

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 April 2014

Public Authority: Sefton Metropolitan Borough Council

Address: Town Hall
Lord Street
Southport
Merseyside
L20 3NJ

Decision (including any steps ordered)

1. The complainant has requested information on complaints made to the council about its use of non-adhesive car parking tickets as compared to councils who use adhesive types. The council provided some information however the complainant wished to receive further information which he had asked for. The council argued that the information was not held for the purpose of the Act as it would require a degree of professional judgement to understand and extract the relevant information from the records that it holds. It also argued that extracting the information would exceed the appropriate limit under section 12 of the Act.
2. The Commissioner's decision is that the council does hold the information and that it was not correct to say that the information was not held for the purposes of section 1 of the Act. He has however decided that the council was correct to apply section 12 to the information. The Commissioner has also decided that the council complied with the requirements of section 10 of the Act.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 4 July 2013 the complainant wrote to the council and requested information in the following terms:

"Please provide the following information in electronic form to this email address:

- 1. Since using non-adhesive backed tickets, how many challenges/appeals have you received by individuals for failing to display the ticket correctly on the basis that it became dislodged by wind, vibration etc?*
 - 2. How many appeals on the grounds set out at number 1 were successful?*
 - 3. How many complaints were received about the adhesive tickets leaving marks on windscreens/dashboards etc?*
 - 4. Please disclose any correspondence, meeting minutes, cost comparisons and other materials relating to the choice to use non-adhesive rather than adhesive tickets."*
5. The council responded on 11 July 2013. It stated that information was not held to respond to parts 3 and 4 of the request given the time which had passed since non-adhesive tickets were introduced. It also said that no consideration had been given to using adhesive tickets for many years. For parts 1 and 2 it stated that section 12 of the Act applied as obtaining the information would exceed the appropriate limit.
6. Following an internal review the council wrote to the complainant. The Commissioner does not have the date on which this was received. The council stated that after further consideration it had decided that the information was not held due to the fact that professional judgement would be required to interpret the records and respond to the request.
7. However following further correspondence between the parties the council wrote to the complainant on 28 August 2013 and said that after further consideration it had found a way to query its database to obtain some information but that this did not exactly match the complainant's request. By searching its database using codes 06 - Parked without displaying a valid ticket, permit, etc (on street), and code 083 - Parked without displaying a valid ticket, permit, etc (off street) it could provide details of tickets issues where no parking ticket was on display, and also

provide details of the number of appeals to that. It therefore disclosed details of the financial year 2012/13 and from 1 April 2013 to 4 July 2013.

8. However the council also said that challenges or appeals could be made on a number of grounds and the council was unable to identify those which were specifically appealed on the grounds requested by the complainant. It was therefore unable to disclose how many of appeals on those grounds were successful.
9. After further correspondence the council confirmed to the complainant that its view was that the information was not held as it would require professional judgement to identify relevant records falling within the scope of the complainant's request. It said that its initial reliance upon section 12 was inappropriate and as the information was not held for the purposes of the Act.
10. During the course of the Commissioner's investigation however the council also clarified that if the Commissioner were to decide that the information is held for the purposes of section 1 then it also wished to retain its initial reliance upon section 12.

Scope of the case

11. The complainant contacted the Commissioner on 1 October 2013 to complain about the way his request for information had been handled.
12. The Commissioner considers that only the response to parts 1 and 2 of the request has been questioned further by the complainant. He did not ask the council to review its answers to parts 3 and 4 of the request.
13. The Commissioner must therefore decide on 3 points:
 - a) whether the council is correct when it says that the information is not held for the purposes of section 1 of the Act, and if it does not.
 - b) whether the council was correct to apply section 12 to the request.
 - c) Whether the council breached the requirements of section 10 in that it did not provide its response to the complainant within 20 working days.

Reasons for decision

Section 1

14. Section 1 of FOIA states that

"1.—(1) Any person making a request for information to a public authority is entitled—

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him."

15. A public authority will hold information if it holds the building blocks required to generate it, and no complex judgement is required to produce it.

16. The council argued that the information which the complainant has asked for would require a degree of professional judgement to interpret and therefore is not held by the council for the purposes of section 1.

17. The Commissioner notes that the council did provide details of the number of appeals which had been made against a finding that no valid parking ticket had been on display (for both off road and on road sites). It also provided details of the number of those appeals which had been successful. An objective reading of the request however is that the complainant wishes to narrow down the information to the number of appeals where the appellant argued that a valid ticket had been purchased but that it was not on display because it had become dislodged in some way.

18. The council said that:

"Consequently, we could have (and subsequently did) undertake a search on the number of PCN's issued under codes 06 and 83 for failing to display a valid ticket and which had subsequently been appealed and also those which had been successful. However, this search would not tell us the reason for the appeal. We would not know if the appeal was on the basis "that it became dislodged by wind, vibration etc" from this search. The only way this information could be obtained is by a trained officer looking in detail at each individual case on the system and reading the correspondence and response to ascertain the exact reason for the appeal. This is important as the reasons given by motorists for failing to display a ticket are many and varied and do not necessarily involve the ticket becoming dislodged. Hence we made our response that as professional judgement would be required to respond to his request we felt it appropriate to refuse the request."

19. The council has argued that in order to determine the nature of the appeal a trained civil enforcement officer would need to go through the paperwork on each case to determine the reason for the appeal. The council did not however provide any further information demonstrating why a trained officer would be required to use professional judgement in order to ascertain either grounds of appeal nor whether the appeal had been successful or not.
20. The Commissioner has considered this argument further. It seems relatively clear that the vast majority of appeals made to the council will be made by members of the public, and that they would be likely to be made in layman's terms. The language used would be, in the vast majority of cases, not technical or legal language but purely a description of the grounds upon which the appeal had been made.
21. The Commissioner therefore considers that for the majority of appeals the council would not require a trained officer to make a complex or professional judgement on the reasons for the appeal – this would be plainly set out by the individual when appealing the parking ticket. No professional judgement would be likely to be required to read the grounds for an appeal, written by a member of the public in layman's terms. Where the appellant appealed on the basis that his parking ticket had been dislodged then this falls within the scope of the request and is added to the count required by the complainant.
22. The Commissioner also considers that the complainant's request was not for the reasons why an appeal was successful or not, which might have required a degree of technical judgement. The complainant simply asked the council to confirm how many of these type of appeals had been successful. Again the records for each appeal would be likely to record such information in simple terms and would not require any complex judgement on behalf of the person searching the information. At the least, details of whether a payment had been received or reimbursed would indicate the status of the notice or the appeal.
23. The Commissioner is therefore satisfied that the information is held for the purposes of section 1 of the Act.

Section 12

24. The council also applied section 12 to the information. It initially claimed that section 12 in response to the complainant's initial request, however after reconsidering the situation it then said that information was not held. During the course of the Commissioner's investigation however it reconfirmed that section 12 should be applied if the Commissioner considered that the information was held, and provided its reasons for applying it.

25. Section 12 of FOIA allows a public authority to refuse to deal with a request where it estimates that it would exceed the appropriate limit to:
 - either comply with the request in its entirety or confirm or deny whether the requested information is held.
26. The estimate must be reasonable in the circumstances of the case.
27. The appropriate limit is currently £600 for central government and £450 for all other public authorities.
28. The council explained that it estimated that it would take an average of approximately 3 minutes for each case to be brought up on the system and for the correspondence to be analysed to ascertain the reason for the appeal. It said that on that basis approximately 360 cases could be analysed within the appropriate limit. In all, its system had identified 6942 parking notices issued between 1 April 2012 and 4 July 2013 with the relevant codes.
29. The Commissioner notes that the council did not test whether the 3 minutes it had estimated were correct or not, but it did offer to do so if the Commissioner considered this relevant to the application of the exception.
30. The Commissioner notes that ascertaining the grounds of appeal would require council employees to read through the information from each of the appeals to determine whether it fell within the scope of the complainant's request, He considers that on average, including time to load the relevant case and to quickly read through the documentation to establish the grounds for appeal and the outcome on each case then 3 minutes is likely to be a reasonable estimate. However even if an officer were able to complete the task within 1 minute for each case, going through each of the 6942 appeals would take the council an approximate total time of 115 hours.
31. Clearly responding to the request for those records would therefore exceed the appropriate limit of 18 hours by a large degree. The Commissioner's decision is therefore that the council has correctly applied section 12 in this instance.
32. As regards the council's duty to help a complainant narrow the request under section 16 of the Act the council said to the Commissioner that it considered it could obtain approximately 3 weeks' worth of appeals within the appropriate limit, based upon the assumption that 105 appeals were received on average per week. It said that if the

complainant specifies which 3 weeks he wishes the council to analyse then it will do so.

33. The Commissioner agrees that this offer meets the requirements of section 16. If on carrying out the task the council finds that it is able to provide more information then it should extend the task to adjacent weeks and provide information on these up to the appropriate limit should the complainant request that the council carries out this exercise.

Section 10

34. The complainant also asked the Commissioner to consider the delay in the council responding to his request.
35. The council's initial response was to apply section 12 of the Act to the request – that the request exceeded the appropriate limit. The Commissioner has decided above that that response was correct.
36. However in its subsequent responses it said that information was not held, and then subsequently provided some information, albeit that that information did not precisely meet with the complainant's request.
37. The complainant's request was made on 4 July 2013. The council responded to the request on 11 July 2013 applying section 12. This falls within the 20 working days required by section 10 of the Act.
38. Subsequent correspondence relating to the request formed part of a review process being carried out by the council, as a consequence of the complainant's continuation of his view that the information should be disclosed to him. There is no specific time deadline for reviews to be carried out under the Act. The Commissioner does set guidelines for responses of 20 working days, and 40 for complex or voluminous cases. The time taken to carry out a review is not however a factor which he can consider under section 50 of the Act.
39. In this case, the initial application of section 12 was correct and was issued to the complainant within twenty working days. The Commissioner therefore considers that the council did comply with the requirements of section 10 of the Act.

Right of appeal

40. 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

41. 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.
42. 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
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