

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 April 2018

Public Authority: Sheffield City Council

Address: PO Box 1283,
Sheffield S1 1UJ

Decision (including any steps ordered)

1. The complainant has requested information relating to the cost of retaining trees on Rustlings Road. Sheffield City Council (the council) refused to provide the requested information citing section 12(1) of the FOIA (cost exceeds appropriate limit).
2. The Commissioner's decision is that the council is not required to comply with the request and has correctly cited section 12(1).
3. The Commissioner does not require the public authority to take any steps as a result of this decision notice.

Request and response

4. On 26 January 2017, the complainant wrote to the council and requested information in the following terms:

"PLEASE PROVIDE ME WITH ALL CORRESPONDENCE AND DOCUMENTS relating to the evaluation of the cost TO THE COUNCIL of retaining the Rustlings Road trees, as per the recommendations of the ITP. Please treat this as an FOI request"
5. The council responded on 9 February 2017 and provided a table containing a breakdown of the budget estimates for the Rustlings Road trees.

6. On 16 February 2017 the complainant requested an internal review stating that his request was for all relevant documents and correspondence regarding the issue, rather than a table of figures.
7. The council provided an internal review on 29 August 2017 in which it maintained its original position. The council further explained that a public authority is not obliged to provide documents but only the information those documents contain, that falls within the scope of the request.
8. The council also stated that due to the amount of records it would need to review to locate "*all relevant documents and correspondence regarding to this issue*" would be likely to exceed the cost limit. It therefore cited section 12 of the FOIA.

Scope of the case

9. The complainant contacted the Commissioner on 16 October 2017 to complain about the way his request for information had been handled.
10. The Commissioner considers the scope of this case to be to determine if the council has correctly applied section 12 of the FOIA to the request.

Background

11. The council explained that it has been under an unprecedented level of scrutiny related to its management of highway trees. This activity was initially instigated as a result of protests related to the intention to replace a number of trees on Rustlings Road and then extended to the general management of highway trees within the council area. As a result the council has received and written an innumerable number of messages, correspondence and other documentation in regard to this road and the activities related to the trees at this location.
12. The operation to remove trees on Rustlings Road took place on the 17 November 2016 and the request was made post this activity.

Reasons for decision

13. Section 12 of the FOIA states that a public authority is not obliged to comply with a request if it estimates that it would exceed the appropriate limit.

14. The relevant Regulations which define the appropriate limit for section 12 purposes are The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 SI 2004 No 3244. These are known as the 'Fees Regulations' for brevity. Regulation 3 of the Fees Regulations states that the appropriate limit is £450.00 or 18 hours at an hourly rate of £25.00. The estimate must be reasonable in the circumstances of the case.
15. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the cost it reasonably expect to incur in carrying out the following permitted activities in complying with the request:
 - determining whether the information is held;
 - locating the information, or a document containing it;
 - retrieving the information, or a document containing it; and
 - extracting the information from a document containing it.
16. 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 of the FOIA.
17. The council explained that it is likely that a wide range of this information would not be relevant to the request; however, it would have to review and consider the materials held in order to select any relevant documentation which would be captured i.e. those with any linkage to the cost of retaining the trees at this site. In this context the request would capture not only council produced information but also the wide range of complaints, enquiries and potentially FOI requests related to the site which may in part feature the cost of retention of the trees.
18. It further explained that the wider request for all such correspondence does not provide any limitation on the scope of the request and this is also a challenge. The Council's Technical Officers within the Highways Maintenance Division, who deal with the council's contact with the highways maintenance contract in regard to trees, have confirmed that to solely review their own documentation related to Rustlings Road to even consider if such information is relevant to the request would exceed the cost threshold for dealing with FOI requests. Extending this to wider members of staff within the Highways Division and then others with contact and involvement with these issues including Customer Services, the Chief Executive's Office, Councillor Liaison staff, Communications Team etc. would further extend the request and the

complexity and scale of the information requiring review to respond to this request.

19. The council also stated that due to the nature of the information it is likely to hold related to this issue it is extremely challenging to provide an estimate in regard to the time likely to be taken to collate the information requested; or even locate records which are of relevance. It was the council's submission that any such activity would be inordinately complex and challenging and far exceed the cost threshold for dealing with FOI requests. In this regard even the use of the search term "*rustling*" by individual staff would produce excessive returns.
20. As an example a council officer reviewed their own mailbox and the council's Freedom of Information email account which identified 286 emails captured by the search term '*rustlings*'. This related to a single individual whose interactions are generally only related to FOI requests and their management. The council consider that individuals more closely aligned to the management of highways trees are likely to hold a far greater number of messages and associated documentation. Furthermore, it is likely that communications could be loosely relevant to the request and would therefore need to be individually read and reviewed in order identify and then extract relevant materials.
21. The council stated that as noted in the internal review response it did not believe such a request would be a simple task due to the number of communications and interactions held in regard to this issue and location. Furthermore, should the council consider collating information in this manner it would have to collate all records it holds related to Rustlings Road in order to consider and extract those relevant to the request.
22. The council further argued that due to the complexity of the information held and the sources/locations where it may sit it was unable to provide a quantifiable estimation of the time or work required to complete the activity in locating, retrieving and extracting the information required.
23. However, the council explained that as an example sample if 10 officers held the same level of information as the previous officer (286) emails and it took just 30 seconds to review each individual message to extract any relevant information it would take in excess of 23 hours to collate records for such a small sample group. These considerations would be far expanded in terms of the number of individuals involved and any wider documentation held in physical records or other systems.
24. The council therefore considered that, due to the holistic nature of the request there would be no way to refine the search to a manageable degree; i.e. it could not limit the request to one system or area of the

council as the request has not been framed in this manner; and the review correspondence appeared to show a specific desire to request all relevant information.

25. Having considered the council's representations the Commissioner is satisfied that its estimate is reasonable in the circumstances of this case. She is therefore satisfied that it has correctly cited section 12 of the FOIA in response to the request and that the cost to comply would exceed £450.

Section 16

26. The Commissioner asked the council if it had considered its responsibilities under section 16 of the FOIA. Section 16 places a duty on a public authority to provide advice and assistance to someone making an information request, including helping an applicant refine a request so that it can be answered within the appropriate costs limit.
27. The council stated that with regard to section 16, it had attempted to provide a response in respect to the details initially provided to the complainant in its initial disclosure.
28. The Commissioner considers that if looking at the request in its entirety it would exceed the costs limit then the council was not obliged to provide any information. However, the council stated that appeared to be a reasonable and proportionate approach to disclose the information it provided as it could do so within the costs limit.
29. The council considered that it would be quite challenging to provide advice and assistance in terms of refining this specific request. It stated that as there is no clear single source of information which it could direct the requestor to focus his request to bring any further materials within costs, particularly as both in his initial request and internal review request he stated he wanted *all* related materials.
30. The Commissioner is satisfied that the above explains why it was not possible for the council to advise the requestor on how to refine his request, and therefore is satisfied that the council has complied with its responsibilities under section 16.

Right of appeal

31. 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

32. 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.
33. 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

Pamela Clements
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