

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 May 2015

Public Authority: City of York Council
Address: West Offices, Station Rise, York YO1 6GA

Decision (including any steps ordered)

1. The complainant has submitted two requests for information to City of York Council ('the Council') about the diary of its Chief Executive, Kersten England. The Council refused to comply with the two requests under section 12 of the FOIA because the cost of doing so would exceed the appropriate limit.
2. The Commissioner's decision is that the Council has correctly applied section 12 to the requests. However he does not consider the Council has met its obligations under section 16 of the FOIA to provide advice and assistance.
3. The Commissioner requires City of York Council to consider *how* the requests might be narrowed in scope so that they could be managed within the cost limit, and to communicate its findings to the complainant.
4. The public authority must take this step 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. Through the 'What Do They Know' website, on 31 August the complainant wrote to City of York Council and requested information in the following terms (**request reference FS50566239**):

"So can you for June 30th until the end of August do the following

For each day and half day :.

- 1. List all dates, locations, and transport modes to every out of York meeting. Please list which organisation or firm (where possible) or event that she attended. For example meeting at Calderdale Council or Windsor castle is insufficient.*
 - 2. Please confirm for each meeting which organisation paid for her 1) time 2) travel - if she took leave for that travel please indicate. Please list how much the travel cost and separately any other costs such as subsistence.*
 - 3. For each event please identify if she received any honorarium, payment, or hospitality and if so who paid for it. or if city of York had to pay to attend the event how much the event was.*
 - 4. Where Kersten made a speech can you upload the written speech and power point so we might all benefit.*
 - 5. Please also for each month indicate which and or how many days she was out of the office on leave (sick or whatever else personal time) - no need to differentiate.*
- In order to keep on top of this I will be submitting a request monthly - so perhaps it would be good to agree a format and you publish them on the open data site on the council website - together with the Directors?*

Please feel free to ask further questions of clarification, it should be easy done monthly."

6. During the Commissioner's investigation, the Council re-sent to the complainant a response it originally provided on 29 September 2014, which it says is a response to this request. In the response the Council said that it is not obliged to comply with the request as, to do so, would exceed the appropriate limit under section 12 of the FOIA. The Council said that if the complainant could narrow down the request, the Council might be able to comply with it within the cost limit. What has become evident is that the complainant may not have understood which of her requests this was a response to. This is because the response does not detail the request to which it is referring.

7. On 27 September 2014 the complainant had written to City of York Council again and submitted a second request for information in these terms (**request reference FS50569243**):

"Please for the calendar month of September 2014 provide the following for Kersten England's diary

- 1. List all dates, locations and transport modes to every out of York meeting she attended. Please list which organisation or firm (where possible) or event that she attended. For each meeting describe the purpose of the meeting and title if a formal meeting such as WYCA or TDF legacy - for example listing a meeting at Calderdale council, or at Windsor castle is insufficient.*
- 2. Please for each meeting confirm which organisation paid for her 1) time 2) travel - if she took leave for that travel please indicate. Please list how much the travel cost, separating all travel, accommodation, subsistence and all other costs, including fees paid for courses, conferences, events.*
- 3. for each event identify if she received any honorarium, payment, or hospitality, list the finance and specific hospitality & value of each.*
- 4. Where Kersten England made a speech can you upload the speech & PowerPoint please upload them so we may all benefit.*
- 5. Please for September identify how many days she was also out of the office on leave and or sick or personal days - no need to differentiate"*

8. The complainant requested an internal review of FS50569243 on 28 October as it appeared at that stage that she had not received a response to this request. On the same day, the Council explained that it had responded to this request on 29 September, but had misdirected the response to the wrong 'What Do They Know' webpage.
9. In this response, also referenced at §6, the Council said it is not obliged to comply with the request under section 12 of the FOIA as the cost of compliance would exceed the appropriate limit. As mentioned, it said that if the complainant could narrow down the request, it might be able to respond within the cost limit.
10. The Council maintained its reliance on section 12 following its internal review of the September request, ref FS50569243, which it provided to the complainant on 26 January 2015. In its detailed review the Council also referred to the earlier request, ref FS50566239. The Council said that it could have combined the two requests for the purposes of the time estimates it provided in its review but that, given its response to the September request, which covers a shorter time period, it had not explored this fully.

11. Following contact from the Commissioner regarding the August request ref FS50566239, the Council told him that it had written to the complainant on 26 January 2015 detailing the time required to provide the information requested in September, relating to a single month of the Chief Executive's diary. It said that although it did not directly address the earlier request for the longer time period (July to August 2014), it believed that the complainant would understand that as it could not locate and retrieve the information within the cost limit for a single calendar month, it would not be possible for the longer time period.
12. The Council went on to tell the Commissioner that it had now provided the complainant with a separate response to FS50566239. It had in fact directed her to the response of 29 September 2014, and its internal review of FS50569243 dated 26 January 2015.

Scope of the case

13. The complainant had contacted the Commissioner on 1 January 2015 to complain that she had not received a response to request reference FS50566239 from the Council. On 28 January 2015 the complainant contacted the Commissioner to complain about the way her second request reference FS50569243 had been handled. She was not satisfied with the Council's application of section 12 to this request and the way in which it appeared to 'despatch' her earlier request in one line.
14. During the Commissioner's investigation, the complainant also provided her own estimates of the time it would take for the Council to identify and retrieve various elements of the information she has requested in FS50569243. Finally, she is not satisfied that the Council met its obligations under section 16.
15. The Commissioner has focussed his investigation on these matters. Since the complainant has effectively complained about the Council's handling of her two requests, this notice covers the Commissioner's investigation of both.

Reasons for decision

16. **Section 12 of the FOIA** allows a public authority to refuse to deal with a request where it estimates that it would exceed the appropriate cost limit to:

either comply with the request in its entirety, or

confirm or deny whether the requested information is held.

17. The estimate must be reasonable in the circumstances of the case. The appropriate limit is currently £600 for central government departments and £450 for all other public authorities. Public authorities can charge a maximum of £25 per hour to undertake work to comply with a request; 18 hours work in accordance with the appropriate limit of £450 set out above, which is the limit applicable to City of York Council. If an authority estimates that complying with a request may cost more than the cost limit, it can consider the time taken to:
 - (a) determine whether it holds the information
 - (b) locate the information, or a document which may contain the information
 - (c) retrieve the information, or a document which may contain the information, and
 - (d) extract the information from a document containing it.
18. Where a public authority claims that section 12 of the FOIA is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit – in line with section 16.
19. To determine whether the Council correctly applied section 12 and section 16 to both requests, the Commissioner has first considered the Council's detailed internal review of the complainant's second request, ref FS50569243. He has also considered his correspondence with the Council and has taken into account the complainant's arguments.
20. In the internal review, the Council provided an analysis of the tasks that it would need to undertake in order to comply with the various elements of this request for information related to one month of Kersten England's diary, as follows:
 - It would need to identify and list potential entries in the Chief Executive's diary.
 - It would then have to match records relating to all of the, what it calculates as, 21 other elements of the request to those diary entries, namely: transport mode; other party; purpose of meeting; title of meeting; which organisation bore the cost of each of: time, travel, accommodation, subsistence, fees, and other; what each of those costs were; additional payments made to Ms England; hospitality provided to her and the value of each item; and text of speech or other presentation.

- It would finally need to review the diary again for the information under point 5 of the request: days out of the office due to sickness, leave or 'personal days'.
21. The Council explained that the Chief Executive's costs, including transport and other incidental costs, are recorded to a cost centre code that relates to all of the Chief Executive's office; that is, items relating specifically to Ms England would need to be identified and extracted from those relating to 109 other employees. These items are not labelled by name; they are identified by the nature of the item. For example, a payment to a rail ticket provider must be referenced back to a purchase order to find the date and destination and this must then be referenced back to an appropriate entry in someone's diary. The Council said that many items will be for multiple journeys for multiple people.
 22. The Council went on to explain that the list mentioned (bullet point 1 at §20) does not identify whether there might be items of travel, accommodation, fees etc. It says that it would therefore have to review the entire list of cost centre entries for each type of item to test whether any item it finds there relates to an entry in the Chief Executive's diary.
 23. According to the Council, it can pay costs months in advance of, or after, a meeting, so it cannot search only for certain months – September 2014 in this case – and instead, would have to review transactions for the entire year. It estimates that to review each entry could take 3 – 5 minutes. With approximately 5,000 supplier entries (ie not pay, recharges or income) for the half-year to September, it would take 250 – 400 hours to complete the task of mapping cost times on to the diary entries that are the subject of the complainant's request. According to the Council, this justifies its reliance on section 12.
 24. The Council said that it would be reasonable to refuse this request at that point, as the cost limit under section 12 would already have been exceeded. However, it went on to consider the non-cost items covered in the request. It said that the 'purpose' (as opposed to the title) of each meeting may not be recorded in the diary although this might be recorded in the invitation or other correspondence with the meeting organisers. The Council said that it would therefore be necessary to review incoming correspondence in order to find this information. It estimated that to carry out an automated search for correspondence with each meeting organiser, and to review the results, would take 10 minutes per appointment. Approximately twenty appointments per month would equate to a further three hours' work. To search for declarations of gifts or hospitality would take an additional 10 minutes, and linking these to diary entries an additional half hour. The Council estimated a further half hour to search for speeches and presentations.

25. The complainant has reiterated to the Commissioner that this particular request is for information about the Chief Executive's meetings for one month only – September. She says that an electronic diary entry has a date, venue and title of meeting and that the Council could take a 'screen shot' of this information, which would take 60 seconds. It could also take 'screen shots' of electronic travel information, and lists of the gifts and hospitality of which the Chief Executive has been in receipt. In the complainant's view, the Chief Executive's secretary could quickly find relevant speeches and it would be a two minute exercise to cross reference the Chief Executive's periods of leave with travel claims. The complainant says that staff in other local authorities have confirmed to her that this request could be processed in about one hour. She consequently disputes the timings the Council has detailed and considers that City of York's Chief Executive wishes to avoid scrutiny.
26. In the Commissioner's opinion, the Council is best placed to know and understand how it records particular information, which may be in quite a different way from how other local authorities record the same information. The Commissioner considers that the Council's explanation of the work involved in complying with this request is sensible and realistic. It is not the Commissioner's role to comment on whether or not City of York's general records management processes and systems are adequate; he has considered the circumstances described to him, as they were at the time of the request. In the circumstances described to the complainant and confirmed to the Commissioner, he is satisfied that it would take the Council in excess of 18 hours to comply with what is a more detailed request than the complainant perhaps recognises, and that, with regard to FS50569243, section 12 is engaged.
27. The complainant is not satisfied that in dealing with this, her second, request, the Council has appeared to 'despatch' the earlier request that she had submitted in August 2014.
28. According to the Commissioner's guidance on section 12, 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, where the requests are: made by one person, made for the same or similar information; and are received by the public authority within any period of 60 consecutive working days.
29. In the Commissioner's view, the Council's response to the complainant's first request, ref FS50566239, was clumsily handled. This is because the Council neither clearly handled this request completely separately from the later request, nor formally aggregated the two requests as detailed in the previous paragraph. Its handling of this request fell somewhere in between these two approaches.

30. The first request is for information covering a wider timescale than the second request. The Council therefore concluded that the complainant should be able to infer that the reasons it considers that complying with the second request would exceed the cost limit, also apply to the first. The Commissioner's agrees with the complainant that the one line that it provided to her within its internal review of FS50569243 was an inadequate review of, or response to, her first request.
31. However, he has reviewed the Council's analysis of the activities involved in complying with the second request and considers that the same or similar activities would be involved in complying with the first request. Given the requests' similarity, he is prepared to accept that it would also take the Council in excess of 18 hours to comply with FS50566239 and that it has therefore correctly applied section 12 to this request.
32. **Section 16 of the FOIA** places an obligation on public authorities to offer advice and assistance to an applicant. The Commissioner notes that in its one response of 29 September (effectively a response to both requests), the Council invited the complainant to narrow the scope of her request. In response the complainant disputed that processing FS50569243 as it stood would take more than one hour and suggested that the Council is trying to keep secret Kersten England's activities outside of York.
33. Paragraph 14 of the FOIA section 45 Code of Practice says 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."
34. The Commissioner recognises however that this is a recommendation and not a requirement. In addition, the duty to provide assistance and advice under section 16 is expressly qualified by the words *"only in so far as it would be reasonable to expect the authority to do so."* This suggests that although compliance with the section 45 code is likely to mean the public authority has complied with section 16; it does not necessarily mean that a failure to meet the requirements of the Code will inevitably lead to a breach of section 16 if it was not reasonable to provide advice and assistance.

35. However, in the Commissioner's view, the Council could have gone further in order to comply with the requests, either separately or having aggregated them. Although it invited the complainant to narrow down her request, the Council does not appear to have considered how this might be done and did not make any resulting suggestions to the complainant. Consequently the Commissioner has decided that the Council has not adequately met its obligations under section 16, with respect to either request.

Other matters

36. The Council told the Commissioner that, from mid-April, it intends to publish details of its Chief Executive's diary on its website. The Commissioner notes that diary entries for March 2015 are available at: http://www.york.gov.uk/downloads/file/17877/diary_of_the_chief_executive_march_2015

Right of appeal

37. 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

38. 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.
39. 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

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