

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

### **Decision notice**

**Date:** 10 February 2023

**Public Authority:** Royal Borough of Kingston upon Thames

**Address:** Guildhall  
Kingston upon Thames  
Surrey  
KT1 1EU

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

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1. The complainant requested from Royal Borough of Kingston upon Thames (the Council) information relating to council tax payments. The Council refused to comply with the request and cited section 12 (cost of compliance) of FOIA.
2. The Commissioner's decision is the Council was entitled to refuse to comply with the request in accordance with section 12 of FOIA. The Commissioner also finds that the Council complied with its obligations under section 16(1) of FOIA to offer advice and assistance. Therefore, the Commissioner does not require the Council to take any steps as a result of this decision.

#### **Request and response**

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3. On 22 April 2022 the complainant wrote to the Council and requested information in the following terms:

"I would like to request proof of where the Residents Council Tax Payments are being spent.

I would like to see the previous 3 years of receipts for where the council tax funding is being spent.

I do not want to see percentages, but actual proof in pounds (£s) as to where the annual council tax is being spent.

I would like to know if my council tax funds the (Royal Borough of Kingston Upon Thames) Police Service, (Royal Borough of Kingston Upon Thames) Ambulance Service, (Royal Borough of Kingston Upon Thames) Waste Collections and (Royal Borough of Kingston Upon Thames) Schools.

If so, I would like to know as to what percentages it is distributed. In addition, which LAW, not legislation, states that council tax must be paid?

Which LAW states that it is a criminal offence not to pay council tax?

Please attach a copy of the contract in where I agreed to pay for council tax.

Please keep in mind that an 'assumption agreement' does not and will not stand up in court."

4. On 10 May 2022 the Council provided its response. It stated the information requested would take more than 18 hours to compile and refused the request under section 12 (costs) of FOIA. The Council, however, provided links to its website where additional information relating to the Council's finances could be found. It also supplied explanations to other parts of the request.
5. Following a request for an internal review, on 30 May 2022 the Council provided its response and maintained its original position to refuse the request under section 12 of FOIA. With regard to providing advice and assistance (under section 16 of FOIA) to the complainant, the Council said it was unable to offer any suggestions or advice which would bring the request under the 18 hour limit.
6. On 8 June 2022 the complainant wrote to the Council and refined part of her request regarding 'the previous years of receipts for where the council tax funding is being spent', in the following terms:

"...I would like to ask that you provide me half, so for example the last 1.5 years please as this will reduce the amount of hours and you can send me a link to the information to download."
7. On 26 July 2022 the Council responded and still considered section 12 of FOIA to be engaged. The Council also said it had met its duty (under section 16 of FOIA) to provide advice and assistance in providing the complainant with several links to the Council's finances within its previous responses.

## Reasons for decision

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8. The following analysis focuses on whether the Council was entitled to refuse to comply with the request in accordance with section 12 of FOIA. It will also consider whether the Council met its obligation to offer advice and assistance under section 16(1) of FOIA.
9. The Council has not confirmed which subsection of section 12 of FOIA it is relying on. Section 12(1) and section 12(2) are two separate exemptions; section 12(1) exempts a public authority from complying with a request for information if to do so would exceed the appropriate limit. Section 12(2) exempts a public authority to confirm or deny whether it holds the requested information if to do so would exceed the appropriate limit.
10. Given that the Council has provided links to potentially relevant information, it appears that the Council is relying upon section 12(1) of FOIA. Therefore, the Commissioner's analysis will consider whether the Council was entitled to do so.

## Section 12 – cost of compliance

11. 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").
12. The Regulations state the appropriate cost limit is £600 for central government, legislative bodies and the armed forces, and £450 for all other public authorities. The appropriate limit for the Council in this case is £450.
13. The Fees Regulations also specify 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.
14. 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.

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*<sup>1</sup>, the Commissioner considers any estimate must be "sensible, realistic and supported by cogent evidence". The task for the Commissioner in a section 12(1) matter is to determine whether the public authority made a reasonable estimate of the cost of complying with the request.

### **The Council's position**

15. The Council stated the information requested would take more than 18 hours to compile and therefore refused the request under section 12 of FOIA. The Council considered it had provided the complainant with a great deal of information relevant to the request. It had supplied her with links to its website where additional information relating to the Council's finances could be found. However, the Council subsequently said it could have supplied more details regarding its application of section 12. It explained that it does not hold the information in a format that could easily be retrieved, collated and released under FOIA. In order to provide the information, the Council said an officer would be required to retrieve, collate and scrutinise all the Council's financial data for the past three years to determine what was relevant to the request.
16. The Council estimated that providing the information would take substantially in excess of 18 hours to determine appropriate material and locate, retrieve and extract the information within scope of the request.
17. The Council considered the complainant's further FOI request which asked for the same information (previous receipts for where the Council tax funding is being spent) but with reduced number of years from three, to one and a half years.
18. The Council said to fulfil this request would entail downloading "thousands upon thousands of lines of data for all the transactions that the Council fulfils", which would exceed the 18 hours limit to compile.

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

19. The Council responded to the complainant's request for an internal review of the refined request, and maintained its reliance on section 12 of FOIA. The Council explained that although the request had been narrowed, it remains unachievable to comply with the request within the time limit. It said the information is not readily available and it had been calculated that it would take substantially in excess of 18 hours to provide the complainant with the detail requested, even with the revised timeframe.
20. The Council provided the Commissioner with an estimated calculation of the tasks and time involved to determine appropriate material and locate, retrieve and extract the information with reference to the request. The Council stated that during the one and half years in question, there were approximately 56,500 payments for which the Council would need to extract invoices to support them.
21. The Council carried out a sampling exercise and said that based on small samples it had extracted for the revised request, it would take about one minute per transaction to obtain the relevant documents from the accounting system. This equates to approximately 941 hours (130 working days).

### **The complainant's position**

22. The complainant disputed the Council's reliance on section 12 of FOIA to the request, she said the information is already filed as it is financial accounts and these accounts are submitted monthly and tax returns are filed per annum. Therefore, the complainant believes this information is "already fit to literally print and put in a pack" which she said she could physically collect from the Council's office. The complainant is of the view that this task would not take more than two hours.
23. The complainant reiterated her request which was to have sight of the "actual receipts" for where the council tax funding is being spent, and not just details of the date, department and price. She said the information which the Council provided to her (links to the redacted receipts on its website) is not the information which she had asked for.

### **The Commissioner's view**

24. The Commissioner considers the Council estimated reasonably that the cost of complying with the request would exceed the appropriate limit. He accepts the Council's reasonable explanation of its search strategy and its sampling estimates. The Commissioner is satisfied that compliance with this request would exceed 18hours/£450. The Council was therefore entitled to rely on section 12(1) of FOIA to refuse the complainant's request.

## **Section 16 – advice and assistance**

25. Section 16(1) of FOIA provides that a public authority is required to provide advice and assistance to any individual making an information request. 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 that the Commissioner does recognise that where a request is far in excess of the limit, it may not be practical to provide any useful advice.
26. The Commissioner recognises that the Council had attempted to comply with section 16(1) of FOIA by providing the complainant with several links to the Council's finances, and the information within the links were appropriate to the request. The Commissioner also acknowledges that given the extensive nature of the information requested, the Council was unable to offer any suggestions or advice which would bring the request under the 18 hour limit. The Council was unable to assist with narrowing the request sufficiently in order to bring it within the appropriate limit, and the Commissioner accepts the impracticality of doing so.
27. It is also noted that the Council provided an explanation to the complainant about how the information is held and why compliance would exceed the cost limit.
28. In conclusion, the Commissioner considers the advice and assistance the Council offered the complainant was adequate. Therefore, the Commissioner is satisfied the Council complied with its obligations under section 16(1) of FOIA in its handling of this request.

## Right of appeal

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29. 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](mailto:grc@justice.gov.uk).

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

30. 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.
31. 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

**Joanna Marshall**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**