

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 31 October 2022

**Public Authority:** Shropshire Council

**Address:** Shirehall  
Abbey Foregate  
Shrewsbury  
SY2 6ND

#### **Decision (including any steps ordered)**

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1. The complainant requested from Shropshire Council information in relation to certain types of companies into which its staff pension funds were invested. Shropshire Council responded by applying Section 12(1) of FOIA on the basis that the time and cost of identifying and extracting the requested information would exceed the appropriate limit.
2. The Commissioner's decision is that Shropshire Council has correctly applied Section 12(1) of FOIA to refuse the complainant's request. The Commissioner also finds that Shropshire Council complied with its obligations under Section 16(1) of FOIA to offer advice and assistance.
3. The Commissioner does not require the public authority to take any steps to ensure compliance with the legislation.

#### **Request and response**

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4. On 20 January 2022 the complainant wrote to Shropshire Council (the Council) and requested information in the following terms:

'I refer to the following article in the Independent online dated 19th January 2022:

<https://www.independent.co.uk/climate-ch...>

This infers local authorities throughout the UK are investing employee pension contributions into intensive livestock farming including Intensive Poultry Units.

Accordingly, I would like a response to my request for the following information.

1. Does Shropshire Council invest pension funds or any other any other funds for that matter into intensive livestock farming?
  2. If so, for how long has this been taking place?
  3. If so, into which form intensive livestock farming are those investments made, Intensive Poultry Unit, Intensive Pig Units etc - please provide a breakdown of livestock type.
  4. If so please provide details of the amount of funds invested on a yearly basis since those investments commenced into each form of livestock farming detailed in response to question 3.
  5. If so please provide the total amount invested since investment into intensive livestock farming commenced
  6. If so please provide details of the annual profit received year on year since those investments began'.
5. The Council responded on 18 February 2022. It stated that its pension fund had a significant amount of diversification within the investments held. Furthermore, it stated it was 'highly probable' that its pension fund had some exposure to livestock and poultry farming companies. However, it added that it did not have a list of those companies. It therefore invited the complainant to provide a list of those companies and said it would then do its best to provide the information requested.
  6. As the complainant was dissatisfied with the Council's response, he requested an internal review on 18 February 2022. He stated it was unacceptable to invite him to provide a list of the companies that he believed the Council was investing its staff funds into. He expressed the view that the funds' portfolio managers should be able to easily access the companies into which investments were being made.
  7. Following an internal review, the Council wrote to the complainant on 28 February 2022. It pointed out that its pension portfolio contained around 16,000 companies and was managed externally. As part of its information gathering process for the complainant's initial request, the relevant portfolio managers were contacted to assess the feasibility of providing the requested information under FOIA. The response from the portfolio managers was that the request was too broad and lacked sufficient clarity to obtain accurate data and therefore their suggestion was to request further clarity from the complainant. Following further discussions with the relevant team, the Council concluded that the estimated cost of assessing the operations of each individual company

within the portfolio to fulfil the complainant's request would exceed the appropriate cost/time limit under FOIA. Accordingly, it was applying Section 12(1) to refuse the complainant's request.

## **Scope of the case**

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8. The complainant contacted the Commissioner on 4 March 2022 to complain about the way his request for information had been handled. In particular, he was unhappy with the Council's decision to refuse his request under Section 12(1) of the FOIA.
9. The scope of the Commissioner's investigation will be to assess whether the Council has correctly cited Section 12(1) of the FOIA and also consider whether it met its obligation to offer advice and assistance under Section 16(1) of FOIA.

## **Reasons for decision**

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### **Section 12 FOIA – cost of compliance**

10. 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" as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations").
11. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 at £450 for 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 in the case of *Randall v Information Commissioner & Medicines and Healthcare Products Regulatory Agency EA/2007/00041*<sup>1</sup>, 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 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 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?**

17. As is the practice in a case where the public authority has informed the complainant that it holds the information, the Commissioner has asked the Council to provide a detailed estimate of the time/cost taken to provide the information falling within the scope of this request.
18. In its submission to the Commissioner, the Council stated;  
  
‘At the time of review we acknowledged that due to the nature of Shropshire County Pension Funds’ investments there was a high likelihood that the fund had some investments in intensive farming though this is not a defined investment area. The fund raised the issue with its external investment managers who advised that there was no simple manner of extracting that data as intensive farming is not a classification and many of the investments are in large conglomerates that operate across multiple areas of the economy. The recommendation we received was that if specific company names could

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<sup>1</sup> <https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i136/Randall.pdf>

be provided, holdings could be reviewed in a timely manner to ensure an accurate response. No clarification was provided so the only way the fund could accurately respond to the request would have been to request investment managers to review individual company records to understand both primary and subsidiary holdings.

As specified in the (internal review) response on the 28<sup>th</sup> February 2022, the fund at that time had around 16,000 companies in its active and passive portfolios which are globally based. The failure to specify specific company names meant that any review of intensive farming would be subjective and would require a review of individual company structures. To assess this amount of data in the time frame of 18 hours as set out in Section 12 would have meant reviewing nearly 900 records an hour. If Managers had excluded an initial trawl of 90% of records, believed to have no connection to agriculture that would still have left 1,600 records to manually review or approximately 90 per hour. To review a company structure and understand the nature of a company's subsidiary holdings would take anything upwards of 15/30 mins a company depending upon size and complexity, especially given that the portfolio is globally based so reliance cannot be placed on a single database like Companies House for initial enquiries. Even if the initial trawl could have excluded 99% of the portfolio the remaining records would still have taken more than the 18 hour time limit and the over generalisation could have impacted the accuracy of the response.

The fund followed the direction of the Act in making initial enquiries to allow an accurate response and when it became apparent that it was not possible for investment managers to streamline the search an estimate of the work involved based on the size of the portfolio suggested that it would not be physically possible to provide an accurate response within the limit of £450 (i.e. 18 hours of staff or investment manager time at £25 per hour as set out in the Act) for the reasons noted above. We therefore believe our response is consistent with Section 12 of the Freedom of Information Act'.

19. Although the complainant believes it would be possible to locate and extract the requested information, the detailed evidence provided by the Council as described above indicates otherwise. According to the Council, there are about 16,000 companies in its pension portfolio. On the basis that it would take between 15 to 30 minutes to review each one, the Commissioner notes the cost of complying with the request would greatly exceed the appropriate limit under Section 12(1) of the FOIA and the Data Protection (Appropriate Limit and Fees) Regulations 2004. Even if it was possible to exclude 99% of the companies concerned, it would still take between 40 to 80 hours to review them. 40 hours, assuming a review time of 15 minutes per company and 80 hours applying a review time of 30 minutes.

20. Based on the evidence provided by the Council the Commissioner is satisfied that it is justified in applying Section 12(1) to the complainant's request.

**Section 16(1) – advice and assistance**

21. Section 16(1) of FOIA provides that a public authority is required to provide advice and assistance to any individual 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<sup>2</sup> in providing advice and assistance, it will have complied with section 16(1).
22. In general, where Section 12(1) is cited, in order to comply with this duty, a public authority should advise the requester how their request could be refined or reduced to potentially bring it within the cost limit.
23. In the present case, the Council invited the complainant to refine his request by providing a list of the companies which he believed were involved with intensive livestock farming including Intensive Poultry Units. The complainant chose not to do this. Accordingly, the Council provided an estimate of the time and cost to review the entire portfolio of companies (16,000), 10% of the companies (1,600) and 1% of the companies (160). In each scenario, based on a review time of between 15 and 30 minutes, the estimate provided by the Council was far in excess of the 'appropriate' limit under Section 12(1) of the FOIA and the Data Protection (Appropriate Limit and Fees) Regulations 2004.
24. In conclusion, the Commissioner considers that the advice and assistance the Council offered the complainant was adequate. Therefore, the Commissioner is satisfied that the Council has complied with its obligations under Section 16(1) of FOIA in its handling of this request.

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<sup>2</sup> <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

**Right of appeal**

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25. 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](mailto:grc@justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

26. 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.

27. 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**