

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 15 August 2011

Public Authority: Portsmouth City Council
Address: Civic Offices
Guildhall Square
Portsmouth
PO1 2AL

Summary

The complainant requested information about Council properties sold to Council employees in specified years. The Council aggregated previous requests from the complainant, which asked for the same information over different time periods, and stated that to comply with the request would exceed the appropriate cost limit. The Commissioner found that the Council had appropriately applied section 12(1) of the Act and requires no steps to be taken.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

Background

2. The complainant has made previous requests to Portsmouth City Council (the "Council") regarding the sale of Council properties to elected members of the Council, ex-elected members, employees and ex-employees. A complaint about the way the Council handled one of those requests has previously been made to the Commissioner and was considered under case reference FS50211876.
3. The request to which this Notice relates and other requests referred to in this Notice refers to the Council's Asset Management Service. The

Asset Management Service manages and maintains properties owned by the Council¹.

The Request

4. On 25 October 2010, the complainant made the following request to the Council:

"Please provide details of the sale of any council properties by PCC [Portsmouth City Council] Asset Management Service, outside the right to buy process, to Council staff for the years 2005 and 2006."

5. The Council refused the request on 19 November 2010. It said that it had received a number of requests from the complainant on the same subject and that it had aggregated the cost of dealing with those requests and the latest request. The Council estimated that to comply with the request of 25 October 2010 would take 14 hours and 20 minutes and that, when taken together with the aggregated requests, would exceed the appropriate limit of 18 hours prescribed by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the "Fees Regulations"). The Council therefore refused to comply with the request on the basis that section 12(1) of the Act was engaged.
6. On 25 November 2010, the complainant made a request for an internal review of the Council's decision not to comply with his request. He said that the *"cumulative effect of cost"* was irrelevant because the Council did not provide him with any information following his previous requests. He also said that some of the requests were made more than 60 days before his request of 25 October 2010. The complainant added to his request for an internal review on 26 October 2010. He said that he had not previously made a request for the time period quoted in his request of 25 October 2010 and that he considered this made the Council's argument for not complying with the request *"even more fallacious"*.
7. The Council issued the findings of its internal review on 15 February 2011 and maintained its position that it had appropriately refused to comply with the request.

¹ <http://www.portsmouth.gov.uk/business/asset-management.html>

The Investigation

Scope of the case

8. On 16 February 2011 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points.
 - He disagreed with the Council's application of section 12 of the Act.
 - He considered the Council's decision to aggregate requests to be flawed because previous requests related to different time periods and his request of 25 October 2010 was submitted more than 60 days after the last request.
 - The Council was in breach of the Act in not complying with an internal review within the statutory time limits.
 - The Council was *"in breach of a former ICO ruling in providing help with this request"*.
9. The Commissioner's investigation has not considered the last two bullet points listed in paragraph seven, above, for the following reasons.
 - The Act includes no statutory timescale for the completion of an internal review into the handling of a request. The Commissioner has, however, included comments on this issue in the *'Other matters'* section, below.
 - If the complainant considers that the Council has failed to comply with the steps ordered in a previous Decision Notice, that is a separate issue that cannot be dealt with through the mechanism of another Decision Notice but is addressed by the Commissioner's enforcement staff.
10. The Commissioner's investigation focused on the Council's application of the provisions of the Act in relation to the complainant's request of 25 October 2010. In particular, he has considered whether it appropriately applied section 12 of the Act when it refused to comply with the request.

Chronology

11. The Commissioner wrote to the complainant on 2 June 2011 to clarify whether his request related to past and present employees of the Council. On 4 June 2011 the complainant replied and said that ideally he would like the information for all council employees, past and present, but that if this was either impractical, or fell out of the remit of the ICO,

or was considered too much information to provide he would accept the information for current employees only.

12. The Commissioner wrote to the Council on 3 June 2011 and asked it to provide further information that would allow him to reach a decision on whether its application of the Act had been appropriate. Amongst other things, the Commissioner asked the Council to confirm how it had interpreted the request; ie whether it had assumed the request related to past and present members or staff and whether it had assumed the time period quoted (*"the years 2005 and 2006"*) to be for calendar years or for some other period, such as financial years.
13. The Commissioner received the Council's response on 29 June 2011. It stated that it had interpreted the request to be for past and present employees and for the calendar years 2005 and 2006. The Council provided further information to support its application of section 12 of the Act.

Analysis

Substantive Procedural Matters

Interpretation of the request

14. The Commissioner firstly considered whether the Council's interpretation of the scope of the request was reasonable. Based on the response of the complainant, the Commissioner's view is that it was reasonable for the Council to assume that the request related to past and present employees. Taking into consideration the wording of the request, the Commissioner also thinks that it was reasonable for the Council to assume that the complainant was referring to full calendar years for both 2005 and 2006. He does not think that there is another objective reading of the request. The Commissioner therefore has gone on to consider whether the Council's application of section 12 of the Act was appropriate.

Section 12 - cost of compliance exceeds appropriate limit

15. The Council confirmed that it is relying on section 12(1) as the basis for refusing the request. Section 12(1) of the Act provides that public authorities do not have to comply with requests where the estimated cost of complying exceeds the appropriate limit as specified by the Fees Regulations. All sections of the legislation are reproduced in the attached legal annex.

16. Section 4(3) of the Fees Regulations sets out the basis upon which an estimate can be made:

“(3) In a case in which this regulation has effect, a public authority may, for the purpose of its estimate, take account only the costs it reasonably expects to incur in relation to the request in –

(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.

(4) To the extent to which any of the costs which a public authority takes into account are attributable to the time which persons undertaking any of the activities mentioned in paragraph (3) on behalf of the authority are expected to spend on those activities, those costs are to be estimated at a rate of £25 per hour.”

17. The Fees Regulations state that the appropriate cost limit is £600 for central government, legislative bodies and the armed forces and £450 for all other public authorities, which includes the Council. This is equivalent to 18 hours' work.

18. The Council estimated that to comply with the request of 25 October 2010 would take approximately 14 hours and 20 minutes, which is under the appropriate limit set out in the Fees Regulations. However, the Council stated that it had received several requests from the complainant on a similar subject and that it had aggregated the cost of complying with these requests. The Council stated that the aggregated cost exceeded the appropriate limit. The Commissioner has therefore considered whether it was appropriate for the Council to aggregate the cost of complying with the requests it referred to.

Aggregating costs

19. Section 12(4) of the Act provides that in certain cases a public authority can aggregate the cost of complying with requests. Paragraph 5 of the Fees Regulations sets out the circumstances in which it may be appropriate to aggregate requests. It states that two or more requests to one public authority can be aggregated for the purposes of calculating costs if they are:

- by one person, or by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign;
 - for the same or similar information to any extent; and
 - the subsequent request is received by the public authority within 60 working days of the previous request.
20. The Commissioner is satisfied that the requests the Council used for the purposes of aggregating the cost of compliance were all made by the complainant. The Commissioner is also satisfied that the requests (previous requests reproduced in Annex 1, below) are for the same or similar information; namely, about the sale of Council-owned properties to Council employees during the period 2000-2010. The Commissioner was not, however, satisfied that the requests were all received within a period of 60 working days. His view was that only requests received by the Council on or after 30 July 2010 should have been considered for the purposes of aggregation. He has therefore determined that when considering the request of 25 October 2010 the Council was not entitled to aggregate the costs of complying with the requests it received from the complainant on 4 June 2010 and 6 July. He considered that the Council was able to aggregate the cost of complying with the requests of 30 July 2010, 25 September 2010 and 25 October 2010.
21. Having reached a decision on the issue of aggregation, the Commissioner went on to consider the Council's application of section 12(1).

Would compliance with the aggregated requests exceed the appropriate limit?

22. The Commissioner has considered whether the aggregated cost of complying with the requests of 30 July 2010, 25 September 2010 and 25 October 2010 would exceed the appropriate limit of £450, or 18 hours' work. When considering this matter the Commissioner was mindful that, as confirmed in correspondence with him, the complainant's request was for information relating to all employees of the Council – past and present. As detailed in paragraph 14, above, although in correspondence with the Commissioner the complainant did say that he would be willing to accept information relating to current employees only, the Commissioner considers it reasonable for the Council to have interpreted his request as being for past and present employees.
23. The Council estimated that to comply with the request of 25 October 2010 would take approximately 14 hours and 20 minutes and to comply with the request of 25 September 2010 would take 6 hours and 40

minutes. The Commissioner therefore considered whether the estimates were reasonable.

The request of 25 October 2010

24. The Council stated that its Asset Management Service is able to produce from an electronic database a list of Council properties that have been offered for sale. It said that the time required to produce this information is negligible and was not taken into account in its estimate of the cost of complying with the request. The list does not contain the name of the purchaser, and in order to obtain this information the Council would need to retrieve the deed packet for each property sold within the time period relevant to the request. Each deed packet would then need to be interrogated manually in order to extract the name of the purchaser and the purchase price. In order to determine whether the purchaser was a current or former employee of the Council, their name would have to be manually entered into the Council's HR database, which the Commissioner understands to have been established in 2002.
25. The Council identified 10 properties sold outside its right to buy scheme that were relevant to the request of 25 October 2010. It provided the following estimate of the time required to comply with the request.
 - (a) Produce report of properties offered for sale. Estimate: negligible and not included in the estimate.
 - (b) Find the deed packet for each property – average of 1 hour per property based on a sample exercise carried out by its Asset Management Service in which it took between 20 minutes and 1 hour 30 minutes to find the deed packets. The Council pointed out that the database from which the list of properties is produced does not include the reference number for the relevant deed packet. Estimate: 10 properties x 1 hour = 10 hours.
 - (c) Interrogation of each deed packet to extract the purchaser's name and the purchase price; 20 minutes per deed packet. Estimate: 10 deed packets x 20 minutes = 3 hours 20 minutes.
 - (d) To cross reference purchaser details with the Council HR database to determine if they are an employee / ex-employee. Estimate: 1 hour.Total estimate to comply with request of 25 October 2010 = 14 hours and 20 minutes.
26. The Council informed the Commissioner that it had undertaken a sampling exercise of the time taken to extract the deed packets and that

the other parts of the process had been carried out when complying with previous requests from the complainant and were known to be accurate.

The request of 25 September 2010

27. In its response to the complainant of 22 October 2010 the Council stated that no properties had been sold to Council employees within the specified period (2008 and 2009) but that it had only checked employee records dating back to 2002 when its HR database was established. To provide information regarding employees who left the Council prior to 2002 would require a manual interrogation of manual records, which would exceed the appropriate cost limit. The Council stated that it only holds employee records for 10 years and it follows that it would therefore be unable to provide any information prior to 2000.
28. In correspondence with the Commissioner the Council stated that five properties had been sold during the period in question and that the time required to comply with the request had been 7 hours 10 minutes, opposed to the 6 hours 40 minutes it had quoted in correspondence with the complainant. The Council stated that the reason for the discrepancy was that it had previously omitted the time taken to cross reference the names of the purchasers of the five properties with its HR database. The Council stated that it had taken 30 minutes to complete that task. The Council summarised the time required for dealing with the request of 25 September 2010 as follows.
 - Time to locate files – 5 x 1 hour = 5 hours
 - Time to extract data from file – 5 x 20 minutes = 1 hour 40 minutes
 - Time to cross reference purchasers' names against HR database – 30 minutes
 - Total 7 hours 10 minutes
29. The Council's estimate for the time required to comply with the request of 25 October 2010 is therefore consistent with the time it says it actually took to comply with the request of 25 September 2010.

The Commissioner's view

30. The issue of what constitutes a reasonable estimate in relation to the cost limit was considered by the Information Tribunal in the case of *Roberts v the Information Commissioner*. The Commissioner is assisted by the Tribunal's approach as set out in paragraphs 9 -13 of the decision:
 - "*Only an estimate is required*" (i.e. not a precise calculation);

- the costs estimate must be reasonable and only based on those activities described in regulation 4(3);
 - time spent considering exemptions or redactions cannot be taken into account;
 - estimates cannot take into account the costs relating to data validation or communication;
 - the determination of a reasonable estimate can only be considered on a case-by-case basis; and
 - any estimate should be *“sensible, realistic and supported by cogent evidence”*.
31. The Tribunal went on to suggest that producing an estimate requires a process of both investigation and assessment/calculation. At paragraph 12, the Tribunal said:
- “...The investigation will need to cover matters such as the amount of information covered by the request, its location, and the hourly rate of those who have the task of extracting it. The second stage will involve making an informed and intelligent assessment of how many hours the relevant staff members are likely to take to extract the information...”*
32. The Fees Regulations specify those tasks that may be taken into account when forming a cost estimate (see paragraph 16, above). The Commissioner considers the tasks referred to by the Council fall within those set out in the Fees Regulations.
33. In reaching a decision in this matter the Commissioner was mindful that he has previously considered a similar complaint from the same complainant about the same Council in Decision Notice FS50211876². In that case (see paragraphs 33-36) the Commissioner found that the Council's estimate of the costs required to comply with the request was reasonable. Although the request in that case was broader, in that it covered a wider time period and requested information about past and present Council employees and past and present elected members of the Council, the process required to locate, retrieve and extract the information is identical. The Commissioner sees no reason to alter his decision that the Council's estimate was reasonable.

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http://www.ico.gov.uk/~media/documents/decisionnotices/2010/FS_50211876.ashx

34. The Commissioner view is that the aggregated costs of complying with the requests of 25 September 2010 and 25 October 2010 would exceed the appropriate cost limit; the estimated time it would take to comply was 21 hours 30 minutes x £25, a total of £537.50, compared to the appropriate limit of 18 hours or £450.
35. The Commissioner is also aware that he has not yet referred to the request of 30 July 2010, which he also determined could be aggregated with the requests of 25 September 2010 and 25 October 2010. That request was for details (number sold, completion date, purchase price) of the sale of any council properties by the Council's Asset Management Service, outside of the right to buy process, to Council staff from 2000-2007 and 2008-2010.
36. Given that the time period referred to in the request of 30 July encompasses those referred to in the requests of 25 September 2010 and 25 October 2010, the Commissioner's view is that to comply with it would exceed the cost limit on its own. When considering the issue of aggregation, the Commissioner's view is that the Council could not reasonably 'double count' the time it would take to comply with the three requests, where the information requested overlaps. For example, the Council could not include the cost of providing information for the years of 2008 and 2009 (requested in the request of 30 July 2010 and 25 September 2010) more than once. However, as the request of 30 July includes additional time periods not referred to in the other two requests, the Commissioner considers that the aggregated cost of complying with all three requests would clearly exceed the appropriate limit.
37. Taking into account the above, the Commissioner's view is that the aggregated cost of dealing with the requests of 30 July 2010, 25 September 2010 and 25 October 2010 would exceed the appropriate cost limit. He therefore considers that the Council appropriately applied section 12(1) of the Act.

Procedural Requirements

Section 16 – duty to provide advice and assistance

38. Section 16(1) of the Act requires a public authority to provide reasonable advice and assistance to applicants. Section 16(2) outlines that any public authority which conforms to the Code of Practice issued under section 45 of the Act, is to be taken to comply with the duty imposed by section 16(1).
39. The Code of Practice outlines that, where an authority is not obliged to comply with a request for information because the cost of complying

would exceed the “appropriate limit” (i.e. cost threshold), the authority should consider providing an indication of what, if any, information could be provided within the cost ceiling. The authority should also consider advising the applicant that by reforming or re-focusing their request, information may be able to be supplied for a lower or no fee.

40. In the Information Tribunal case of *Barber v The Information Commissioner* (EA2005/0004) the Tribunal stated that it will generally be appropriate for the Commissioner to consider whether it was reasonable to expect a public authority to have provided more advice and assistance and, if had it done so, whether this might have had an impact upon how the request was handled.
41. In this case the Council has provided information within the cost limit. For example, it confirmed that no properties were sold in the years 2008 and 2009 to past or present Council employees, who were employed from 2002 onwards. It has also provided the complainant with its estimate of the time it would take to provide the information he requested for each of the years 2000-2010 and asked if he would like to select a particular year or years that would allow it to respond within the appropriate limit. The Commissioner is also aware that the complainant has been offered the opportunity to discuss his requests with the Council if he would like assistance in further refining his request.
42. In this case the Commissioner considers that the Council has complied with its duty to provide the complainant with advice and assistance.

The Decision

43. The Commissioner’s decision is that the public authority dealt with the request for information in accordance with the Act.

Steps Required

44. The Commissioner requires no steps to be taken.

Other matters

45. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern.
46. The Act does not specify a timescale within which internal reviews should be completed but the Commissioner expects that in most cases

20 working days should be sufficient time to complete this task, rising to 40 working days in exceptional circumstances. In this case the complainant requested an internal review on 25 November 2010 and the Council did not provide a response until 15 February 2011. The Council has acknowledged that it misplaced the original request for an internal review and apologised to the complainant. The Commissioner would like to highlight the need to complete internal reviews in a timely manner.

Right of Appeal

47. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: <http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm>

48. 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.
49. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 15th day of August 2011

Signed

**Jon Manners
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Annex 1 – Previous requests to the Council by the complainant

Request of 4 June 2010:

"Dear Portsmouth City Council,

This is a Freedom of Information request;

Please provide details of the sale of any Council properties by PCC's Asset Management Service outside of the Right to Buy process to Staff/Ex Staff, Elected Members/ ex Elected Members for the financial year 2007/08.

Data required: 1. Number of properties sold.
2. Completion date.
3. Purchase Price"

Request of 6 July 2010:

"Dear Portsmouth City Council,

Please provide details of the sale of any council properties by PCC Asset Management Service , outside of the right to buy process, to Council staff from 2000-2007 and 2008-2010.

Only those Staff who have declared an interest in any other property within Portsmouth or elsewhere should be considered.

Data required:
1. Number of properties sold.
2. Completion dated.
3. Purchase price"

Request of 30 July 2010

"Dear FoI,

Thank you for your response. Please delete the sentence:

'Only those staff who have declared an interest in any other property within Portsmouth or elsewhere should be considered.'

in my original FOI request; then reconsider my FOI request without this sentence."

Request of 25 September 2010

"Dear FoI,

Please therefore provide details of the sale of any council properties by PCC Asset Management Service, outside of the right to buy process, to council staff for the years 2008 and 2009.

Data required:

1. Number of properties sold.
2. Completion date.
3. purchase price."

Legal Annex

Exemption where cost of compliance exceeds appropriate limit

Section 12(1) provides that –

“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.”

Section 12(2) provides that –

“Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.”

Section 12(3) provides that –

“In subsections (1) and (2) “the appropriate limit” means such amount as may be prescribed, and different amounts may be prescribed in relation to different cases.”

Section 12(4) provides that –

“The secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority –

(a) by one person, or

(b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,

the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them.”

Section 12(5) – provides that

“The Secretary of State may by regulations make provision for the purposes of this section as to the costs to be estimated and as to the manner in which they are estimated.”

Duty to provide Advice and Assistance

Section 16(1) provides that -

"It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it."

Section 16(2) provides that –

"Any public authority which, in relation to the provision of advice and assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case."