

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 July 2024

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

Decision (including any steps ordered)

1. The complainant requested information relating to a contract. Brighton & Hove City Council (the "Council") confirmed that the cost of complying with the request would exceed the appropriate limit, and as such it was relying on section 12 (cost limit) of the FOIA to refuse the request.
2. The Commissioner's decision is that the Council is entitled to rely on section 12(1) (cost limit) of the FOIA to refuse to provide the requested information. However, he finds that the Council failed to provide reasonable advice and assistance and therefore did not meet its obligations under section 16(1) of the FOIA.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation:
 - The Council must provide the complainant with advice and assistance to help them submit a request falling within the appropriate limit.
4. The Council must take these steps within 35 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 2 January 2024 the complainant asked Brighton & Hove City Council (the "Council") for the following information:

"Please could you send me a copy of the contract between B&H Council and the Blink EV Charging company. Please could you send me copies of the minutes of any meetings pertaining to this contract including meetings between Blink and B&H officials and meetings within the Council."

6. The Council responded on 22 January 2024 and confirmed that it was withholding the information under the exemption for commercial interests – section 43(2).
7. On 16 February 2024 the Council provided the complainant with its internal review decision. This confirmed that it was dropping its reliance on section 43(2) and, instead, refusing the request under section 12 as it considered that the cost of compliance would exceed the appropriate limit.

Scope of the case

8. On 12 March 2024 the complainant contacted the Commissioner to complain about the way their request for information had been handled.
9. The complainant disputes the Council's grounds for refusing the request. The Commissioner has, therefore, considered whether the Council correctly applied section 12 in this case.

Reasons for decision

Section 12 – cost of compliance

10. Section 12(1) of FOIA provides 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 Fees Regulations 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.
15. 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,
16. 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.
17. 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.
18. 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?

19. The Council has explained that, although its initial response relied on the exemption in section 43(2) to refuse the request, it transpired during

the internal review that records had not been gathered. The review, therefore, focused on asking the relevant service to locate the information and to understand whether the appropriate limit had been reached. The understanding was that the service had indicated that they had not looked at the minutes because they already knew that the contract and many of the minutes would be excluded because of commercial interests.

20. The Council has explained that the review concluded that the information could not be provided because of the number of records that it was estimated would need to be gathered and looked through to enable a response to be provided.
21. In relation to the grounds for applying section 12, the Council has provided the following estimates it made to allow calculation of the appropriate limit:
 - Reviewing documents 107 documents x 4.49 mins = 480.43
 - Extracting information from documents 107 documents x 12.1 mins = 1294.70 mins
22. The Council confirmed to the Commissioner that the scope of the request encompassed some three and half years of records and that the total time it would take to comply with the request is estimated at 1775.13 minutes – the equivalent of 29.58 hours at 25.00 per hour = £739.50.

The Commissioner's decision

23. Based on the estimates provided, the Commissioner is satisfied that the Council's explanations regarding the activities and processes necessary in order to comply with the request appear reasonable. Based on the Council's representations regarding the volume of information captured by the request, the Commissioner accepts that the work involved in complying with the request would be considerable.
24. Having considered the detailed estimate provided by the Council, the Commissioner finds that it is realistic and reasonable. He therefore accepts that the Council estimated reasonably that to provide the requested information would exceed the appropriate limit and that section 12(1) has been correctly applied in this case.

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, so far as it would be reasonable to expect it to do so.

26. In general, where section 12(1) is cited, in order to comply with this duty a public authority should advise a 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.
27. The Commissioner's guidance on advice and assistance also confirms that, where an authority receives a request that is estimated to exceed the appropriate limit under section 12, it should first think about whether there is any information that can be provided within the cost limit and free of charge. The Commissioner has issued numerous decision notices where the authority has breached section 16 because of a failure to do this¹.
28. In this case the Council's internal review advised the complainant: "Unfortunately, we are unable to suggest any refinements to your request that would fall within the 18-hour time limit."
29. The Commissioner disagrees with the Council's position and considers that, in this case, it would have been reasonable for the Council to provide advice and assistance to the complainant in a number of ways. This might include either offering to provide the complainant with such information that could be disclosed within the appropriate limit or suggesting that the complainant submit a refined request specifying a narrower timeframe.
30. In light of the above the Commissioner's decision is that the Council did not provide the complainant with adequate advice and assistance and therefore breached section 16(1) of FOIA.

¹ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/section-16-advice-and-assistance/#advice>

Right of appeal

31. 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

32. 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.
33. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Christopher Williams
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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