

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 May 2024

Public Authority: Kent County Council
Address: County Hall
Maidstone
Kent
ME14 1XQ

Decision (including any steps ordered)

1. The complainant requested information from Kent County Council ("the Council") relating to contracts between the Council and a construction company.
2. The Commissioner's decision is that the Council is entitled to rely on section 12(1) (cost limit) to refuse to comply with the request. He also finds that the Council met its obligations under section 16(1) of FOIA to offer advice and assistance.
3. The Commissioner does not require the Council to take any steps.

Request and response

4. On 8 August 2023, the complainant wrote to the Council and requested information in the following terms:

"Please accept this letter as a request for information under the Freedom of Information Act 2000.

1. The information requested is as follows:

- 1.1 All correspondence including letters and emails held by the Council relating to a contract or contracts including a Professional Services Contract between the Council and Morgan Sindall Construction and Infrastructure Ltd

("Morgan Sindall") in connection with land off Cockerling Road, Thanington near Canterbury and the construction of a primary school and nursery.

- 1.2 A signed and dated copy of any contract including any Professional Services Contract between the Council and Morgan Sindall.
 - 1.3 Details of the procurement process adopted by the Council, including all key dates for awarding any contract to Morgan Sindall including the date on which the Department for Education or any other authorising body gave its approval for the Council to contract with Morgan Sindall for the construction of the primary school and nursery."
5. The Council responded on 6 November 2023 and refused to provide the information requested in part 1.1 of the request citing section 12(1) (cost limit) of FOIA as its basis for doing so. The Council also refused to provide the information requested in parts 1.2 and 1.3 of the request under section 21 (information accessible by other means) of FOIA.
 6. On 29 November 2023 the complainant requested an internal review. By the date of this notice, the Council has not provided the complainant with the outcome of its internal review.

Reasons for decision

7. This reasoning covers whether the Council is entitled to rely on section 12(1) to refuse to comply with part 1.1 of the request.
8. Under section 12 of FOIA, a public authority can refuse to comply with a request in its entirety if it estimates reasonably that the cost of complying with part of a request would exceed the cost limit, even if the request could be complied with in part within the cost limit.
9. Therefore the Commissioner will only go on to consider whether the Council is entitled to rely on section 21 to withhold the information requested in parts 1.2 and 1.3 of the request if he finds that the Council is not entitled to refuse the request in its entirety under section 12(1) of FOIA.

Section 12(1) – 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 cost

limit. The appropriate limit for public authorities such as the Council is £450. As the cost of complying with a request must be calculated at the rate of £25 per hour, section 12(1) effectively imposes a time limit of 18 hours for the Council.

11. 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
12. 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/20017/00041*, 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.

The Council’s position

13. In its submissions to the Commissioner the Council stated that in order to comply with part 1.1 of the request, it would need to search for information relating to a professional services contract (PSC). It explained that information relating to the PSC would be held within the inboxes of the 4 strategic projects officers involved with the PSC.
14. The Council explained that the lead strategic projects officer has conducted a search of their inbox for information falling within the scope of part 1.1 of the request. This search identified 600 emails. The Council estimates that it would take approximately 30 seconds to review each email and determine whether it falls within the scope of part 1.1 of the request and so it calculated that in total it would take 5 hours to review all 600 emails. Based on this, the Council estimates that it would take approximately 20 hours to search the inboxes of all 4 strategic project officers involved with the PSC for information falling within the scope of part 1.1 of the request.
15. The Council stated that in order to comply with part 1.1 of the request it would also need to search for information relating to a framework

contract as the PSC is underpinned by that contract and must be read in the context of it. It explained that information relating to the framework contract is held within the inboxes of the 21 officers involved with the contract. Information is also held in a shared network drive and central project folder.

16. The Council explained that one of the officers involved in the framework contract has carried out a search of their inbox for information falling within the scope of part 1.1 of the request. This search identified 151 emails. The Council estimates that it would take approximately 30 seconds to review each email to determine whether it falls within the scope of part 1.1 of the request and so in total, it calculated that it would take approximately 1.25 hours to review all 151 emails. Based on this, the Council estimates that it would take approximately 26.4 hours to search the inboxes of all 21 officers who were involved in the framework contract for information falling within the scope of part 1.1 of the request.
17. The Council explained that it has conducted a search of the shared network drive for the framework contract for information falling within the scope of part 1.1 of the request. This search identified 529 documents. The Council estimates that it would take approximately 30 seconds to review each document to determine whether it falls within the scope of part 1.1 of the request and so in total, it calculated that it would take 4.4 hours to review all 529 documents (529 documents x 30 seconds = 4.4 hours).
18. The Council explained that it would also need to review all 424 messages in the framework contract's central project folder to determine whether they fall within the scope of part 1.1 of the request. The Council estimates that this would take approximately 3.5 hours (424 messages x 30 seconds = 3.5 hours).
19. The Council explained that as information within the scope of part 1.1 of the request may also be held within Microsoft Teams and each officer involved with either the PSC or framework contract would need to review their Microsoft Teams messages and calendar events for information falling within scope of part 1.1 of the request. Whilst the Council did not provide an estimate of the amount of time it would take to carry out these searches, it stated that as Teams messages are not marked by topic or subject it expects the searches to impose a substantial burden
20. The Council stated that in total it estimates that it would take a minimum of 54.3 hours to comply with part 1.1 of the request. It explained that this estimate does not include the amount of time it

would take to search Microsoft Teams for information falling within the scope of part 1.1 of the request.

The Commissioner's position

21. The Commissioner considers the Council's estimate of 54.3 hours to comply with part 1.1 of the request to be reasonable. Even if the cost estimate provided by the Council was halved, the cost of complying with part 1.1 of the request would still exceed the appropriate limit.
22. Under section 12 of FOIA, a public authority can refuse to comply with a request in its entirety if it estimates reasonably that the cost of complying with part of a request would exceed the cost limit, even if the request could be complied with in part within the cost limit.
23. Therefore, whilst the Council has only applied section 12(1) to part of the request, as the cost of complying with part 1.1 of the request exceeds the cost limit, the Commissioner considers that the Council is entitled to refuse to comply with the request in its entirety.
24. The Commissioner's decision is that the Council estimated reasonably that the cost of complying with the request would exceed the appropriate limit. Therefore, the Council is entitled to apply section 12(1) of FOIA to the entirety of the request.
25. As the Council is entitled to rely on section 12(1) of FOIA to refuse to comply with the request in its entirety, the Commissioner has not gone on to consider the Council's application of section 21 to parts 1.2 and 1.3 of the request.

Section 16 – advice and assistance

26. 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).
27. In its initial response to the request, the Council advised the complainant that they could reduce the scope of their request to bring it within the appropriate limit. The Council suggested to the complainant

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

that they could narrow the scope of their request by limiting it to correspondence containing a particular key word rather than requesting information relating to a certain topic.

28. The Commissioner considers that this was an appropriate response in the circumstances given the broad scope of the original request. He is therefore satisfied that the Council met its obligations under section 16(1) of FOIA.

Other matters

29. The Commissioner cannot consider in a decision notice the amount of time it took a public authority to complete an internal review because such matters are not a formal requirement of FOIA. However, it is good practice to offer an internal review, and, where a public authority chooses to do so, the code of practice established under section 45 of FOIA sets out, in general terms, the procedure that should be followed. The code states that reviews should be conducted promptly and within reasonable timescales.
30. The Commissioner has interpreted this to mean that internal reviews should take no longer than 20 working days in most cases, or 40 working days in exceptional circumstances. By the date of this notice, the Council has not provided the complainant with the outcome of its internal review, 5 months after it was originally requested. The Commissioner considers that the Council has failed to act in accordance with the section 45 code of practice.
31. These concerns will be logged and used by the Commissioner when considering the overall compliance of the Council.

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

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.

Victoria James
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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Cheshire
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