

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 February 2024

Public Authority: Department for Levelling Up, Housing & Communities

Address: 2 Marsham Street
London
SW1P 4DF

Decision (including any steps ordered)

1. The complainant requested information regarding funding of developments for Skegness Town Council. The Department for Levelling Up, Housing & Communities (DLUHC) refused the request citing section 12 (cost of compliance) of FOIA.
2. The Commissioner's decision is that the DLUHC was entitled to rely on section 12 of FOIA, in response to the request. It has also complied with its duty to provide advice and assistance in line with the requirements of section 16 of FOIA.
3. The Commissioner does not require any steps as a result of this decision.

Request and response

4. On 11 September 2023, the complainant made a request for information in the following terms:

“Please send me copies of key documents of your dealings with Skegness Town Council for totally or partly-funded developments in Skegness generally and Tower Gardens in particular. By this I mean any letters, emails, plans, drawings or other communications from the Town Council and any documents that show or describe the general scope of plans proposed and money to be spent (a) in total and (b) covered by grant funding.

I do not require detailed breakdowns of costs etc (but am happy to receive them) but really I just wish to get a general idea of the scope, costs and grant funding available.”

5. On 10 October 2023, the DLUHC responded citing section 12 to refuse the request and explained the background to the administration process involved. It also provided advice regarding narrowing the scope of the request.
6. The complainant requested an internal review on 12 October 2023, setting out their grounds for dissatisfaction with the DLUHC’s response.
7. The DLUHC provided its internal review response on 19 October 2023 again citing the cost limit exemption under section 12 of FOIA. As part of its section 16 responsibilities the DLUHC further stated it may be possible if a narrowed request were submitted around a particular fund or date range, this could be considered further.

Scope of the case

8. The complainant contacted the Commissioner on 20 October 2023 to complain about the way their request for information had been handled. They included a link to the What Do They Know (WDTK) website and argued that:

“The Department for Levelling Up, Housing & Communities unreasonably maintains that my request for overall general information about a particular small project (the restoration of a small park) with a Town Council (Skegness Town Council) is far too complex and diverse for an answer. For one small project I find that idea quite ridiculous. To me their answer is negligent and/or obstructive and I wish to be sent copies of the key communications for that project. I find it strange that

this unreasonable attitude is held by both the Department and their supposedly independent FOI reviewer.”

“I would like to stress that I am just an ordinary citizen keeping an eye on a local parish (town) council that has a tendency to overspend on high-status projects. I only need copies of key documents that show or describe the general scope of plans proposed and money to be spent (a) in total and (b) covered by grant funding. I do not require detailed breakdowns of costs etc but just wish to get a general idea of the scope, costs and grant funding available.

It's very basic stuff. How can any official funding organisation not be able to provide that?”

9. The Commissioner considers the scope of this case is to determine if the public authority is entitled to rely on section 12(1) of FOIA. He has also considered whether the DLUHC complied with its duty to provide advice and assistance under section 16 of FOIA.

Reasons for decision

Section 12 – cost of compliance exceeds the appropriate limit

10. Section 12 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 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 £600 for public authorities such as the DLUHC.
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 of FOIA effectively imposes a time limit of 24 hours for the DLUHC to deal with this request.
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/20017/0004*, 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 of FOIA is an absolute exemption and 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. When dealing with a complaint to him under FOIA, it is not the Commissioner’s role to make a ruling on how a public authority deploys its resources or how it chooses to hold its information.
18. Therefore, as set out in the Fees Regulations, the Commissioner has considered whether the estimated cost of responding to the request would exceed the appropriate limit of 24 hours.
19. As is the practice in a case where a public authority has cited the cost limit under section 12, the Commissioner asked the DLUHC to provide a more detailed explanation of its cost estimate.
20. The DLUHC explained to the Commissioner that:

“the Department does not centrally hold the information requested and would be required to approach policy areas across the Department. In order to reasonably determine whether the Department held information in scope of this request and to retrieve all of this information, we would not only have to approach every current Departmental policy area which administers a funding programme, but also conduct a search of any wound-down policy areas’ archives as the applicant did not provide a specific scope.

21. The DLUHC also gave a breakdown for its search criteria:

"Based on the parameters provided in the applicant's original request, which does not include a set timescale, the Department's Records team have estimated the following amount of time it would take to search across our archives at current network speeds and with likely search strategies:

- 1) Search of active email accounts (circa 3500) 12 hours
- 2) Search of inactive email accounts (circa 1000) 4 hours
- 3) Search of Azure Blob storage 8 hours
- 4) Search of SharePoint (including Teams accounts) 12 hours
- 5) Search of the departmental records catalogue 3 hours

Total time spent searching: 39 hours."

22. It further explained that:

"In addition, due to the broad scope of the applicant's original request, the Department is only able to conduct its searches using terms such as "Skegness" and/or "Skegness funding". As such, further examination of all search returns would be required to positively determine if they fell in scope, or if they were secondary mentions of Skegness unrelated to the applicant's request. Doing so would add to the 39 hour estimate established by the Department's Records team."

23. Section 1 FOIA provides a general right of access to information requested. However, a public authority has a duty to consider whether any information located and retrieved is relevant to the request. For these reasons it is not a case of merely providing the information without reviewing it to determine if the information held could be in scope.

24. In light of this, the DLUHC explained that: "At minimum, it would cost £975 for the Department to conduct its searches (£25 x 39 hours). This does not include the additional time it would take to extract the relevant information from those searches, as it is unknown how much information the Department holds in scope of the applicant's original request."

25. Therefore, to determine if information is held and provide the same, the DLUHC demonstrated this would be well in excess of the 24 hours permitted.

26. Even if it were possible to reduce the amount of time taken (which would seem unreasonable given the above) to check the files, this would still be over the threshold limit at 24 hours.
27. Having considered the information provided, the Commissioner's overall conclusion is that the DLUHC has estimated reasonably and cogently that to comply with the complainant's request would exceed the cost limit of 24 hours. The DLUHC was therefore entitled to apply section 12(1) of FOIA to the complainant's request.

Section 16 – advice and assistance

28. Section 16(1) of FOIA provides that a public authority is required to provide advice and assistance to any individual making an information request where it would be reasonable to do so. 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. In general, where section 12 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.
30. The Commissioner notes that the DLUHC provided meaningful advice and assistance as to how the requester could refine their request in order to narrow the scope of the initial request for information both in its original response and later in the internal review, however, the complainant declined to follow the advice given at that time.
31. The Commissioner considers this was an appropriate response in the circumstances given the nature of the original request. He is therefore satisfied that the DLUHC met its obligation under section 16 of FOIA and does not require it to take any steps.

Right of appeal

32. 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@hmcts.gsi.gov.uk>

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

33. 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.
34. 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

Susan Duffy
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF