

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 February 2013

Public Authority: North East Lincolnshire Council

Address: Municipal Offices
Town Hall Square
Grimsby
DN31 1HU

Decision (including any steps ordered)

1. The complainant requested information relating to the Council Tax (Administration and Enforcement) Regulations 1992, specifically the 'Header C' fee. North East Lincolnshire Council ("the council") refused to provide the information on the basis that the exclusion under section 12 relating to the £450 cost limit applied. The Commissioner's decision is that the council has correctly applied section 12, but did not provide reasonable advice and assistance in accordance with its duty under section 16.
2. The Commissioner does not require the council to take any steps as a result of this decision notice.

Request and response

3. On 28 June 2012, the complainant wrote to the council and requested information in the following terms:

"With regards the Council Tax (Administration and Enforcement) Regulations 1992 (As amended) and more specifically Schedule 5 Header C fee of the regulations,

Between financial years 2006 and 2011;

Q. 1 Please supply the number of North East Lincolnshire residents who have incurred the Header C fee, as a result of the council or its agents enforcing alleged council tax debt

Please categorise this into the number;

a) of residents incurring the fee,

b) incurring the fee where no prior levy was in place

c) incurring the fee at the same time a levy was made

d) incurring the fee where the bailiff attended with insufficient transport to remove goods levied on a prior visit

e) incurring the fee where the bailiff attended with insufficient transport to remove goods which had not been identified on a prior visit/levy

For example, if a bailiff attended without bringing at least a removal van and vehicle recovery truck, this would be classed as insufficient transport.

f) incurring the fee on the same attendance where a vehicle had been levied, before confirmation of ownership.

g) incurring the fee on the same attendance where a vehicle had been levied, when ownership had already been confirmed but where a vehicle recovery truck has not been brought (sic). "

4. On 17 July 2012, the council advised the complainant that it did not hold this information. On the same day, the complainant sought an internal review. The council responded on 19 July 2012, maintaining its position that it did not hold the information sought.
5. On 14 August 2012, the council contacted the complainant to advise him that it did hold information falling within the scope of his request. However, the council also amended its refusal notice of 17 July 2012, refusing the request under section 12. On the same day the complainant wrote to the council expressing dissatisfaction with its response which may be taken as a request for a further review of the council's handling of his request.
6. The council responded on 7 September 2012, maintaining its application of section 12.

Scope of the case

7. The complainant wrote to the Commissioner on 21 July 2012 to complain about the way his request for information had been handled. It was subsequently agreed that the focus of the investigation would be

the council's application of section 12 as a basis for refusing to provide the information requested.

8. The complainant also stressed his dissatisfaction with the council's initial position that it did not hold the information requested and also presented various arguments to the Commissioner as to why he felt section 12 would not apply.

Reasons for decision

Section 12

9. Section 12(1) of the Act states:

"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."

10. The appropriate limit is £600 for central government and £450 for all other authorities, as per regulation 3 of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.
11. Regulation 4(3) provides that when estimating whether complying with a request may cost more than the cost limit, a public authority can consider the time taken 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.
12. Regulation 4(4) provides that the calculation is to be estimated at a rate of £25 per person per hour.
13. The Commissioner would note that he has already issued a decision notice in respect of a separate request received by the council relating to Header H fees ([FS50443807](#)). The council has explained that there is no requirement for it to hold information relating to Header H and C fees in a centralised, electronic system and that it does not do so. The only means of identifying information of the type requested by the complainant is for the council to go directly to the return files provided by a named bailiff. Therefore, whilst the requests are not symmetrical,

the process which the council would need to go through to answer them is identical. Accordingly, the council has presented a similar cost estimate to the Commissioner as it did for the previous request and the Commissioner's analysis is also similar to that in [FS50443807](#).

14. In support of its cost estimate, the council has explained that the most effective way of locating the accounts is to use the original bailiff files sent to a named bailiff each month. Each file contains 24 bailiff files, held as a string of information for each debtor. In order to ensure all records were identified from the information held, the files would have to be transferred to an organised spread sheet recording the information in its separate data elements (name, account number, address etc). This activity was estimated at ten minutes per file.
15. The council then explained that to retrieve the information the account number would need to be entered into the council's imaging system to examine the files held on the system for that particular account, searching for the correct Bail Return/Nulla Bona. The council explained that a 'Council Tax Case' could have multiple bailiff return files. Depending on the type of bailiff file (Bail Return/Nulla Bonna), and the age of the file, the Header C fee will either be listed as a 'Fee' incurred or it will be detailed in the bulk of the 'History' notes provided with the return.
16. Following this process, the details would have to be extracted and recorded onto a spread sheet identifying whether a fee was incurred or not.
17. The council conducted a sampling exercise for one hour. During this time, it was able to check 19 individuals' cases. The council explained that it took between two and five minutes to retrieve and extract the relevant information for each case.
18. Consequently, the council provided the following cost estimate for the whole period covered by the request: £39,775 based upon a search of 31,823 accounts at 3 minutes per account, leading to 1,591 hours of work at a rate of £25 per hour.
19. The council has also provided an estimate for the information in respect of a single year which produced a cost estimate of: £5,725 based upon 4,583 accounts at three minutes per account, leading to 229 hours of work at a rate of £25 per hour. This estimate was provided for 2011/12 on the basis that this year contained the fewest accounts and therefore represented the most conservative time estimate which the council could provide for a single year.

20. The Commissioner would also note that these cost estimates do not take into account the 10 minutes per file outlined in paragraph 14 above. Based on a calculation of 24 files per year over a six year period at 10 minutes per file, the council could have added a further £600 to its cost estimate for the whole period.
21. The council further explained that in cases where there had been a full payment of costs to the bailiffs separate return files are not sent to the council. Therefore, for these cases, the council only holds information on the payment received from the bailiff for the debt only.
22. Having considered the representations put to him by both parties, the Commissioner accepts that the council's estimate is reasonable and that to comply would exceed the appropriate limit under section 12 of the Act.

Section 16

23. Section 16(1) of the Act states:

"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."

24. If a public authority wishes to reply on section 12, it must then consider its duty to provide advice and assistance under section 16 of the Act. The Code of Practice under section 45 of the Act states the following:

"Where an authority is not obliged to comply with a request for information because, under section 12(1) and regulations made under section 12, the cost of complying would exceed the appropriate limit 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 refocusing their request, information may be able to be supplied for a lower or no fee."

25. The Commissioner notes the council's consideration of section 16 and its conclusion that *"... [it has] determined that due to the large number of accounts it is not possible to refine the request so that it could be responded to without exceeding the appropriate limit."*
26. The Commissioner is unable to accept that the council has adequately discharged its obligations under section 16 on this occasion. In consideration of the detailed explanation provided to the Commissioner, the council could have provided further information to aid the complainant's understanding of the application of section 12.

27. The complainant has highlighted to the Commissioner his dissatisfaction that the council did not provide him with an explanation as why it was initially of the view that the information was not held. The council has advised the Commissioner that its council tax department was of the view that the information was not held. As explained above, the council does not hold Header C information on its main system, because there is no obligation upon it to do so, and therefore it was thought that the information was not held at all. However, it was later realised by the council tax department that it would be able to locate the information within the return files from the named bailiff.
28. The Commissioner considers that it would have been helpful if the council had set this out to the complainant in order to meet its obligations under section 16 of the Act. However, as this explanation is set out in the paragraph above, the Commissioner requires no steps to be taken.

Other matters

29. The complainant has also presented to the Commissioner various arguments as to why he does not accept the council's application of section 12 in this case. First, he has drawn the Commissioner's attention to section 11 of the council's 'Charging Policy' which states "*information will not be charged for where staff time is necessitated by locating information due to poor records management practice*". The council has advised the Commissioner that there is "*no business or statutory requirement for the council to record this information either separately or on its processing system*". Accordingly, there does not appear to be evidence of "*poor records management practice*", as referred to in section 11 of the council's 'Charging Policy'. In any event, the Commissioner is not persuaded that the council's 'Charging Policy' would disapply section 12 of the Act.
30. The complainant has also sought to argue that the relevant bailiff company in this case is contractually obliged to supply information in response to requests submitted to the council. To this effect, the complainant drew the Commissioner's attention to paragraph 3.58 of the Service Level Agreement between the council and the company which states: "*[the company] understands and acknowledges the Council is subject to the requirements of the Freedom of Information Act 2000 and agrees to assist and co-operate with the Council to enable it to comply fully with its disclosure obligations including supplying requested information with 48 hours of being asked to do so by the council*". The complainant has also drawn the Commissioner's attention to the council's Contract Procedure Rules which states: "*It shall be a condition*

of any contract entered into by the Council that... [the] Contractor shall co-operate (at the contractor's expense) to enable the Council to comply with its obligations under the FOIA...".

31. The Commissioner would note that both of these refer to the council's obligations under the Act. However, there is no suggestion that either of these documents' intention is to place an undertaking on any party which goes beyond the obligations placed upon public authorities generally under the Act. In respect of local government, section 12 makes clear that authorities are not obliged to provide information if the £450 cost limit is exceeded. The Commissioner therefore considers that that the provisions referred to by the complainant do not affect the application of section 12.

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: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

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

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.

Signed

Alexander Ganotis
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