

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 October 2015

Public Authority: Leeds City Council

Address: Civic Hall
Calverley Street
Leeds
LS1 1UR

Decision (including any steps ordered)

1. The complainant has requested information concerning the closed or ended Council Tax accounts where the liable party is deceased and where the account is in credit. The complainant requires this information from 1993 to 2015.
2. The Commissioner's decision is that the Council is entitled to refuse to comply with the complainant's request by virtue of section 12 of the FOIA – where to comply with the request would exceed the appropriate limit provided by section 3(2) of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.
3. The Commissioner requires the public authority to take no further action in respect of this matter.

Request and response

4. On 20 March 2015, the complainant wrote to Leeds City Council and requested information in the following terms:

"I wish to request a list of all closed/ended Council Tax accounts with credit balances from 1993 (or earliest records) to 2015 where the liable party is deceased.

I would like the following fields returned in Excel format by email:-

Full name

*Address**
End date on the account
Amount of credit on the account

If the account address of the deceased is considered exempt for any reason, then I would still request that the other criteria is returned.

5. The Council responded to the complainant's request on 24 March, refusing to supply the requested information in reliance on the exemption to disclosure provided by section 41 of the FOIA.
6. On 26 March, the complainant provided the Council with a copy of the Commissioner's decision in case FS50558362¹ and asked the Council to review its decision to refuse his request.
7. The Council conducted its review and wrote to the complainant on 21 April to convey its final decision. The Council advised the complainant that it had asked its Systems Team to identify the information he had requested and as a result of this enquiry, the reviewer was told that, "we do not hold records of deaths in such a way which would make this request possible". The complainant was informed that a manual search of the system would take longer than the Fees Regulations appropriate limit and therefore the Council rejected his appeal on the grounds that Section 12 applied.
8. The Council also stated that, "Section 41 no longer applies given that the Council is unable to identify the requested information".

Scope of the case

9. The complainant contacted the Commissioner 1 June 2015 to complain about the way his request for information had been handled. The complainant asked the Commissioner to review the Council's decision on the grounds that the Data Protection Act exempts deceased people from the FOIA.
 10. The Commissioner has investigated whether the Council is entitled to refuse to comply with the complainants request by virtue of the provisions of section 12 of the FOIA. This notice sets out his decision.
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¹ Available on the Information Commissioner's website at: https://ico.org.uk/media/action-weve-taken/decision-notice/2015/1043627/fs_50558362.pdf

Reasons for decision

11. The Council has relied on the provisions of section 12 of the FOIA to refuse to provide information the information sought by the complainant.
12. Section 12 of the FOIA states that a public authority is not obliged to comply with a request for information if it estimates that the cost of complying would exceed the appropriate cost limit. The cost limit is set out in section 3(2) of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations) and is currently set at £450.
13. The £450 limit must be calculated at the rate of £25 per hour. This effectively provides a time limit of 18 work hours. Additionally regulation 4(3) the Fees Regulations only allow for four activities which can be considered in relation to complying with the requests. These activities are:
 - Determining whether the public authority holds the information requested;
 - Locating the information or documents containing the information;
 - Retrieving such information or documents; and
 - Extracting the information from a document or other information source.
14. The cost of redacting relevant but exempt information may not be taken into consideration for the purpose of calculating the appropriate limit.
15. To support its reliance on section 12 of the FOIA, the Council has explained to the Commissioner how it holds the information requested by the complainant. The Council explained that:
 - The Council records individual Council Tax accounts on Capita's Revenues and Benefits bespoke system known as Academy.
 - Each property has a unique record in the Council Tax Valuation List, and a list of accounts for each Council Tax payer associated with the property.
 - Account details are recorded against each account including the name of the Council Tax payer, debit and credit transaction postings, discount and exemption details, bank account details, payments, Council Tax Support details, balance, notice periods, refund details,

account notes, bills and adjustments notices issued, reminders and summons issued, and recovery enforcement details.

16. The Council explained its process for collecting Council Tax owed by living individuals and by the estates of deceased persons. The Council explained that:

- Council Tax bills are issued to Council Tax payers annually in March, and throughout the year as new Council Tax payers become liable.
- Additionally, subsequent adjustment notices are issued throughout the year as accounts are amended, for such instances as changes of address and Council Tax Support amendments.
- Council Tax payers normally pay by monthly instalments – a significant number by Direct Debit.
- In the event of non-payment, a reminder notice is issued, followed by a summons to appear before the Magistrates' Court.
- An application is made to the Court for a liability order which gives the council enforcement powers to recover the debt by means such as attachment of earnings orders, deductions from Benefit Orders, and bailiffs. Before this however, the council encourages payment arrangements which the debtor can afford to pay.
- The Council receives notification of deceased persons from a variety of sources. These include: weekly spreadsheet from the Registrar of Births and Deaths; daily downloads from the Government's national 'Tell us Once' system; alerts by organisations such as HMRC, DWP, DVLA and their Local Authority; notifications direct from bereaved persons; solicitors and executors (in writing or in person at the council's One Stops Centres or by telephone); and by unpaid Direct Debits.
- When the Council is first notified of a death, a stop recovery code is input on the Academy system, this is done to prevent any new documents being issued. The Council also amends the account into the name of a surviving partner where Council Tax has been charged to a couple.
- Where the deceased person was the sole resident, the Council amends the name on the account to 'Exor² of [deceased person's name]' and it

² Executors

issues an adjustment notice for payment of any outstanding Council Tax. If the Council does not know the name and address of the executor or next of kin it is required to make enquiries to find this information.

- Where the property is left unoccupied due to a death, there is no ongoing liability as it is exempt from Council Tax. This remains the case until probate or letters of administration have been granted, and for six months afterwards, unless someone else becomes the owner.
 - In circumstances where there is any outstanding liability for Council Tax, the Council defers recovery to allow time for the estate to be settled. Thereafter, if an account remains unpaid, the Council will take recovery action against the executor(s).
 - If the Council is unable to ascertain the name and address of the executor, it is left with little alternative but to write-off the debt.
17. The Commissioner asked the Council to explain how it makes refunds to living persons and to the estates of deceased persons and how its records are structured to allow arrears to be collected and refunds to be made.
- The Council informed the Commissioner that it issues refunds when an account goes into credit provided that the credit is correct.
 - It issues refunds either by cheque or by Direct Credit if the Council Tax payer is a Direct Debit payer and if it holds their bank details.
 - The Council does not routinely issue refunds for amount of £2.00 or under.
 - The Council may issue refunds when an account is not in credit, for example, for backdated discounts or Council Tax Support claims, or Council Tax Band reduction. These circumstances may create a credit for a previous year, but the overall balance on the account may still be in debit.
 - If a Council Tax payer has arrears on another Council Tax account or sundry income account, the Council transfers the credit to offset the arrears. If a credit remains on the account, the Council will issue a refund for this.
 - Where the Council has no forwarding address to issue a refund to, a credit adjustment notice is sent to the Council Tax payer, care of the property address. The notice invites the Council Tax payer to claim the

refund. Thereafter, if the refund is not claimed, and no further information is forthcoming, the credit is written-off.

- Credits up to the value of £30 on closed accounts which have had no account transaction activity in the previous 365 days, are written-off by automated program under transaction code CRED.
 - Credits over £30 can remain on an account indefinitely in case the Council Tax payer subsequently re-registers for Council Tax at another address and provides their previous address. The Council will transfer the credit to offset the liability at the new address.
 - Small credits up to £2.00 are automatically written-off at year end as part of the year end/annual billing program.
 - Refunds in respect of a deceased person's account are issued to the named executor(s) or solicitors dealing with the estate. They are not issued in the name of 'Exors of [deceased person's name]'. If the Council does not know the name and address of the executor it issues a letter addressed to the 'Exors of [deceased person's name]' and it monitors the account for a response. Where no response is made and no further information is forthcoming, the Council will write-off the credit under program transaction code CRWO.
 - Refunds are recorded on the Refund Details screen on the Academy system.
18. The Council was asked to describe the search terms it used to interrogate its electronic systems for the information requested by the complainant. The Council advised the Commissioner that it used Structured Query Language ("SQL") to communicate with its database.
 19. SQL, according to the American National Standards Institute, is the standard language for the interrogation of information held in relational database management system tables.
 20. The Council advised that Commissioner that Council Tax information constantly changes; consequently it is not possible to extract accurate data retrospectively. If a person who is liable for Council Tax dies, the Council is only able temporarily to flag the account: As soon as the account is settled the flag is removed.
 21. All closed accounts, where the charge payer has died and there is no surviving partner, are changed to read 'Exors of [deceased person's name]', and where there is a surviving partner, the partner becomes the lead liable person.

22. The Council explained that it has written a SQL search term to identify the closed Council Tax accounts in the names of 'Exors of [deceased person's name]' to try to identify accounts in credit.
23. The SQL searched the Council's Account Database and the Property Database for the following: The account reference number; the property reference number; the account name searching for 'Exors'; the property address; the write-off transaction codes CRED and CRWO'; the bill number for each year; the start date and end date for each notice period; the value of the credit write-off; the debit amount; and, the Benefit posting amount.
24. The Council advised the Commissioner that its search took approximately 6 hours of staff time and identified 4,722 rows of annual accounts or part-year accounts which appear to have un-refunded credits.
25. Of the 4,722 rows of annual and part-year accounts which have an un-refunded credit, the Council identified 2,575 rows where the accounts that had Council Tax Benefit postings on them. A sample check of these accounts showed that a number of these credits are the result of the accounts having too much Council Tax Benefit posted to them – known as excess benefit. If the excess benefit is removed there would be no remaining credit or a reduced remaining credit.
26. The accounts with excess benefits would need to be individually checked to confirm whether there is a genuine credit and how much any genuine credit might be. To check the accuracy of credits on the excess Benefits accounts, the Council Tax Benefit entitlement for each case would need to be confirmed.
27. For cases with Council Tax Benefit from 2002 onwards, the information about the Council Tax Benefit entitlement is most likely to be held on the current Academy Revenues and Benefits system. For accounts in credit from 1993 to 2001, there is no data held about Council Tax Benefit entitlement. This is because the council changed Revenues and Benefits systems in 2004 and imported benefits data from 2002 only.
28. In the circumstances outlined above, the Council asserts that it is not possible to confirm the accuracy of credits for accounts where there is an excess benefit. It gave two reasons for this: Firstly, the data is not available for accounts prior to 2002 and therefore it follows that the Council does not "hold" information about whether there is a credit balance. Secondly, there is no automated process for checking those accounts from 2002 onwards. Each account would need to be manually checked, and the time required to do this would exceed the appropriate limit.

29. The Council informed the Commissioner that it does not hold manual files of deceased accounts. Where the Council receives notifications of deceased persons daily from 'Tell us Once Deaths' or directly from bereaved persons and solicitors, the information is captured into the Council Tax document imaging and recording system (ICLipse) and indexed to the Council Tax account reference number. The weekly spreadsheet from the Registrar of Births and Deaths is held on the desktop in MS Excel. The Council's records of this information go back to 2007.
30. The lists held by the Council include all deaths of persons over the age of 18 registered with the Leeds Registrar, including persons who were not Council Tax payers in Leeds. The lists also includes Tell us Once Deaths from 2012, when the system was rolled out by the Government, and notifications direct from bereaved persons and solicitors.
31. The Council has assured the Commissioner that the lists it holds are suitable to be used to determine an estimate of the time taken to manually locate and extract the requested information.
32. Nevertheless, the Council maintains the position that it does not hold any details of notifications of deceased persons received before 2007 as these were held as paper records. As such they were not retained in accordance with minimum retention periods (current year + 2 previous years) within the Council's Financial Regulations which applied at the time.
33. Likewise, the Council accepts that it holds records of all benefit claims on the Service's Document Management System from 1995 onwards. These are electronic images of benefit application forms and reported changes in circumstances. The Council has advised the Commissioner that it would need to recreate a benefit file for each account from 1995 to 2002 and manually recalculate benefit entitlement.
34. In consideration of the foregoing information about how the requested information is held and used by the Council, the Council's position is that it would need to manually work through the data on a case-by-case basis to be able to provide meaningful and accurate information from the list of credit write-offs. The Council strongly asserts that the cost of doing this would exceed the 'appropriate limit' which is set out in section 3(2) of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.
35. The Council provided the Commissioner with its estimate of the time it would require to undertake this work: The Council estimated that to work through 2,575 rows of data within 18 hours required by the Fees Regulations, would require to check 143 records in each hour. The

Council considers this to be clearly unachievable. It points out that there can be retrospective Council Tax band amendments made to its records and many of these would also require manual benefit calculations to be done in that time as well. It therefore estimates that determining whether the information is held, in other words checking whether there is a genuine credit balance or not, and then extracting that information would take at least 10 minutes per record, and depending on the calculations to be done, could take up to 1 hour per record. To be achievable within the 18 hour limit would require these operations to take less than half a minute per record.

36. To verify its estimate the Council informed the Commissioner that it carried out initial checks to establish the accuracy and reliability of the data it holds. The checks the Council made are reflected in its estimate of the time need to be spent in providing the complainant with the requested information.
37. The Council has assured the Commissioner that its assessment is based on manual checks as it is unable to further refine the SQL to provide more meaningful and accurate data.

The Commissioner's conclusions and decision

38. The Commissioner has considered the information and assurance provided by the Council in response to his enquiry. He accepts that the information held by the Council is held in electronic formats which can be searched.
39. The Commissioner further accepts that the information held by the Council is complex and may be subject to change and that a significant proportion of the Council Tax records may require recalculation of the type described above.
40. The estimate of the time the Council would need to spend in ensuring that the data was accurate and up-to-date appears to be realistic. In the Commissioner's opinion the Council would need to take significantly longer than 30 seconds to check and possibly recalculate the 2,575 rows of data which are shown as 'excess benefit'.
41. The Commissioner considers that the information provided by the Council is plausible to the extent that he can accept, on the balance of probabilities, that to comply with the complainant's request the Council would exceed the appropriate limit. He therefore finds that the Council is entitled to refuse the complainant's request in reliance on section 12 of the FOIA.
42. The Council confirmed to the Commissioner that it had not offered the complainant any advice and assistance in respect of his information

request. This is because, notwithstanding its application of section 12, the Council would still maintain the position that the information was also exempt by virtue of section 41 of the FOIA. For this reason the Council could not see how the complainant could revise his request for information which it maintains is exempt from disclosure.

43. The Commissioner accepts the difficulties the Council would have in offering advice and assistance to the complainant in this case; not least since any potential disclosure would still require the Council to undertake the tasks listed above to ensure that the information is meaningful and accurate. Consequently the Commissioner has not found a breach of section 16 of the FOIA based on the facts of the case as presented by the Council.
44. The Council has provided the Commissioner with its arguments for its alternative position in respect of an application of section 41 to information which it maintains is confidential. The Commissioner has not considered the Council's arguments in support of section 41 in view of his decision regarding the Council's application of section 12.
45. The Commissioner has considered his previous decision in case FS50558362. Whilst case FS50558362 concerns a request for information which is substantially the same as the request in this case, the facts of FS50558362 can easily be distinguished. In the former case the Council did not rely on either section 12 or section 41. Instead, Newcastle City Council chose to argue that section 31(1)(a) applied to the requested information and the Commissioner disagreed with that position. In making its case, Newcastle City Council was able to provide the Commissioner with a spreadsheet of the information it was withholding from the complainant. It did so, apparently with relative ease and without the suggestion that section 12 was applicable or even contemplated.

Right of appeal

46. 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

47. 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.
48. 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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