

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 19 April 2012

**Public Authority:** Conwy County Borough Council

**Address:** Bodlondeb  
Conwy  
LL32 8DU

#### Decision (including any steps ordered)

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1. The complainant requested information about expenditure on travelling and subsistence for the financial year 2010/2011. The Council refused to comply with the request as it would exceed the cost limit under section 12 of the FOIA. The Commissioner's decision is that the Council correctly refused the request under section 12 as compliance would exceed the appropriate cost limit. The Commissioner requires no steps to be taken.

#### Request and response

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2. Following information provided by the Council, on 23 July 2011 the complainant submitted the following request:

"Year 2009-2010: - Travelling Expenses amount to £2,445,344.72; a very large sum of money, Could you please advise,

- is travel by road, rail and air?
- what are the destinations? Within the UK and overseas?
- is first class travel used?
- who is doing this travelling? And for what reasons?

Year 2009-2010: - Conference and Subsistence

- a) what were the conferences?
  - b) what are the subsistence expenses for?
  - c) who are the people involved?"
3. The Council issued a refusal notice on 17 August 2011 stating that, to comply with the request would exceed the appropriate limit as set out in

section 12 of the FOIA and as such it was not possible to answer the request. The Council suggested that the complainant may wish to refine the request by being more specific about the information he was seeking, including any dates or time periods.

4. The complainant wrote to the Council again on 23 August 2011 and refined his request to the following information:
  - (a) "What is subsistence for?
  - (b) How many conferences were there?
  - (c) Where were they held and how many delegates attended
  - (d) Is travel by road, rail and air undertaken?
  - (e) Is 'first class' travel used?
  - (f) What are the destinations? – within the UK and overseas?
  - (g) Who is doing all this travelling?"
  
5. The Council responded on 15 September 2011 and provided some general information about its travel and subsistence arrangements but maintained that, to provide the level of detail requested would exceed the cost limit.
  
6. On 23 September 2011, the complainant refined his request further to:
  1. "How many instances of air travel have there been and what were the destinations?
  2. How many instances of air travel overseas have there been, where to and why?
  3. How many times was first class travel used, where to and why?
  4. How many conferences were held and where were they held?"
  
7. Further correspondence between the Council and the complainant referred to information relating to the year 2010/2011, as well as 2009/2010.
  
8. The Council responded to the request on 19 October 2011 stating that, to provide the information requested would exceed the cost limit and as such it was unable to comply with the request. The Council advised it had estimated that it would take approximately 57.5 hours to determine whether the information was held and to locate, retrieve and extract the relevant information. Within this letter, the Council stated that, if the complainant wished to proceed with the request, he would be required to pay a fee of £1437.50, which had been calculated in accordance with the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations').

9. The complainant wrote back to the Council on 25 October 2011 expressing dissatisfaction with its response to the request.
10. The Council treated this communication as a request for an internal review and responded on 28 October 2011. It upheld its decision that compliance with the request would exceed the appropriate limit and explained that it would only be able to provide the information on payment of the fee, as outlined in its letter of 19 October 2011.

## **Scope of the case**

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11. The complainant contacted the Commissioner on 18 November 2011 to complain about the way his request for information had been handled. Based on the content of correspondence with the Commissioner, it appeared that the complaint related to the refined request of 23 September 2011, and to the year 2010/2011.
12. The Commissioner wrote to the complainant on 23 January 2012 to confirm that the scope of his investigation would be to assess whether the Council should provide the information requested on 23 September 2011, for the financial year 2010/2011, or whether it was correct in refusing it on the ground of the costs for compliance.

## **Reasons for decision**

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### **Section 12**

13. Section 12 of the FOIA states that a public authority is not obliged to comply with a request for information if it estimates that the cost of complying would exceed the appropriate cost limit which in this case is £450 as laid out in section 3(2) of the Fees Regulations. This must be calculated at the rate of £25 per hour, providing an effective time limit of 18 hours.
14. Regulation 4(3) of the Fees Regulations states that an authority, when estimating whether complying with a request would exceed the appropriate limit, can only take into account the costs it reasonably expects to incur in:
  - determining whether it holds the information;
  - locating the information, or documents containing it;
  - retrieving the information, or documents containing it; and
  - extracting the information from any documents containing it.

15. Section 12(4) of the FOIA provides that in certain cases a public authority can aggregate the cost of complying with requests. Section 5 of the Fees Regulations sets out the circumstances in which it may be appropriate to aggregate requests. This 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.
16. The Commissioner will first consider whether the Council was entitled to apply section 12(1) to the four requests. What the Commissioner must consider is whether the Council is entitled to combine the work together for these four requests, or whether each request should be considered individually.
17. The Commissioner would characterise the complainant's letter of 23 September 2011 as containing more than one request within a single item of correspondence. In reaching a decision, the Commissioner notes that there were previous exchanges of correspondence between the complainant and the Council prior to 23 July 2011. On 20 May 2011, the Council responded to a previous request for information from the complainant and provided a breakdown of the total pay bill for 2009-2010 into three elements – staff pay, travelling expenses and conference and subsistence. The request of 23 July 2011 (and subsequent refinements of this request) all refer to the high level breakdown of the pay bill provided by the Council on 20 May 2011.
18. Having considered the wording of the four parts of the request and the context and history of the request and correspondence between the parties, the Commissioner has concluded that they can be aggregated for the purpose of calculating the cost of compliance, in accordance with section 12(4) of the FOIA and regulation 5 of the Fees Regulations. This is because they follow an overarching theme and common thread relating to travelling expenses and expenditure on conference and subsistence which form part of the Council's total expenditure on pay during the period.
19. Having reached this conclusion, the Commissioner has gone on to consider the application of section 12(1).

**Would compliance with the requests exceed the appropriate limit?**

20. The Commissioner asked the Council to provide a detailed reasonable estimate of the time taken and cost that would be incurred by providing the information falling within the scope of the request. The Commissioner asked that, when the Council provided these calculations, a description of the nature of the type of work involved was also included.

21. The Council stated that its General Ledger records all expenditure and income and is populated via journals from systems such as Accounts Payable, Debtors, Payroll, Cash Management, etc. In order to provide the level of detail which has been requested the Council advised it would be necessary to examine:

“original payroll travelling and subsistence claims filed in the Payroll Section on a weekly/monthly basis by payroll number, monthly credit card statements together with supporting documents detailing the charge for each card holder in Central Finance, purchase card statements together with supporting documents are generally held in the Services, invoices can be filed in Central Finance and also filed within the Services. In addition the reasons for the travel, attendance at conference etc would have to be obtained from each Service area”.

22. The Council confirmed that the majority of travel by staff was undertaken by rail and road throughout the UK. However the Council advised that there may have been some occasions where staff had travelled by air, both within the UK and overseas. The Council also confirmed that, in line with its travel policy, standard class rail travel was used as a matter of course. However, the Council advised that, there may have been some instances of travel by first class. The Council confirmed that its travel policy did not identify when and in what circumstances air travel or first class rail travel was appropriate, or identify the roles or grades that would be entitled to such travel modes. As such it was not possible to refine the search criteria to a particular group or grade of staff.

23. The Council provided the Commissioner with a detailed breakdown of the 79.4 hours it estimated it would take to comply with the request. The Council advised that this estimate was different to that provided in its fees notice of 19 October 2011 (57.5 hours) and explained that this was due to two reasons:

- At the time it issued the fees notice, some service areas had not provided an estimate.

- Upon reconsideration, some service areas had adjusted their original estimate.

The Council confirmed that, had the complainant been willing to pay the fee, it would have honoured the original estimate of 57.5 hours.

24. The Council's estimate is broken down into each of its 18 service areas. The Council advised that the information required to respond to the request is not held or stored in any consistent format across the service areas. As a result, it had not undertaken a sampling exercise as the findings within one service area would not correlate with the tasks involved in complying with the request within another service area.
25. The Commissioner notes that the estimates provided by each individual service area vary from 10-20 minutes to 23 hours. He also notes that the tasks involved in complying with the request vary considerably between service areas, which appear to be related to the way that information is recorded and held.
26. It would not be practical for the Commissioner to record in this notice details of the estimates of each individual service area, but he has summarised some of the larger estimates below;

*Regulatory Services – estimate 23 hours*

- Air travel – total estimate 10.5 hours.  
There are various ways of procuring flight tickets – via procurement card, an account with a supplier or reimbursement of officer's individual purchase. All three methods of purchase would need to be checked in order to identify information relevant to the request this would involve: -
  - Checking through procurement card statements – 1 hour
  - Interrogating General Ledger to identify appropriate invoices relating to air travel and then check each invoice held within the Creditor's filing system – 1.5 hours
  - Reviewing individual expense payroll claims – records are held manually in boxes by month and ordered by pay reference number. It would be necessary to identify all pay roll references for staff working within the service area and then retrieve and review all relevant expense forms – estimate 8 hours
- Overseas travel – similar process to air travel – estimate 10.5 hours
- First class rail travel – similar process to air travel, but rail warrants would need to be identified and reviewed as opposed to supplier invoices – estimate 10.5 hours

- Conferences – as it is unlikely that attendance at conferences would be paid for by individual officers and then re-claimed it would not be necessary to check payroll claim forms. However, the number of invoices that would need to be reviewed would be higher than for payment of air/overseas/rail travel – estimate 3 hours.
- Total time = 34.5 hours. As some tasks identified for each request could be carried out simultaneously, the estimate would be reduced by one third making a total estimated time of 23 hours.

*Community Development Services – estimate 10 hours*

- Department consists of nine business sections and around 500 staff.
- Send an email to each of the nine sections of Community Development (to include Head of Service), and a copy to Accountants
- Each section to check all relevant manual/electronic records, collate and prepare summary.

*Adults SSD – estimate 8 hours work*

- Produce an expenses report for all staff for each claim made in the period – in excess of 900 staff.
- Manually review the report to identify those staff that have:
  - Undertaken air travel.
  - Travelled overseas.
  - Travelled first class.
- Once identified, contact each relevant officer to establish the purpose of the travel, and the destination.
- Manually check all conference expenditure budget codes to establish the number of conferences attended and their location.

*Education – estimate 7 hours*

- Examine every single travel claim during the period in question – around 250 claims each month = 3000 per annum.

27. The issue of what constitutes a reasonable estimate was considered in the Tribunal case of Alasdair Roberts v the Information Commissioner [EA/2008/0050] and the Commissioner endorses the following points made by the Tribunal at 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".
28. As stated above, the detailed estimate provided by the Council shows a significant variation both in terms of the time it would take each individual service area, and the level of detail provided about the tasks involved in complying with the request.
29. The Commissioner considers it debatable whether some of the tasks specified by the Council would fall within those tasks specified in the Fees Regulations. However, the Commissioner accepts that enough of the tasks specified by the Council can be taken into account that the possibility of the opposite will not impact upon the conclusion here. For example, in the Commissioner's opinion, the estimate for the Regulatory Services department appears excessive as he considers that the first three requests could be dealt with concurrently as the same tasks and processes would need to be carried out for each one. He therefore considers that the total estimate for this department would be 13.5 hours. This would bring the Council's total estimate down to 69.9 hours, which is still significantly in excess of the 18 hour limit
30. The Commissioner notes that the estimates from some service areas appear to focus only on part 4 of the request relating to conferences, and no mention is made of the processes involved in responding to parts 1 to 3 of the request. In addition, some of the estimates do not appear to include any steps or processes involved to identify the reason for any travel overseas/first class travel, while other departments have indicated that individual officers would need to be consulted regarding this part of the request. This suggests that there may be an element of under-estimation.
31. Due to the nature of the information requested by the complainant and the way in which it is recorded within the various services areas in the Council, it is the Commissioner's view that the Council has provided adequate explanations – as referred to above – to demonstrate that it would exceed the appropriate limit of 18 hours to locate, retrieve and extract the requested information. The conclusion of the Commissioner is, therefore, that section 12(1) was appropriately applied by the Council and that it was not obliged to comply with the request.



## Section 16

32. Section 16(1) imposes an obligation for a public authority to provide advice and assistance to a person making a request, so far as it would be reasonable to do so. Section 16(2) states that a public authority is to be taken to have complied with its section 16 duty in any particular case if it has conformed with the provisions in the Section 45 Code of Practice in relation to the provision of advice and assistance in that case.
33. Whenever the cost limit has been applied correctly, the Commissioner must consider whether it would be possible for the Council to provide advice and assistance to enable the complainant to obtain information without attracting the costs limit in accordance with paragraph 14 of the Code. In this case the Commissioner has considered whether it would have been reasonable for the Council to have advised the complainant further about reducing the scope of his request.
34. The Council advised the Commissioner that it has had several telephone discussions with the complainant during the course of his requests. The complainant was made aware of the complexity in identifying, at service level, the detailed information requested in terms of locating and retrieving the information. It also explained that he could refine the request, but given the level of detail he has requested, it was unlikely that any refinement would bring compliance within the appropriate limit.
35. In its initial refusal notice of 17 August 2011, the Council made the complainant aware of its obligation under the FOIA to provide advice and assistance and suggested he may wish to refine the request by narrowing its scope and be more specific about the information he was particularly interested, or reducing the period of time covered by the request. In response the complaint submitted a refined request as detailed at paragraph 4 of this notice.
36. In its response of 15 September 2011 the Council provided general information about its travel and subsistence arrangements. It confirmed that the majority of travel was undertaken by road and rail and a small number of journeys would have been undertaken by air. The Council confirmed that the majority of travel was undertaken in Wales/UK but there may have been some instances of overseas travel. It also confirmed that the majority of public transport journeys would have been undertaken using standard class transport, but again, there may have been instances of first class travel.
37. The Council admitted to the Commissioner that, with the benefit of hindsight, the terminology used in its letter of 15 September 2011 could have been misleading. This letter referred to "a handful of instances" where air travel may have been undertaken" and "a handful of instances

involving travel overseas". The Council explained that this was done in an attempt to provide reassurance to the complainant that it was not normal practice for air travel/travel overseas/first class travel to occur. The Council acknowledged that this could have lead the complainant to believe that if there was only a small number of such cases, then information relating to those occasions would be 'readily available'. The Council accepted that it did not explain that any information relating to occasions of air travel/travel overseas/first class travel would be contained within the same systems as the original request, and require similar processes and tasks in order to provide the information. However the Commissioner also notes that on 23 September 2011 the complainant did refine his request further.

38. The Commissioner accepts that the Council's letter of 15 September 2011 could be considered misleading. However, the Commissioner considers that the Council did offer reasonable advice and assistance in this case. He considers that given how the information is recorded and held within the Council, and in the absence of any policy indicating when travel by first class rail or by air was appropriate, and any groups of staff entitled to travel by such modes there was no possibility of providing the level of detailed information requested within the costs limit.

## Right of appeal

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39. 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: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

40. 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.
41. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Signed .....**

**Anne Jones**  
**Assistant Commissioner**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**