

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 December 2016

Public Authority: Cherwell District Council
Address: North Oxfordshire
Bodicote House
Bodicote
Banbury
Oxfordshire
OX15 4AA

Decision (including any steps ordered)

1. The complainant has requested information in relation to local government reorganisation. Gloucestershire County Council (the council) refused the request under section 12 of the FOIA as it considered responding would take over the appropriate cost limits.
2. The Commissioner's decision is that section 12 of the FOIA is engaged and the council has provided appropriate advice and assistance under section 16 of the FOIA.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 23 February 2016, the complainant made the following request to the council:

"I wish to request all information (including, but not exclusively, any report, email or other item of correspondence) in your authority's possession with regards local government reorganisation, including proposals etc, in, or adjoining, your council. In the interests of expediency, I am happy to limit this to the last 12 months."

5. The council responded on the 24 March 2016 refusing the request under section 12 of the FOIA as it considered providing the information would exceed the appropriate cost limits.

6. The complainant requested an internal review on the same day as he did not consider that section 12 of the FOIA was engaged. The council provided its internal review on the 11 April 2016 upholding its decision to refuse the request.

Scope of the case

7. The complainant contacted the Commissioner on 13 April 2016 as he was not satisfied with the council refusing his request.
8. The Commissioner considers the scope of the request is to consider whether section 12 of the FOIA is engaged. If found to be engaged, she will go on to consider whether the council has provided appropriate advice and assistance under section 16 of the FOIA.

Reasons for decision

Section 12 of the FOIA

9. Section 12 of the FOIA states that a public authority does not have to comply with a request for information if it estimates that the cost of complying with the request would exceed the appropriate limit.
10. The Freedom of Information and Data Protection (Appropriate Limit and Fees) regulations 2004 ("the Fees Regulations") sets the appropriate limit at £450 for the council.
11. A public authority can charge £25 per hour of staff time for work undertaken to comply with a request in accordance with the appropriate limit set out above. If a public authority estimates that complying with a request may cost more than the cost limit, it can consider time taken in:
 - a) Determining whether it holds the information;
 - b) Locating the information, or a document which may contain the information ;
 - c) Retrieving the information, or a document which may contain the information; and
 - d) Extracting the information from a document containing it.
12. In determining whether the council has correctly applied section 12 of the FOIA in this case, the Commissioner has considered the council's rationale as provided to the Commissioner during his investigation.

13. The council has provided some background information to demonstrate the extent and breadth of its reorganisation activities up to the date of the complainant's request.
14. The council informed the Commissioner that it has had a shared management team with South Northamptonshire Council (SNC) since 2011 and has, since then, entered into several shared service arrangements with SNC and continues to consider other business cases for further shared service arrangements.
15. In 2014, the council entered into some three-way shared service arrangements with Stratford on Avon District Council (SADC) and SNC, although they have been terminated in recent months.
16. The council further explained that it continues to seek commercialisation opportunities via a confederation with SNC and other potential partners to generate income and achieve savings to ensure the future financial stability of the council. On top of this, the council, together with other district councils in Oxfordshire, has recently submitted a devolution proposal to central government.
17. So, with regards to this, the council has interpreted the complainant's term "local government reorganisation" to include but not be limited to, shared working arrangements/ proposals with neighbouring authorities SADC and SNC, the council's proposed move with SNC to a confederation with the associated increased commercialisation of its activities and various devolution considerations/proposals/bids.
18. The council stated that it informed the complainant of this interpretation in its 24 March 2016 response to him. The Commissioner is not aware of any dispute of this interpretation, although, she notes that the complainant is of the view that the amount of employees dealing with the matter relating to the request over the past year would not be anywhere near the amount of employees suggested by the council and therefore should not reach the section 12 of the FOIA threshold for refusal.
19. However, the council is of a differing view to this. It has told the Commissioner that because the council employs approximately 450 office based staff members and because of the wide scope of activities undertaken by the council that came under the umbrella of "local government reorganisation", it has told the Commissioner that it would be necessary for its entire office based staff to search for information relevant to the request.
20. The council has acknowledged to the Commissioner that individual officers would hold varying amounts of information dependant on their

involvement in the various reorganisation activities undertaken by the council and to the extent that they were directly consulted upon or informed about them. But the council considers that all staff would potentially hold information due to the wide dissemination of relevant information by senior management.

21. The council has told the Commissioner that this process is the only way it could ensure that all relevant information was located and retrieved and therefore believes this to be the quickest method of gathering the information.
22. With regards to the council's calculations that responding to the request would take it over the appropriate limit, the Commissioner asked the council to undertake a sampling exercise in order to demonstrate its conclusion.
23. The council carried out a sampling exercise on 3 of its employees who had varying degrees of involvement with the reorganisation. These being:
 - The Practice management Support Officer – classed as a junior administrative role with no close work association to matters relating to local government reorganisation but who would have received general information about it. The majority of the 450 staff would come under this category – an estimation of 420 staff members.
 - Legal Assistance – a more senior role than above but also a member of the consultation group meaning that this position would have received additional information as part of the role. There are approximately 20 members of staff at this level.
 - Head of Law and Governance – a member of the council's joint management team, there being 12 employees of this level and they would hold considerably more information within the scope of the request than the bulk of the employees.
24. The council has told the Commissioner that there would also be a small amount of staff likely to hold even more information than members of the management team. The Council has a transformation team numbering 5-6 individuals and these, together with the Chief Executive, would hold the most information of all.
25. The sampling exercise involved each of the three officers, listed above, searching their personal email folders for the relevant 12 month period using 19 different search terms, all of which have associations with the concept of local government reorganisation. These included search

words such as: Reorganisation, Devolution, Local Government Review, Staff Consultation and Restructure.

26. Using a stop watch, the council has told the Commissioner that it took the Practice Manger Support Officer 5 minutes and 39 seconds to interrogate his email system, and 27 minutes and 32 seconds for the Legal assistance to do the same.
27. The Head of Law and Governance stopped searching his email system at the 2 hour mark and during that time he located 556 potential emails that would need reviewing from 5 of the 19 search terms used.
28. So based on it taking approximately 27 minutes for each of the 20 members of staff at the same level of Legal Assistance this equates to approximately 9 hours of time.
29. Then if you add this to the 2 hours it took the Head of Law and Governance's search time multiplied by the 12 other employees at this level, who would have a similar search time, this takes it to 33 hours of officer time which is already over the appropriate limit of 18 hours.
30. The council considers that even a conservative estimate of it taking an average of 3 minutes for the majority of the remaining 450 employees to interrogate their systems to identify the information they hold would take over the required 18 hours.
31. The Commissioner sees that the request made is very broad in asking for all information held. Therefore she is satisfied with the council's explanations given as to why every employee would have to carry out searches in order for the council to ensure they had gathered all the information it holds within the scope of the request.
32. Basing it on this conservative estimate of 3 minutes per employee, the Commissioner is satisfied that section 12 of the FOIA is engaged in this case.

Section 16 of the FOIA – Advice and Assistance

33. Section 16 of the FOIA imposes an obligation on public authorities to provide advice and assistance to a person making a request, so far as it is reasonable to do so. Section 16(2) states that a public authority is to be taken to have complied with its section 16 duty in any particular case

if it has conformed with the provisions in the section 45 Code of Practice¹ in relation to the provision of advice and assistance.

34. Paragraph 14 of Section 45 of the Code of Practice states 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 refocusing their request, information may be able to be supplied for a lower, or no, fee."

35. The council has explained to the Commissioner that it advised the complainant of the interpretation given to the term "local government reorganisation" in its response to him of 24 March 2016. In that response the council invited him to provide further clarification as to the specific information he required in order that the council might reconsider his request.
36. It also told the Commissioner that the complainant was also referred to the Committee area of the council's website where copies of any relevant reports, minutes, agendas and documents already in the public domain could be located and it was advised him of the committees which would have considered these matters.
37. The council repeated its invitation to provide further clarification to the specific information that was required, but no such clarification was received so it could only go off the request for all information held.
38. On review of this, the Commissioner is satisfied that the council has provided appropriate advice and assistance to the complainant in this case. So it would now be for the complainant to refine his request to the council should he choose.

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/235286/0033.pdf

Right of appeal

39. 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

40. 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.
41. 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
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Water Lane
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