

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 24 June 2015

**Public Authority:** Newcastle City Council  
**Address:** Civic Centre  
Newcastle-upon-Tyne  
NE99 2BN

### Decision (including any steps ordered)

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1. The complainant has made a request to Newcastle City Council ("the council") for information relating to comments, feedback, issues and complaints deriving from specific addresses since 1962. The council refused to comply with the request on the basis that to do so would exceed the appropriate limit in costs set by section 12(1) of the Freedom of Information Act ("the FOIA").
2. The Commissioner's decision is that the council correctly applied section 12(1). Additionally, the Commissioner found that the council had complied with section 16(1) by providing appropriate advice and assistance.
3. The Commissioner does not require any steps to be taken.

### Request and response

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4. On 23 October 2014, the complainant wrote to the council and requested the following:
  1. *Any comments, feedback, issues or complaints about noise in relation to the People's Theatre, Stephenson Road, Newcastle upon Tyne, NE6 5QF recorded through a variety of methods by Newcastle City Council including the formal complaints process, as well as individual and departmental processes for recording all kinds of feedback since 1962 to the current date. From properties situated on: Holderness Road NE6 5RH (house numbers 5 to 40), Beatrice Road NE6 5RJ (house numbers 6 to 21).*

2. *Any comments, feedback, issues or complaints in relation to traffic from the People's Theatre, Stephenson Road, Newcastle upon Tyne, NE6 5QF recorded through a variety of methods by Newcastle City Council including the formal complaints process, as well as individual and departmental processes for recording all kinds of feedback since 1962 to the current date. From properties situated on: Holderness Road NE6 5RH (house numbers 5 to 40), Beatrice Road NE6 5RJ (house numbers 6 to 21).*
3. *Any comments, feedback, issues or complaints about parking in relation to the People's Theatre, Stephenson Road, Newcastle upon Tyne, NE6 5QF recorded through a variety of methods by Newcastle City Council including the formal complaints process, as well as individual and departmental processes for recording all kinds of feedback since 1962 to the current date. From properties situated on: Holderness Road NE6 5RH (house numbers 5 to 40), Beatrice Road NE6 5RJ (house numbers 6 to 21).*
4. *Any funds provided by Newcastle City Council to the People's Theatre, Stephenson Road, Newcastle upon Tyne, NE6 5QF since 1962 to the current date (complete).*
5. *Have there been any conflicts of interest declared by Newcastle City Council in relation to the People's Theatre, Stephenson Road, Newcastle upon Tyne, NE6 5QF since 1962 to the current date (complete).*
6. *Any comments, feedback, issues or complaints about noise in relation to the Corner House, Heaton Road, Heaton, Newcastle upon Tyne, NE6 5RP recorded through a variety of methods by Newcastle City Council including the formal complaints process, as well as individual and departmental processes for recording all kinds of feedback since 1962. From properties situated on: Holderness Road NE6 5RH (house numbers 5 to 40), Beatrice Road NE6 5RJ (house numbers 6 to 21).*
7. *Any comments, feedback, issues or complaints about traffic in relation to the Corner House, Heaton Road, Heaton, Newcastle upon Tyne, NE6 5RP recorded through a variety of methods by Newcastle*

*City Council including the formal complaints process, as well as individual and departmental processes for recording all kinds of feedback since 1962. From properties situated on: Holderness Road NE6 5RH (house numbers 5 to 40), Beatrice Road NE6 5RJ (house numbers 6 to 21).*

- 8. Any comments, feedback, issues or complaints about parking in relation to the Corner House, Heaton Road, Heaton, Newcastle upon Tyne, NE6 5RP recorded through a variety of methods by Newcastle City Council including the formal complaints process, as well as individual and departmental processes for recording all kinds of feedback since 1962. From properties situated on: Holderness Road NE6 5RH (house numbers 5 to 40), Beatrice Road NE6 5RJ (house numbers 6 to 21).*
5. The council responded on 20 November 2014. It provided information in response to parts 4 and 5 of the request, but refused to comply with parts 1-3, 6-8 on the basis that to do so would exceed the appropriate limit in costs.
6. The complainant requested advice about how to amend the request on 21 November 2014.
7. The council responded on 26 November 2014 and advised that it considered that the information was not held due to it not being already held in aggregated form.
8. The complainant sought an internal review on 10 December 2014 in which they further requested advice about how to amend the request.
9. The council responded on 19 December 2014. It maintained that it did not consider the information to be held.
10. Following this, and after a telephone conversation with the complainant, the council disclosed part of the requested information (under the terms of the Data Protection Act 1998) on 21 December 2014 where it represented the personal data of the complainant.

### **Scope of the case**

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11. The complainant contacted the Commissioner on 22 December 2014 to contest the council's response.

12. At the start of the Commissioner's investigation, and following advice about aggregation from the ICO, the council confirmed that it would rely on its earlier position and refuse parts 1-3, 6-8 of the request on the basis that section 12(1) applied.
13. The Commissioner therefore considers the scope of this case is the determination of whether the council has correctly applied section 12(1), and whether appropriate advice and assistance has been provided under section 16.

## Reasons for decision

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### Section 12 – the cost of compliance

14. Section 12(1) provides 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."*

15. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Regulations") sets the appropriate limit at £450 for the public authority in question. Under the Regulations, a public authority may charge a maximum of £25 per hour for work undertaken to comply with a request. This equates to 18 hours work in accordance with the appropriate limit set out above.
16. A public authority is only required to provide a reasonable estimate or breakdown of costs and in putting together its estimate it can take the following processes into consideration:
  - determining whether it holds the information;
  - locating the information, or a document which may contain the information;
  - retrieving the information, or a document which may contain the information; and
  - extracting the information from a document containing it.
17. The council has explained to the Commissioner that the majority of the information relating to noise, traffic and parking for the specified streets is held within hardcopy files, with a smaller proportion held electronically. However, these records would need to be manually searched in order to identify relevant information, as they are not

structured by address. Corporate complaints are stored electronically as a database structured by the correspondent's name, and would likewise need to be manually searched to identify information deriving from the addresses given by the complainant.

18. The council has confirmed that it has undertaken a sampling exercise to retrieve information relating to part 2 and 7 of the request (which seek information about traffic). The council has identified that it holds approximately 250 hardcopy paper files that may pertain to one of the given streets alone, and that it is estimated that it would take an officer an average of 10 minutes to examine each file for relevant information, requiring an estimated total of 41 hours to comply with parts 2 and 7 for one of the given streets.
19. Having considered the above, the Commissioner is satisfied that total compliance with the request in its current form would far exceed the appropriate limit. The council was therefore correct to apply section 12 to the complainant's request.

### **Section 16(1) – The duty to provide advice and assistance**

20. Section 16(1) of the FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45 code of practice (the "code")<sup>1</sup> in providing advice and assistance, it will have complied with section 16(1).
21. The code advises that, 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, it should provide the requester with reasonable advice and assistance.
22. The Commissioner's guidance states that the minimum a public authority should do in order to satisfy section 16 is indicate if it is able to provide any information at all within the appropriate limit. Communicating this to a complainant may avoid further and futile attempts to refine the request to bring it under the appropriate limit. If the requestor understands the way in which the estimate has been calculated to exceed the appropriate limit, it should help them decide what to do next.

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<sup>1</sup> <http://www.justice.gov.uk/downloads/information-access-rights/foi/foisection45-code-ofpractice.pdf>

23. In this instance, the council has advised the Commissioner that the complainant spoke to its Freedom of Information Coordinator by telephone before submitting their complaint to the ICO, and that it was ascertained that the most useful information for the complainant's purposes would be information relating to the complainant's address. In response to the Commissioner's enquiries, the council has since provided copies of the disclosed information, which the Commissioner perceives is related to the complainant and their concerns about noise and light pollution.
24. It is clear to the Commissioner that that council has attempted to provide advice and assistance to the complainant, albeit at a late stage, and has provided the complainant with their own personal data, as well as advice about the substantive matter itself (which appears to be the complainant's concern about light and noise pollution affecting their address). It is difficult to envisage a practical way in which information could otherwise be disclosed in a manner that does not either surpass the appropriate limit, or otherwise engage the exemption for third party personal data that is provided by section 40(2). It is evident that even to provide aggregated information for a smaller range of addresses, such as in the form of an anonymised tally, would still require the same extensive manual search for information due to the relevant records not being searchable by address.
25. The Commissioner has therefore concluded that the council provided such advice and assistance as was reasonable, and that it has complied with section 16(1).

## **Other matters**

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26. The complainant, in submitting their complaint to the Commissioner, has expressly stated that the basis for their complaint is the council not having the means in place that would allow their original request to be met, and that they wish the Commissioner to encourage the council to make changes to its information systems. However, such an issue falls outside the Commissioner's jurisdiction under section 50 of the FOIA, which does not extend to deciding how a public authority should structure its hardcopy and electronic records. The Commissioner's role here is to determine whether the council has complied with the terms of the FOIA as it relates to held information.

## Right of appeal

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

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

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