

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 September 2014

Public Authority: East Riding of Yorkshire Council
Address: County Hall
Beverley
East Riding of Yorkshire
HU17 9BA

Decision (including any steps ordered)

1. The complainant requested information from East Riding of Yorkshire Council ("the Council") on salaries and pensions. The majority of this information was provided to the complainant with the exception of a list of all positions within the public authority with the number of employees in each position and their current salaries. The Council considered it would exceed the cost limit under section 12(1) of the FOIA to provide this information due to the need to cross-check the information against structure charts.
2. The Commissioner's decision is that the Council has incorrectly applied section 12(1) and has not sufficiently demonstrated that it would exceed the cost estimate to comply with this request.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
 - Disclose the information requested in the second bullet point of the request; or
 - Issue a new refusal notice clearly explaining why the information cannot be provided with reference to specific exemptions under the FOIA.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the

Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 16 October 2013, the complainant wrote to East Riding of Yorkshire Council ("the Council") and requested information in the following terms:

"I wish to obtain under the FOI Act request the following:

- *The total number of employees*
 - *A full list of every position of employment together with the number of employees in that position within the Council and their current salaries.*
 - *The total amount of funds banked by the Council in the current year, together with the Banks that hold that deposit and the rates of interest on that deposit.*
 - *The total expenditure on Salaries and also their Pensions.*
 - *The Pension Contributions of staff and the contributions by the tax payer (percentage rates)*
 - *A full list of bonuses of financial rewards given to Council employees 2012-13 and for the current."*
6. The Council responded on 7 November 2013. It stated that the information was held by the Council but it would exceed the appropriate cost limit of £450 to make the information available. The Council considered it would exceed the cost limit just to respond to the second bullet point as it would require manual cross-referencing to ensure accuracy of any compiled figures.
7. Following an internal review the Council wrote to the complainant on 28 January 2014 and upheld its position that responding to the request would exceed the appropriate cost limit set out in section 12 of the FOIA.

Scope of the case

8. The complainant contacted the Commissioner on 16 May 2014 to complain about the way his request for information had been handled. Following the internal review the Council did provide the majority of the requested information to the complainant. The remaining information which has not been provided to the complainant is that requested in the second bullet point. The complainant has explained to the Council and to the Commissioner that he would accept current salaries being provided in bands of £5000 if exact salaries cannot be provided.
9. The Commissioner considers the scope of his investigation to be to determine if the Council has correctly refused the information in the second bullet point – a list of positions of employment with number of employees in each position that their salaries – as to provide this information would exceed the appropriate cost limit under section 12 of the FOIA.

Reasons for decision

10. Section 12 of the FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate cost limit which, in this case, is £450.
11. A public 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 undertaking the following activities:
 - 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.
12. The costs are calculated at £25 per person per hour and in this case the cost limit will be exceeded if the above activities exceed 18 hours.
13. A public authority does not need to make a precise calculation of the costs of complying with a request; only an estimate is required. However, it must be a reasonable estimate and what is reasonable will

be determined on a case by case basis. The Commissioner is guided by the Information Tribunal¹ on this and considers that a reasonable estimate should be sensible, realistic and supported by cogent evidence.

14. The Commissioner is also mindful of his own guidance on this subject² which states that a sensible and realistic estimate is one which is based on the specific circumstances of the case and should not be based on general assumptions, for example that all records would need to be searched when staff in a relevant department would know where the information would be held.
15. When dealing with the complainant's request, the Council did not provide the complainant with a breakdown of its estimate that responding to the request would exceed the appropriate cost limit. In fact in the response of 20 March 2014 the Council provided the complainant with an unclear response which stated it was upholding the exemption it had claimed but went on to say that the Commissioner's guidance suggested *"exceptional circumstances are needed to justify the publication of exact salaries when they are not routinely published. It may be possible to disclose salary figures in bands of £5000. However the information we hold is not held in that way and in order to extract the information and produce it in a way that would comply with the guidance would exceed the cost limit."*
16. The Commissioner therefore sought further information from the Council specifically in relation to the costs estimate and the reason why this information could not easily be provided when most organisations will hold details of positions of employment with salaries, either exact or in bands, which is readily accessible.
17. The Council provided the Commissioner with a very high level calculation of the costs limit. It explained that in order to provide the information it would need to manually cross-check it against structure charts to ensure accuracy. The Council stated it would have to do this for every post of the 14,386 posts at the time of the request and assumed that this would take five minutes for each cross-check, thereby vastly exceeding the cost limit to provide the information.

¹ EA/2006/0004

²

[http://www.ico.gov.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/costs_of_compliance_exceeds_appropriate_limit.ashx](http://www.ico.gov.uk/for_organisations/guidance_index/~/media/documents/library/Freedom_of_Information/Detailed_specialist_guides/costs_of_compliance_exceeds_appropriate_limit.ashx)

18. The Commissioner has requested that an estimate should include a description of the nature of the work undertaken, for example searching x number of files would take x amount of hours. He notes that in this case the estimate merely stated how long it would take to cross-check each position against structure charts without breaking the estimate down any further by reference to the activities that can be included in a cost estimate. The Council also did not state whether any sampling exercise had been conducted in reaching this estimate.
19. Therefore, the Commissioner wrote to the Council again to make it clear the activities that could be included in a cost estimate. In particular he pointed out that the only activity mentioned by the Council was that of cross-checking the information against structure charts and he did not consider this would be an activity undertaken to determine if information was held, to locate that information, retrieve it or extract it from a document containing the information.
20. The Council responded and argued that the need to ensure the information is accurate is part of extracting the information from the document containing it. The Council went on to say that as the complainant was requesting an average salary for each role in bands, this could not be provided as the Council did not hold the information in this format. The Council stated it only held the exact salaries for each employee as each role within the Council has a single pay point.
21. As such, the Council then argued that even if the exact salary paid for each role could be provided within the cost limit it should be exempt from disclosure under section 40(2) of the FOIA as the salary paid for each post constitutes personal data.
22. The Commissioner has considered the Council's position as set out above and maintains his view that the cross-checking of information to ensure it is accurate cannot be included in the cost estimate as it does not relate to the extraction of the requested information from a document containing it. As the Council has provided no further arguments or a more detailed estimate to support its position, the Commissioner considers there are reasonable grounds for assuming that the information could be provided within the cost limit.
23. The Commissioner notes the Council's point that the complainant had stated he would be satisfied with the information as average salaries for each role which is not held by the Council; however as the request was for the current salaries for each role this is the information the Council should focus on providing. With regard to the reference to section 40(2) in the last correspondence from the Council, the Commissioner has

issued guidance on the publication of salary details³ and in this notes that many public bodies now routinely publish job titles and salaries of senior members of staff and job titles and pay scales for more junior members of staff. Often this is part of a public authority's publication scheme.

24. The Commissioner appreciates that in this case the Council states it does not hold pay scale information and only holds single pay points for each role but it may be possible for the Council to provide an average for each role based on the information it does hold.
25. In any event, the Commissioner does not intend to make any conclusive decision on the potential use of section 40(2) in this case. This decision notice is intended to address the use of section 12 of the FOIA by the Council. Based on the arguments presented and the lack of a detailed estimate explaining how activities required by the Council would relate to locating, retrieving and extracting relevant information, the Commissioner has decided there is a sufficient level of doubt to find that the appropriate limit would not be exceeded in complying with the request. As such the Commissioner has determined that the Council was not entitled to rely on section 12(1) of the FOIA in the circumstances of this case.
26. The Council should now provide the requested information or issue a new refusal notice explaining why the information cannot be provided with reference to the relevant exemption(s) under the FOIA.

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http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Environmental_info_reg/Practical_application/section_40_requests_for_personal_data_about_employees.ashx

Right of appeal

27. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

28. 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.
29. 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

Pam Clements
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