligation for the Council to have such a database.
19. The Council explained that as no centralised database containing the requested information exists, in order to provide the information it would have to examine the paper and electronic records for each loan and extract the required information.
20. The Council explained that it had carried out a search for information relating to eight loans to assess how long it would take to provide the requested information. It took the Council between 60 and 85 minutes to locate and extract the requested information from the records of each loan.
21. The Council calculated that in total it would take approximately 45 hours to provide the requested information (60 minutes x 45 loans = 45 hours). Therefore, the Council concluded that the cost of providing information relating to loans made by the Council would exceed the cost limit.

The Commissioner's position

22. Under section 12 of the FOIA, a public authority can refuse to comply with a request in its entirety if it estimates reasonably that the cost of complying with part of a request would exceed the cost limit, even if the request could be complied with in part within the cost limit.
23. The Commissioner considers the Council's estimate of 45 hours to provide information relating to the loans made by the Council to be reasonable. Even if the cost estimate provided by the Council was halved, it would still be over the appropriate limit under the FOIA.
24. Therefore, whilst it appears that the Council has only applied section 12 to part of the request, as the cost of complying with part of the request would exceed the cost limit, the Commissioner considers that the Council is entitled to refuse to comply with the request in its entirety.

25. The Commissioner's decision is that the Council estimated reasonably that the cost of complying with the request would exceed the appropriate limit. Therefore, the Council is entitled to apply section 12(1) of the FOIA to the entirety of the request.
26. As the Council is entitled to rely on section 12(1) of the FOIA to refuse to comply with the request in its entirety, the Commissioner has not gone on to consider the Council's application of section 21, section 22 and section 40(2) to the request.

Section 16 – 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 practice¹ in providing advice and assistance, it will have complied with section 16(1).
28. The Council did not advise the complainant that they could refine their request to bring it within the cost limit. Furthermore, the Council did not provide the complainant with suggestions on how to narrow the scope of their request.
29. The Commissioner's decision is that the Council did not provide the complainant with adequate advice and assistance and therefore breached section 16(1) of the FOIA.

¹ <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

Right of appeal

30. 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

31. 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.
32. 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

Ben Tomes
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