

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 August 2023

Public Authority: Royal Sutton Coldfield Town Council
Address: AFE Business Centre
62 Anchorage Road
Sutton Coldfield
B74 2PG

Decision (including any steps ordered)

1. The complainant has requested information from Royal Sutton Coldfield Town Council ("the Council") in relation to any ICT service providers for the Council. The Council cited section 12(1) of FOIA – cost exceeds the appropriate limit.
2. The Commissioner's decision is that the Council was entitled to rely on section 12(1) of FOIA. He is also satisfied that the Council complied with its requirements under section 16 of FOIA. However, the Commissioner finds that the Council has breached section 10(1) of FOIA, as it did not respond within the statutory timeframe of 20 working days.
3. The Commissioner does not require the Council to take any steps as a result of this decision notice.

Request and response

4. On 24 March 2023, the complainant wrote to the Council and requested information in the following terms:

"Any communications including emails, phone calls or face-to-face meetings (as well as any meeting minutes) related to Voipfone, Microsoft Office365, Adventure, Hubtel IT, Vision ICT within the past one calendar year."

5. Following communication with the Commissioner, the Council responded on 24 May 2023. It stated that due to the broad parameters of the request, it believe that it would take in excess of the appropriate limit of 18 hours. The Council also advised the complainant to narrow the scope of the request.
6. On 25 May 2023, the complainant advised that they would reduce the request to the previous 9 months.
7. Following an internal review the Council wrote to the complainant on 22 June 2023. It stated that it still considered that the shorter timeframe would exceed the appropriate limit of 18 hours and therefore refused to provide the requested information.

Scope of the case

8. The complainant contacted the Commissioner again on 23 June 2023, to complain about the way their request for information had been handled.
9. The Commissioner considers that the scope of this case is to determine whether the Council is entitled to rely on section 12 of FOIA. He will also consider if the Council met its obligations under section 16(1) of FOIA to provide advice and assistance.

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 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 £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.
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/2007/0004*, 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.
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 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.
18. The Council provided the Commissioner with a background to the circumstances which relate to the request. It explained that from March 2022 to December 2022, it had seven information and communication technology service providers. During this period, one of the providers became unsuitable for the requirements of the Council and it became clear that an alternative provider would be required.
19. The Council explained that in December 2022, a company that their service provider was using had a ransomware incident and, as a consequence, the officers of the Council lost all emailing facilities.

20. The Council advised that following the incident, all of the officers needed fresh emailing facilities and new passwords. It also found a contract with a new service provider.
21. The Council explained to the Commissioner that the migration of the services was detailed, lengthy and not without a number of serious complications. It says that it took from December 2022 to the end of January 2023 for the migration to complete.
22. The Council explained that there were routine issues over the following weeks at the new service provider supported Councillors and Council employees in setting up their new accounts.
23. The Council also advised that some emails were never retrieved from the previous service provider. However, it estimated that the number of relevant emails would be in excess of 800.
24. The Council has explained that to retrieve the information, it would have to search 41 email accounts in respect of all of the service providers that serve the Council.
25. The Council has explained that it considers that it would take approximately 164 hours to locate and extract the information.
26. The Council advised that it had carried out a sampling exercise, which consisted of one member of staff looking for the information over 3 accounts with different providers. It explained that it took two hours to retrieve the emails.
27. The Commissioner considers that the Council has estimated reasonably that it would take more than the 18 hours/£450 limit to respond to this request. The Council was therefore correct to apply section 12(1) of FOIA to the complainant's request.
28. The Commissioner notes the complainant has advised that if the request would take 18 hours for the original timeframe of 12 months, then it would be shorter for a 9 month period. In this case, the Council is not advising that it would take 18 hours to find 12 months of correspondence, it is advising that it would take far in excess of 18 hours.

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

29. 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 practice¹ in providing advice and assistance, it will have complied with section 16(1).

30. In this case, the Council advised the complainant to refine the request and it may have been able to provide the information. The Commissioner is satisfied that the Council met its obligations under section 16 of FOIA.

Section 10 – time for compliance

31. Under section 10(1) of FOIA a public authority must comply with section 1(1) promptly and within 20 working days following the date of receipt of the request.
32. The complainant submitted their request to the Council on 24 March 2023 and the Council did not respond until 24 May 2023. As such, the Council breached section 10(1) of FOIA.

Other matters

33. The Commissioner reminds the Council that it should respond to requests within 20 working days of receiving them.
34. The Commissioner also reminds the Council that it cannot take into consideration any redactions when considering section 12 of FOIA. Only the points in paragraph 13 can be considered. Whilst the Council had included them in this case, as the appropriate limit would have still been exceeded the Commissioner has considered that section 12(1) is applicable.
35. The Commissioner also advises the Council that it is best practice to have a procedure for internal reviews under FOIA.

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

Right of appeal

36. 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

37. 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.
38. 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

Michael Lea
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
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SK9 5AF