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**IN THE FIRST-TIER TRIBUNAL  
GENERAL REGULATORY CHAMBER  
(INFORMATION RIGHTS)**

**Appeal No: EA/2011/0229**

**ON APPEAL FROM:**

**The Information Commissioner's Decision Notice No: FS50368305  
Dated: 22 September 2011**

**Appellant: Kevin Scranage**

**Respondent: The Information Commissioner**

**2nd Respondent: Rochdale Metropolitan Borough Council**

**Heard on the papers**

**Date of Hearing: 22 March 2012**

**Before**

**Christopher Hughes**

**Judge**

**and**

**Rosalind Tatam and David Wilkinson**

**Tribunal Members**

**Date of Decision: 30 March 2012**

**Subject matter:**

Section 12 Freedom of Information Act 2000

Regulations 3 and 4(4) of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (SI 2004/3244).

**DECISION OF THE FIRST-TIER TRIBUNAL**

The Tribunal upholds the decision notice dated 22 September 2011 and dismisses the appeal.

Dated this 30<sup>th</sup> day of March 2012

Judge Christopher Hughes

[Signed on original]

## **REASONS FOR DECISION**

### The request for information

1. On 1 October 2010, the Appellant wrote to the Second Respondent (“The Council”) requesting information in the following terms:

“Please disclose

how many people have been employed in the council’s planning and regulation department in the years 2004 to date,

how many complaints have been received by that department in each financial year,

how many were held to have been justified and

how many prosecutions the council has taken.”

2. The Council first responded to the request by letter of 20 October 2010, indicating that, in relation to the first part of the request, the information would soon be forwarded to the Appellant and requesting clarification of the information sought in the second, third and fourth parts of the request.

3. The Appellant responded to the Council’s request by letter of 22 October 2010, clarifying his request as follows:

“Please provide details of all complaints both from members of the public about professionals areas falling within the remit of Planning and Regulation (eg Planning, Consumer Advice, Trading Standards, and Environmental Health etc) and complaints from the public about perceived poor service by the Service or its staff for each of the financial years 2004/5, 2005/6, 2006/7, 2007/8, 2008/9, 2009/10 and 2010 to date

together with the total numbers judged to have been justified and the number of prosecutions taken in each of these financial years”

4. In a separate letter to the Council of the same date, the Appellant gave further information about his understanding of “complaint” as:-

“...any problems or potential breaches identified by all other “enforcement” activities for example inspection, sampling, project work, test purchasing etc”.

5. On 9 November 2010 at the Council responded in part to the first request; however it was unable to provide the data from 2004 – 7 because of a system change. It refused to provide the data about complaints on the basis that the cost of so doing would exceed the statutory limit. The Appellant was invited to "redefine" his request.
6. He was dissatisfied and on 12 November 2010, the Appellant e-mailed the Council indicating that he did not accept that compiling the requested information would take more than 18.5 hours and so exceed the appropriate financial limit set out in the Fees Regulations. On 15 November 2010 he wrote to the Council redefining his request:
7. “Please provide numbers of all complaints received across planning and regulation for the years specified, total number judged to be justified and total number of prosecutions taken together with number proven.”
8. After further correspondence between the Council and the Appellant in which the Council sought further clarification, the Council stated on 10 January 2011 that it was refusing the redefined request as “the information sought would take more than 18.5 hours to compile”. It subsequently conducted a review of its handling of the Appellant’s requests. On 8 April 2011, the Council wrote to the Appellant to inform him of the outcome of the internal review which was to confirm that it held the information requested and to maintain the Council’s position that it would take more

than 18 hours to process his request. The internal review letter also explicitly relied on section 12 FOIA and Regulations 3 and 4(4) of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (SI 2004/3244) ("the Fees Regulations").

#### The complaint to the Information Commissioner

9. The Appellant complained to the Commissioner. The Council provided the Commissioner with further information as to how it reached its decision in relation to section 12 FOIA (including material compiled for its internal review of the request) on 18 May 2011. The Commissioner noted that in carrying out its own internal review the Council had estimated that compliance with the second, third and fourth parts of the request would take approximately 154 hours. Applying the statutory costing regime of £25 per hour compliance with the request would cost the council £3850. The Commissioner concluded that the time estimates for compliance was a reasonable one; while the Appellant argued to the contrary, the Commissioner took account of the Council's description of its previous experience in providing returns from its "Flare" database for regulatory purposes. These required the collation of similar information to that requested by the Appellant. The Commissioner issued a Decision Notice dated 22 September 2011 in which he found that the Council were entitled under section 12 FOIA to refuse to comply with the Appellant's request on the grounds that compliance would exceed the appropriate costs limit.

#### The appeal to the Tribunal

10. On 19 October 2011 the Appellant challenged this decision. His Notice of Appeal is long and much of it addressed his employment dispute with the Council and the subsequent employment tribunal hearing. In it he stated:-

"it is not true that I had "little appetite" to refine my search. (Paragraph 24) I was perfectly happy with the total numbers of complaints received which could be calculated quite simply by subtracting the number allocated to the first complaint in any year from that of the last and the total number of prosecutions which I know from

personal experience was of a small number and details of all prosecutions were recorded manually in a green book. It is clear the Council did not want to provide any information for the reasons already explained, namely that it would fundamentally undermine their case against me in the employment tribunal which has been orchestrated by (name redacted) himself the very person who was refusing my FOIA request.

Also as the Council itself made reference (paragraph 23) to the completion of various statutory returns. The information I have requested will have already been compiled for these returns and so could simply have been lifted from them."

11. In the Notice of Appeal there are repeated claims that the Council and its officers "tell lies".

#### The question for the Tribunal

12. In the view of the Tribunal there is only one issue of substance to be determined; whether the Commissioner was correct in concluding that the Council was entitled to rely on section 12 FOIA in refusing to comply with the request on the grounds that compliance would exceed the costs limit.

#### Evidence

13. The witness statement filed on behalf of the Council provides a reasonably full account of the Council's understanding of the request and how it sets about calculating the likely cost of compliance:-

"This request struck me as being very wide ranging and likely to take a considerable amount of time to enable the requested information to be supplied. It was for that reason that I wrote to him on 20 October 2010 (page 42) to seek clarification of the ambit of his request. In effect, I was giving him the opportunity to restrict his request

to areas which related to his work which I could understand he might wish to refer to in the employment tribunal proceedings.

From his reply of 22 October 2010 (page 43) it was apparent that he was seeking information about the whole of the planning and regulation service and that it was about both substantive complaints and about the level of service offered. His other letter of that date (page 44) set out his definition of "complaint".

...

In reaching my conclusion about the time likely to be taken to collate the information requested I took account of the fact that information was sought about five separate financial years and that there are numerous databases in use across P&R. These include Flare/APP for the former Trading Standards and Environmental Health functions, licensing uses LALPAC; Planning uses APAS; the Register office uses RON; and the Coroner's office uses Mountain. At that stage I did not calculate a specific figure, although my initial calculation put it out above 100 hours. When the Appellant was deemed to have requested an internal review of my decision I calculated the requisite time as being 105 hours. For the licensing and planning functions I calculated that a total of 35 hours would be entailed. For each of the Registrar and Coroner four hours would be required.

The number of new entries onto each database will vary according to the size of the section using it and the volume of work generated in that section. The number of new entries is therefore difficult to quantify, but will be considerable for each database "usually in the thousands over the course of the year". Irrespective of "running time" for the system it would require an examination of each entry to ascertain whether it was a complaint which requires investigation is a substantive issue or whether it connoted a complaint about service provided (or both)."

14. The Appellant provided a wide-ranging witness statement which largely addressed issues in and the conduct of his employment tribunal claim. However he did provide a

number of statements as to specific numbers of actions of various sorts which the council had taken for example (quoting from a letter he had sent):-

“the total number of prosecutions taken (I know there can't have been more than two or three a year so to suggest it takes over 18.5 hours to count them is absurd)

the number of average quantity reference tests (approximately 0 per year)

the number of underage sales test purchase attempts (I know nil returns had been submitted to regional figures on the number of occasions)

the number of prosecutions taken and that the consumer protection from unfair trading regulations 2008 (approximately 0)”

### Legal analysis

15. While in his notice of appeal, witness statement and submissions the Appellant has argued that the request was much simpler than the Council suggested, was more straightforward and could be easily complied with (in part by using the existing statutory returns or counting the number of entries in a logbook) a public authority receiving a FOIA request has to consider the actual words and natural meaning of the request. The Council in this case sought clarification in order to restrict the range of the request and the amount of work needed in order to comply with it. The response of the Appellant was not helpful in this matter and left the Council with a request which it properly interpreted as wide ranging and requiring the inspection of a large number of individual records in order to determine whether or not the information they contain fell within the specified categories of information sought; rather than the simple automated enumeration of files.

16. One of the restrictions on the general obligation on public authorities to comply with FOIA requests is provided by S12 FOIA which provides (so far as is relevant):-

“(1) Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.”



17. The appropriate limit is provided by the Fees Regulations which provide by Regulation 3(3) that the cost limit for a local authority is £450 and by Regulation 4(4) that the calculation of the cost of staff time is at an hourly rate of £25; this gives a cost limit of 18 hours of officer time to carry out the necessary activities of (Regulation 4(3)):-

“ ...

- (a) determining whether it holds the information,
- (b) locating the information, or a document which may contain the information,
- (c) retrieving the information, or a document which may contain the information, and
- (d) extracting the information from a document containing it.”

18. The evidence of the Council demonstrated that these activities would require many multiples of 18 hours to complete.

#### Conclusion and remedy

19. The Appellant has not submitted any substantive evidence upon which the Tribunal could rely. The evidence before it from the Council was consistent with the amount of time likely to be required in order to comply with a wide-ranging request for information held in a number of databases and spread over a number of years. The Council made some attempt to refine the search; and while the Information Commissioner found that the Council failed to provide adequate advice and assistance under section 16 (1) of FOIA it is likely that any further attempts would have been equally unavailing. The Tribunal is satisfied that the decision of the Commissioner was in accordance with the law and therefore the Decision Notice is upheld.

20. Our decision is unanimous

Judge Christopher Hughes

[Signed on original]

Date: 30 March 2012