

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 March 2014

Public Authority: Sandwell Metropolitan Borough Council

Address: Sandwell Council House
Oldbury
Sandwell
West Midlands
B69 3DE

Decision (including any steps ordered)

1. The complainant requested information relating to the running and costs of the Vehicles and Ground Care workshops at Sandwell Metropolitan Borough Council (Sandwell MBC).
2. The Commissioner's decision is that Sandwell MBC is entitled to rely on the exemption at section 12. However, Sandwell MBC failed to discharge its duty under section 16 of the FOIA.
3. The Commissioner requires the public authority to advise and assist the complainant as to how he may submit a refined request for information to bring it within the 'appropriate limit'.

Background

4. The request relates to the Vehicles and Groundcare workshops at Sandwell MBC.
5. The workshops provide services both internally within the Council and externally. The range of services provided includes vehicle procurement purchase/finance, routine vehicle maintenance including damage rectification, modifications and disposal, fleet management including tax, insurance and licence holder details, hire vehicle provision, supply of vehicle consumables including oil, antifreeze and screenwash, MOT testing and inspections/repairs as required. The workshops also provide private hire and hackney carriage taxi testing to licensing requirements.

Request and response

6. On 28 May 2013, the complainant wrote to Sandwell MBC and requested information in the following terms:

"I would be delighted if you could please answer the following Freedom of Information requests to substantiate or dispel the veracity of the above as we are committed to fact based decision making:

1. **OVERHEADS**

Please provide all the overheads associated with running the VEHICLES and GROUND CARE workshops including personnel, premises, heat & light etc. In particular please could we receive the fully loaded cost of the two storemen.

2. **PARTS SPEND**

Please provide the total parts spend by the Council including ALL categories under CPV code 343000000 for parts and consumables (including groundcare and plant and including all spend already contracted to Transform Sandwell). Please provide a breakdown of spend by supplier.

3. **INVOICES**

Please provide a total number of invoices per supplier, processed per annum. [This is relevant when estimating the total administrative load of running this type of multi-supplier framework contract]

4. **PROCUREMENT & ADMINISTRATION**

Please enlighten us as to the total overheads associated with the administrative and procurement functions. If these services have been outsourced to Transform Sandwell please enlighten us as to the service charges SMBC pays to Transform Sandwell whether as a % of the value of goods procured or a handling charge per invoice.

5. **FLEET & PLANT LIST**

Please send us a fleet list and a list of groundcare plant with a scope of work undertaken by each workshop in a year.

6. **VALUE FOR MONEY**

Please share with us, what, if any, work has been undertaken to calculate the fully loaded cost of running a) the groundcare workshop and b) the vehicles workshop.

7. **AUDIT & TRANSPARENCY**

Please clarify what audit function, if any, exists, to monitor the spend under this and the groundcare parts contracts. It appears to us that

purchases are largely delegated to workshop staff and left to the Workshop Manger's sole discretion.

8. **QUALITY & ENVIRONMENT**

What Quality Assurance processes are in place to ensure that suppliers are ISO 9001 Accredited and that's parts supplied are fit for purpose? Similarly what processes are in place to check that suppliers are ISO 14001 Accredited and operate effective EMS?"

7. Sandwell MBC responded on 13 June 2013 refusing to provide the information citing section 12 of the FOIA (cost of compliance exceeds appropriate limit).
8. Following an internal review Sandwell MBC wrote to the complainant on 10 July 2013. It upheld its original position. The complainant asked Sandwell MBC to address the elements of the request it deemed easy to process but Sandwell MBC invited a fresh application which would specify exactly what information the complainant required. This was because Sandwell MBC said it was not in a position to determine what information the complainant would want to be provided with in priority or which he considered easy to process.
9. Sandwell MBC subsequently wrote to the complainant providing further information regarding the application of section 12, and providing the information requested at numbers 7 and 8 of the request.

Scope of the case

10. The complainant contacted the Commissioner on 27 July 2013 to complain about the way his request for information had been handled. Specifically the complainant stated that he felt that Sandwell MBC was being disingenuous in stating that it would take in excess of 18 hours to collate the information and he also felt that the Council was trying to conceal facts.
11. During the course of the Commissioner's investigation Sandwell MBC revised its position and advised both the Commissioner and the complainant that it sought to rely, in part, on the exemption at section 43(2) commercial interests. Sandwell MBC then subsequently reviewed its position in terms of the application of section 43(2) and reverted to its original position that section 12 applied to the request in its entirety.
12. The Commissioner considers the scope of the investigation to be Sandwell MBC's application of section 12 and consideration of section 16 (duty to provide advice and assistance). Information requested at

questions 7 and 8 has been provided during the course of the investigation and will not be addressed by this notice.

Reasons for decision

13. Section 12 (1) of FOIA states 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".

14. In other words, section 12 of FOIA provides an exemption from a public authority's obligation to comply with a request for information where the cost of compliance is estimated to exceed the appropriate limit.

15. This limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 at £600 for central government departments and £450 for all other public authorities. 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 in this case.

16. In estimating whether complying with a request would exceed the appropriate limit, Regulation 4(3) states that an authority can only take into account the costs it reasonably expects to incur in:

- determining whether it holds the information;
- 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.

17. The four activities are sequential, covering the retrieval process of the information from the public authority's information store.

18. When a public authority is estimating whether the appropriate limit is likely to be exceeded, it can include the costs of complying with two or more requests if the conditions laid out in regulation 5 of the Fees Regulations can be satisfied. Those conditions require the requests to be

- made by one person, or by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign;
- made for the same or similar information; and
- received by the public authority within any period of 60 consecutive working days.

19. Regulation 5(2) of the Fees Regulations requires that the requests which are to be aggregated relate "*to any extent*" to the same or similar information. This is quite a wide test but public authorities should still ensure that the requests meet this requirement. Requests are likely to relate to the same or similar information where there is an overarching theme or common thread running between the requests in terms of the information that has been requested.
20. In this case the complainant is seeking a wide range of information about the operation of the Vehicle and Groundcare workshops operated by Sandwell MBC, and he has broken down the request into eight categories. The Commissioner is satisfied that the requests have an overarching theme in that they are requests for information about the costs, workloads and evaluation of the operation of the workshops. Therefore Sandwell MBC is entitled to aggregate the costs of dealing with the requests.

Would compliance exceed the appropriate limit?

21. Section 12 explicitly states that public authorities are only required to estimate the cost of compliance with a request, not give a precise calculation. In the Commissioner's view, an estimate for the purposes of section 12 has to be 'reasonable'; he expects it to be sensible, realistic and supported by cogent evidence.
22. In correspondence with the Commissioner, Sandwell MBC has advised how it has calculated costs of dealing with the requests. The estimates provided explain that an extensive collation exercise would be required in order to comply with the requests.

Parts spend and invoices

23. The Commissioner notes Sandwell MBC's estimate for dealing with requests 2 and 3 as an indication of the scale of the tasks involved in complying with the request. Sandwell MBC asserts that this information is not readily available and that neither the parts spend broken down by supplier nor the requested breakdown of invoices is held in a readily available format. The relevant information is held in part manually, in approximately 4,000 job tickets a year for every different fleet. Extracting the information would require the data to be separated into council and non-council fleet as the council has contracts for maintenance with various third party organisations, whereas the request relates only to the council's own fleet. Once separated, each order regarding the council fleet would then need to be checked to extract orders covered by the request and then broken down into spend by supplier.

24. The Commissioner notes the extremely large amount of hard copy information which would need to be manually checked in order for Sandwell MBC to be able to comply with these requests. Even if this request were considered in isolation, it is extremely unlikely that this task could be completed within 18 hours given that would allow just 15 seconds to retrieve and extract relevant information from each job ticket.
25. In addition to the manual check, there would be numerous entries for vehicle parts which would need to be checked. This information is held electronically but would need to be assessed manually. In order to provide a costs estimate for this task, Sandwell MBC provided the Commissioner with details of a sample exercise which it wrote and ran in order to retrieve relevant data. However, it would then be necessary to manually check the lines of data to extract items relevant to the request. The sample exercise covering data for a period of one month produced 2,420 lines of data from which relevant information would have to be extracted. Sandwell MBC estimates the time taken to extract relevant information manually from each report is 20 seconds per line. Therefore, based on this sampling exercise, Sandwell MBC says that the time to extract this information is estimated at 13 hours for each month required and 156 hours for each period of a year.
26. Sandwell MBC has also outlined the steps it would be required to take in order to collate information covered by the other points of the request. These involve tasks to retrieve and extract the information which are similar to those outlined above. However, on the basis of the estimates provided in relation to requests 2 and 3 alone, the Commissioner is of the view that the wide-ranging and extremely detailed nature of the requests for information about the costs and operation of the workshops mean the request as a whole would clearly exceed the appropriate limit of 18 hours. Given that the Commissioner is satisfied that Sandwell MBC is entitled to aggregate the costs of dealing with the requests, he finds that section 12(1) is engaged.

Section 16 – advice and assistance

27. Section 16 of FOIA states:

“(1) 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.

(2) Any public authority which, in relation to the provision of advice or 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".

28. Paragraph 14 of the section 45 Code of Practice states that where a public authority is not obliged to comply with a request because it would exceed the appropriate limit to do so, then it:

"...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-focussing their request, information may be able to be supplied for a lower, or no, fee".

29. In this case the Commissioner notes that Sandwell MBC, when prompted by the complainant, stated:

"we are not in a position to choose which information you would want to be provided with in priority, or which you consider easy to process. Should you want to submit a new request specifying exactly which information you require the Council would be happy to consider".

30. The Commissioner does not accept that this response meets the requirements of section 16 as it offers no advice to the complainant, but simply the opportunity to submit a fresh request.
31. During the course of the Commissioner's investigation Sandwell MBC accepted that it had not acted in accordance with section 16 of the Act and apologised for this failing. By way of explanation it stated that it did not accept the request could have been narrowed down or changed in a way that would have enabled it to comply with the request within the appropriate limit.
32. However, the Commissioner does not accept that Sandwell MBC could determine that the request could not be refined or changed without first entering into a constructive dialogue with the complainant. The Commissioner notes also that, upon reviewing its position and applying section 12 to the entire request, Sandwell MBC has recently suggested that the complainant might consider submitting a revised request, perhaps reducing the timeframe.
33. The Commissioner requires the public authority to contact the complainant to provide advice and assistance as to how he may be able to submit a refined request which Sandwell MBC may be able to comply with within the appropriate limit.

Right of appeal

34. 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: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

35. 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.
36. 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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