

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 June 2024

Public Authority: Brighton and Hove City Council
Address: Hove Town Hall
Norton Road
Hove
BN3 3BQ

Decision (including any steps ordered)

1. The complainant has made two requests for information about PCN appeals relating to bus gates installed at Valley Gardens. Brighton and Hove City Council ("the council") aggregated the two requests and refused to comply with them under section 12(1) (cost of compliance) of FOIA.
2. The Commissioner's decision is that the council has not demonstrated that section 12(1) is engaged but has otherwise complied with section 10(1) of FOIA.
3. The Commissioner requires the council to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response to the two requests that does not seek to rely on section 12.
4. The council must take these steps within 30 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

5. On 15 October 2023, the complainant wrote to the council and requested information in the following terms:

"I am making an Information Request under the FOI Act, regarding the new bus-gates in the centre of Brighton, at York Place, St George Place, St Peter Place, Gloucester Place and Marlborough Place.

I understand that appeals against fines are ultimately decided by the Traffic Penalty Tribunal, so am requesting information about their decisions.

Request 1:

For each of these bus-gates, please state the numbers of TPT Appeals which were:

- a) Allowed (decided in the driver's favour),
 - b) Refused (decided in the authority's favour), and
 - c) Not Contested by the Authority,
- in each year since these bus-gates started.

Request 2:

I understand from statements in the local press, that only a limited number of Traffic Penalty Tribunal (TPT) Appeals have been Allowed (decided in the driver's favour). Therefore, for these bus-gates, please supply all of the Adjudicator's Decision Notices, for appeals which were Allowed."

6. The council responded on 14 November 2023. It stated that information was held in respect of the two requests, but that the two requests in conjunction would exceed the appropriate limit in costs set by section 12(1), and provided its reasoning for this. It advised that it may be able to provide some of the information within the costs limit (specifically, that sought by Request 1), and invited the complainant to submit a refined request for that information.
7. Following an internal review, the council wrote to the complainant on 11 December 2023. It maintained that it had correctly applied section 12(1), and provided further detail about its basis for this.

Scope of the case

8. The complainant contacted the Commissioner on 31 December 2023 to complain about the way their request for information had been handled, and specifically that the council was not entitled to refuse the request under section 12(1), and had not otherwise complied with section 10(1) of FOIA.
9. Due to his findings on section 12(1), the Commissioner has not considered whether council has complied with section 16 of FOIA.

Reasons for decision

Section 12 – Exemption where cost of compliance exceeds appropriate limit

10. Under section 12(1), the appropriate limit in costs for the council as a local public authority is £450, or 18 hours of officer time.
11. When considering whether the appropriate limit has been reached, a public authority may aggregate the cost of a number of requests¹. This includes multiple requests made within a single item of correspondence.
12. 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”).
13. The Fees Regulations specify that the appropriate limit is set at £600 for central government and £450 for non central government public authorities. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour.
14. This means that a central government department may refuse the request for information under consideration if it estimates that it will take longer than 24 hours to comply with it. For non central government public authorities the limit is 18 hours.

¹ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/section-12-requests-where-the-cost-of-compliance-exceeds-the-appropriate-limit/#aggregate>

15. 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.
16. 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".
17. The task for the Commissioner when considering section 12 is to reach a conclusion as to whether the cost estimate made by the public authority was reasonable; in other words, whether it estimated reasonably that the cost of compliance with the request would exceed the limit of £600 or £450. If it did then section 12(1) applied and it was not obliged to comply with the request.

The Commissioner's investigation

18. The Commissioner wrote to the council on 30 April 2024 to request its arguments for the application of section 12(1). The Commissioner drew the council's attention to concerns raised by the complainant that the council's basis for applying section 12(1) (which were different in the response and internal review) were not cogent, and in particular, the council's position that it would need to manually review 700 cases a year, which the complainant has argued did not correlate to that information already public.
19. The council responded to state that compliance with the requests would take 35 hours per year's worth of information. This was based on needing to review 700 appeal cases a year, which sampling suggested would take 3 minutes for each case. It did not indicate how many years of information related to the request. It informed the Commissioner that the full rationale for its position was contained in its response and internal review.

20. The Commissioner wrote further to the council on 9 May 2024, on the basis that the council's reasoning for its cost estimate remained unclear. He invited the council to provide any final submissions to address this.
21. The council responded further. It explained that the requested information is contained in the Traffic Penalty Tribunal (TPT) portal, and that the council would need to check each case to decide whether it relates to the specific bus gates given in the request. The council further indicated that the information sought by request 2 (the TPT decision notices for allowed appeals) may not actually be held by it, as the council would need to retrieve it from the TPT portal.

The Commissioner's conclusion

22. The Commissioner has reviewed the council's reasoning.
23. The Commissioner is aware that the council has indicated it could comply with Request 1, but that Request 2 would exceed the appropriate limit.
24. However, the Commissioner perceives that Request 2 seeks only specific information (TPT decision notices where an appeal has been allowed), and the council has not – in the Commissioner's view – clearly explained why it has estimated that the identification of those allowed appeals would exceed the appropriate limit.
25. The Commissioner broadly interprets that the council's arguments relate to the difficulty of correlating the appeals (to the TPT) to the council's own PCN records. However, the Commissioner perceives that if allowed appeals are already known, there must be a feasible way by which the council can effectively connect an allowed appeal back to the original PCN records. Otherwise, there would be no way for the council to respond to such appeals and comply with the decisions of the TPT.
26. It is also unclear to the Commissioner how the council has concluded there are 700 cases a year, as the data published by the TPT suggests that there are significantly less (the TPT portal indicates there were 331 appeals for 2020-2021, and 361 appeals for 2021-2022)².
27. The Commissioner also understands that the sought information relates only to bus gates that have been in operation since the start of 2021.

² <https://www.trafficpenaltytribunal.gov.uk/appeals-data/by-authority/>

However, the council, in its internal review response, appears to have considered information from 2018 onwards.

28. Lastly, the Commissioner understands, from the council's submissions to him, that it may not in fact hold the TPT's decision notices, as such documents are issued by the TPT, and are not centrally held by the council.
29. For the above reasons, the Commissioner is not persuaded that the council has estimated reasonably that the complainant's information request would exceed the cost limit. His decision is, therefore, that section 12(1) is not engaged.

Procedural matters

30. The complainant has raised concerns about the timeliness of the council's response to their request.
31. Section 1(1) of FOIA states that an individual who asks for information is entitled to be informed whether the information is held and, if the information is held, to have that information communicated to them.
32. Section 10(1) of FOIA states that: "Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt".
33. The Commissioner's guidance³ clarifies that the obligation to respond promptly means that an authority should comply with a request as soon as is reasonably practicable. Whilst this is linked to the obligation to respond within 20 working days, it should be treated as a separate requirement. A public authority will need to both respond both promptly and within 20 working days, in order to comply with section 10(1).
34. The Commissioner expects that careful deliberation will be given to any decision to apply section 12(1) and it is not a decision which should be reached lightly or without adequate supporting evidence. In this case, while he disagrees with the council's decision, the Commissioner is satisfied that prior to reaching it, the requirements of section 12(1) meant that the council had to consider a number of factors in respect of

³ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/time-limits-for-compliance-under-the-freedom-of-information-act-section-10/>

the two information requests, as well as liaising with relevant officers in Parking Services. The Commissioner considers it reasonable that this should take 20 working days. Consequently, the Commissioner finds no failure to respond “promptly” and no breach of section 10(1) of FOIA.

Other matters

35. The Commissioner notes that the council has suggested that the requested information (TPT decision notices) may not be held by it. The Commissioner reminds the council that when issuing a fresh response to these requests, it may wish to consider and address whether some, or all, of the information is held, before taking further steps under FOIA.
36. The Commissioner also refers the complainant to the following observations, which may be of assistance to them in the event they make an information request in the future:
 - The time limit given for section 12 does not provide an ‘allowance’ of time for the requester. Once an authority reasonably estimates that the cost of a request would exceed the limit, the request can be refused.
 - A request made by reference to the cost limit (i.e., “18 hours’ worth of information on...”) is unlikely to be a valid request for the purposes of section 8 of FOIA, as it does not properly identify the information sought.
 - When refusing a request, an authority is only obliged to provide a refusal notice and comply with its duty under section 16. It is not obliged to give detailed calculations, screenshots, or otherwise comply with instructions.

Right of appeal

37. 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

38. 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.
39. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Daniel Perry
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