

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 5 March 2014

**Public Authority:** Sunderland City Council

**Address:** Civic Centre  
PO Box 100  
Burdon Road  
Sunderland

#### **Decision (including any steps ordered)**

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The complainant has requested breakdown of costs and a total figure of money spent to produce Sunderland Seafront Regeneration Strategy and Marine Walk Masterplan. Sunderland City Council (the "Council") initially considered the information to be caught by the Environmental Information Regulations ("EIR") and refused to provide the information on the grounds that the request was manifestly unreasonable (EIR Regulation 12(4)(b)). During the course of the Commissioner's investigation, it argued that the information was not environmental but that it could rely on section 12 (Cost of compliance) of the FOIA as its basis for refusal.

1. The Commissioner's decision is that the Council can rely on section 12 as its basis for refusing the request.
2. No steps are required.

## Request and response

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3. On 14 July 2013 the complainant requested information of the following description:  
  
"Please publish a breakdown of costs and a total figure of money spent to produce Sunderland Seafront Regeneration Strategy and Marine Walk Masterplan."
4. On 12 August 2013, the Council responded. It refused to provide the requested information. It cited "section 12(4)(b) of the Freedom of Information Act [sic]" although, in context, it would appear to mean regulation 12(4)(b) of the Environmental Information Regulations ("EIR"). It appeared to have reached this view because it took the view that the complainant was acting in concert with others. It was apparently dealing with a large number of requests on a similar topic.
5. The complainant requested an internal review on 14 August 2013. The Council sent her the outcome of its internal review on 19 September 2013. It upheld its original position although it acknowledged that it had not cited the relevant provision correctly.

## Scope of the case

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6. The complainant contacted the Commissioner on 20 September 2013 to complain about the way her request for information had been handled.
7. She disputed the Council's refusal and its basis for associating her request with others. She drew attention to a similar request she had made about costings of the New Sunderland Bridge which had received an answer stating the costs. She expressed scepticism as to the Council's real motive for refusing her request.
8. During the course of the Commissioner's investigation, the Council said that it had changed its view as to whether all the information within the scope of the request was environmental such that it was caught by the requirements of the EIR. The cost of producing the Strategy and Masterplan referred to in the request was, in its view, a step removed from the Strategy and Masterplan such that the provisions of the Freedom of Information Act applied to the request and not the provisions of the EIR. It said that it did not hold a single figure or a breakdown as requested in a single document. It said that it held the information but in a variety of different areas. It acknowledged that some of the figures may be found in environmental information and may well, in themselves, be subject to the EIR. It argued that collating the

information would be burdensome and that, once collated, it would then need to determine whether and to what extent the information was environmental.

9. It argued that, in its view, it could rely on FOIA section 12 (costs limit) and section 14 (vexatious request) as a basis for refusing to provide the requested information. Where the information was environmental, it could rely on regulation 12(4)(b) (manifestly unreasonable request) as a basis for refusing to provide that information.
10. The Commissioner has considered whether the requested information is environmental. Where it is not, he has considered whether the Council is entitled to rely on FOIA section 12 and FOIA section 14 as a basis for refusing to provide any of the requested information.

## **Reasons for decision**

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### **Is the requested information environmental?**

11. Environmental information is defined in regulation 2 as :

“any information in written, visual, aural, electronic or any other material form on –

- a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
- b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);
- c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;
- d) reports on the implementation of environmental legislation;
- e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c) ; and
- f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be

affected by the state of elements of the environment referred to in (b) and (c);”

12. In the Commissioner’s view, when defining environmental information, for 2(1)(b) to (f) to apply, it is not necessary for the information itself to have a direct effect on the elements of the environment, or to record or discuss such an effect. What is relevant instead is that the information should be on [the Commissioner’s emphasis] something falling within these sections.
13. In this case, the requested information is “a breakdown of costs and a total figure of money spent to produce Sunderland Seafront Regeneration Strategy and Marine Walk Masterplan”. On reflection, the Commissioner thinks that this is not a description of environmental information. The breakdown of costs incurred and the total figure of money spent to produce the strategy and the masterplan referred to in the request is not the same as any costs that might be incurred by the implementation of the strategy or the masterplan themselves. Information about costs incurred as a result of implementation are more likely to fall within the definition of environmental information, for example, at EIR regulation 2(c) or EIR regulation 2(e). The costs incurred producing the strategy and masterplan are not environmental information.
14. The Commissioner has therefore concluded that the requirements of the FOIA apply to this request rather than the requirements of the EIR.
15. The Commissioner has next considered whether the Council is entitled to rely on section 12 (cost of compliance) as a basis for refusing to provide the requested information. Where he finds that the Council is not entitled to rely on section 12, he will consider whether the Council is entitled to rely on section 14 (vexatious request) as a basis for refusing to provide the requested information.

## **Section 12 – Cost of compliance**

16. Section 12(1) of FOIA 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.”*

17. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the “Fees Regulations”) provide that the appropriate limit for non-central government public authorities is £450. This must be calculated at the rate of £25 per hour, providing an effective time limit of 18 hours. If a public authority estimates that the

time spent on complying with a request would exceed 18 hours, or £450, section 12(1) provides that the request may be refused.

18. A public authority can only take certain activities into account when assessing whether compliance with a request would exceed the cost limit. These activities are:
  - determining whether it holds the information;
  - locating a document containing the information;
  - retrieving a document containing the information; and
  - extracting the information from a document containing it.
19. Section 12 makes it clear that a public authority does not have to make a precise calculation of the costs of complying with a request. Only an estimate is required.
20. To determine whether the Council applied section 12 of the FOIA correctly the Commissioner has considered the submissions it provided to him during his investigation.
21. The Council explained that the "two documents - the Seafront Strategy and the Marine Walk Masterplan - were prepared in-house, but with the input of some consultancy". It argued that "the cost of preparing the documents would comprise a total of recorded costs, including those costs that were invoiced, and the information required to establish the staffing costs of preparing the Strategy and Masterplan". It explained that it did not hold "a single recorded figure for this latter component".
22. It said that it had initially estimated that a minimum of 18 hours would be required to locate, retrieve and extract relevant information. However, in undertaking work to respond to the Commissioner's enquiries it had concluded that this estimate was conservative.
23. It said that because it held no central record of the staffing costs attributable to production of the documents "it would reasonably expect to be required to attempt to identify those costs as follows:-

Based on the content of each document [it provided the Commissioner with the contents page of each] the following business areas were identified as having been involved in work contributing to or reviewing the material that went into each of the documents above. This was a conservative approach, and it was known to be likely that additional business areas had input or provided advice on the form and content of the documents.

1. Planning & Environment

2. Corporate Policy
  3. Strategic Programmes & Europe
  4. Tourism & Events
  5. Highways
  6. Property
  7. Sustainability / Strategic Programmes & Projects Office
  8. Equalities Team
  9. Chief Executive & Relevant Heads of Service".
24. To illustrate its point, it pointed to the departments from the above list that it would need to contact now for input on particular sections of the Masterplan. It directed the Commissioner to the contents page that it had provided for that plan in support of this explanation.
25. It said that it had assumed that a minimum of one officer in each of the above departments "would be needed to complete the contributory and/or review work going into each document".
26. It said that:
- "Each of the business areas would need to identify
- whether they had a record of the cost of their officers' time (eg time recording data or departmental recharges) relevant to their work on each of the two documents and, if so, to identify, locate and retrieve it. We are aware that the majority of council business areas (including the planning teams) do not have time recording arrangements in place that would readily allow such information to be identified.
  - if not, that they check diaries, e-mails, notes and memos, to establish whether information relating to time spent / costings might be located and extracted, so that these might be provided to the requester together with details of the relevant officer's hourly pay or recharge rate".
27. It also said that as a conservative estimate, it would take, one hour per identified officer to check its records in the manner described above. It also said that the documents in question would, by the time of the request have been at least 3.5 years old. It said that it had taken this into account when reaching the view that it would take at least "an hour per service" to find the records.

28. It therefore calculated that it would take at least 9 hours to determine staffing costs for the Marine Walk Masterplan. It argued that it would also take 9 hours to determine staffing costs for the Seafront Regeneration Strategy. It reiterated that this document has been produced separately.
29. It added that it had also incurred disbursement costs in relation to both documents and that "additional work would be involved in locating and retrieving the documents relating to these". It had located and retrieved some of these documents in preparing its reply for the Commissioner and was able to identify the costs of doing so more clearly and as follows:

"-reviewing invoices & project folders): 2 hours

-reviewing cost centres and working with Accountant to identify relevant costs and distinguish these from costs applicable to other pieces of work undertaken by the consultants in connection with other contemporary projects): 2 hours +

- email & telephone queries associated with these activities: 0.5 hours

- reviewing working papers for consultant etc costs as above): 3.42 hours (half day) +

- reviewing cost centre codes for associated production disbursed costs): 1.51 hours (quarter day).

30. It had concluded therefore that "Work on initial identification of direct disbursement costs attributable to production of the Strategy and Masterplan is therefore now known to have totalled 10 officer hours (and 3 minutes)".
31. It argued that "attempting to identify information relevant to the preparation of these two documents, including disbursement and staffing costs would require more than 28 hours of officer time (10.03 hours spent on disbursement costs and 18+ hours staffing costs as above). Calculated at £25 per hour, as provided for in the Regulations, this equates to a minimum of £700, which significantly exceeds the £450 fees limit that applies in the case of a local authority."
32. The Commissioner is satisfied that the Council's estimate is cogent and reasonably arrived at. Even if, for the sake of argument, it had overestimated all three elements that it had looked at, this would have to be an overestimate by more than 10 hours for the cost of compliance to be less than the 18 hours described in the Fees Regulations. The Commissioner has looked carefully at the Council's description of the work it would need to undertake in reaching his view.

33. The Commissioner is therefore satisfied that it would exceed the £450 cost limit under section 12 FOIA to comply with this request for information.

### **The Commissioner's decision**

34. The Commissioner has concluded that the public authority is entitled to rely on section 12 as its basis for refusing the request. He has therefore not gone on to consider whether the Council is also entitled to rely on section 14 as a basis for refusing to provide the request.

## Right of appeal

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35. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

36. 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.
37. 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 .....**

**Andrew White**  
**Complaints Resolution**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**