

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 October 2019

Public Authority: Caerphilly County Borough Council
Address: Penallta House
Tredomen Park
Hengoed
CF82 7PG

Decision (including any steps ordered)

1. The complainant has requested information about the awarding of EU structural funding. Caerphilly County Borough Council ("the Council") provided some information but refused the remainder of the request because it estimated that the cost of complying would exceed the appropriate limit.
2. The Commissioner's decision is that the Council has demonstrated that complying with the request would exceed the appropriate limit and therefore the Council was entitled to rely on section 12(1) of the FOIA to refuse it. However, the Commissioner also finds that the Council failed to issue a refusal notice, citing section 12, within 20 working days and thus breached section 17(5) of the FOIA.
3. The Commissioner does not require any further steps to be taken.

Request and response

4. On 28 June 2018, the complainant wrote to the Council and requested information in the following terms:

"Please be kind enough to let me know,

- 1. The total amount of money Caerphilly CBC has had access to since 1999 to the present from the three rounds of European Structural Funding won for West Wales and the Valleys?*

2. *How much of the European Structural Funding has Caerphilly CBC spent since 1999?"*

5. The Council responded on 23 July 2018. It provided some broad information about the total funding provided to West Wales and an estimate of how much of that pot had been allocated to the Borough of Caerphilly.
6. The complainant requested an internal review on 29 July 2018 because he did not consider that the requested information answered his request. The Council finally issued the outcome of its internal review on 14 February 2019. It provided some additional information but now refused the request and cited section 12(1) of the FOIA as its reason for doing so.

Scope of the case

7. The complainant originally contacted the Commissioner on 10 November 2018 to complain about the delay in the Council informing him of the outcome of its internal review.
8. Following the intervention of the Commissioner, the Council issued the outcome of its internal review to the complainant. The complainant then asked the Commissioner to look at the substantive reasoning behind the Council's decision to refuse his request.
9. The Commissioner considers that the scope of her investigation is to determine whether the Council has reasonably estimated that the cost of compliance would exceed the appropriate limit.

Reasons for decision

Section 12 – Cost of Compliance Exceeds Appropriate Limit

10. Section 1(1) of the FOIA states that:

Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*
- (b) if that is the case, to have that information communicated to him.*

11. Section 12 of the FOIA states that:

- (1) *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.*
- (2) *Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.*

12. The "Appropriate Limit" is defined in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Regulations") and is set at £450 for a public authority such as the Council. The Regulations also state that staff time should be notionally charged at a flat rate of £25 per hour, giving an effective time limit of 18 hours.

13. When estimating the cost of complying with a request, a public authority is entitled to take account of time or cost spent 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.

14. A public authority does not have to make a precise calculation of the costs of complying with a request; instead only an estimate is required. However, it must be a reasonable estimate. In accordance with the First-Tier Tribunal in the case of *Randall v Information Commissioner & Medicines and Healthcare Products Regulatory Agency* EA/2007/0004, the Commissioner considers that any estimate must be "sensible, realistic and supported by cogent evidence".¹ The task for the Commissioner in a section 12 matter is to determine whether the public authority made a reasonable estimate of the cost of complying with the request.

¹ <http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i136/Randall.pdf>

The Council's position

15. The Council explained to the Commissioner that:

"Due to changes to the Council's structure in 2015, there is no longer a central team with a co-ordinating role with regards to European funded projects. Even when this team was in place not all of the European projects were managed through this route. Whilst some of the information was held centrally prior to 2015 there was also an element that was held locally in specific service areas. Today all this information is spread across the authority depending on which service area is dealing with the project....European funded projects often span more than 1 financial year and the actual level of funding can change from the start of the project to the end of the project for a number of reasons:

- Additional funding becoming available*
- Length of the project being extended or shortened*
- A change in the "outcomes" profile of the project which requires a re-profile of the funding bid*
- A change in the intervention rate which determines the split between the level of European funding and Local Authority match funding*

"In order to provide the information requested, paper records would have to be retrieved from archive for each individual project and an officer would have to trawl through this paperwork to identify the relevant information so that it can be extracted for further analysis. Unfortunately, with the passage of time, many of the project managers responsible for individual projects are no longer employed by the Authority, and their specialist knowledge has been lost, so any work carried out to locate, retrieve and extract the information would have to be carried out by an officer who is not familiar with the project and would therefore, take them longer to complete the exercise."

16. The Council continued:

"It is difficult to produce the information for funding received by Caerphilly County Borough Council with a mix of projects led either by CCBC or other bodies external to the Authority (e.g. another Local Authority). Welsh Government data / statistics do not always produce readily available & accessible localised figures (i.e. specific to a Local Authority). A Lead Sponsor will collate all the necessary financial and non-financial information in relation to the Project and act as the contact for project bids, financial claims and providing details of participant outcomes to WEFO. When the bid and financial

claims are submitted, the funding is awarded to the Project via the Lead Sponsor – this then needs to be broken down and split between all the beneficiaries (i.e. disaggregated).

As mentioned above, many projects will span more than 1 financial year and the project year could be different to the financial year e.g. a project year could run from June to May falling in 2 separate financial years.

The Council's "live" financial system holds 4 years of data and anything older than that is held in an archived database. To retrieve the information from the archived system would require a level of knowledge about the projects so that a report can be run to pull down the raw data. This data would be downloaded at transaction level and again, would require a level of knowledge about the project to interpret the information appropriately. As a project could run over more than 1 financial year, a report would need to be run and analysed for each year that the project was active.

On this basis information for the period 1999 to 2016 (17 years) has largely been archived in the authority's Financial Information system database whilst more recent financial year information is held in the "live" OLAS ledger. There is no marker in either the "live" ledger or the archived database to identify which cost centres (a cost centre holds all the financial transactional information relating to a project) relate to EU funded projects. As a result, we are unable to run a report listing European funded projects, and we would have to carry out a manual search to identify and extract such information. As the projects are no longer managed centrally, key members of staff from across the authority would have to collate the information for their service areas and it is estimated that it would take 7 officers approximately 1 hour per year to search these records in order to identify the cost centres linked to EU grant funded projects i.e. 119 hours which exceeds the appropriate fees limit."

17. The Council then went on to explain that, once relevant projects had been identified, searching the relevant project files to establish how much had been spent on each one. It had sampled one particular project which, it claimed, would require in excess of nine hours to review to establish the amount of information which fell within the scope of the request.
18. If, say, 25 such projects were identified by the process identified earlier, the Council argued, that would add an additional 237 hours on top of the 119 hours already spent.

The Commissioner's view

19. The Commissioner considers that the Council has demonstrated that the request could not be answered within the cost limit.
20. The Commissioner has not been convinced that the Council has made a reasonable estimate of the time taken to search each individual project to establish the amount of EU funds which were spent and received.
21. Whilst she accepts the Council's arguments that funding may span more than one financial year and that funding provided to a project spanning more than one local authority will need to be disaggregated to establish the Council's "share" of that funding, she struggles to understand how or why the Council would need to take in excess of nine hours of searching to establish how much EU funding had been received and spent on a single project.
22. Whilst the Council noted that it had done some sampling in relation to one particular project, it did not explain why this particular project had been chosen, whether it was in fact representative of other projects and why it was necessary to review so much of the project to establish what sums had been spent and received.
23. Nevertheless, the Commissioner does accept that the lack of a central record would require a great deal of searching to establish which projects would fall within the scope of the request. She notes that, had the Council carried out its search at the time the request was made, it would only have needed to have searched 15 years' worth of projects, but this is still a great deal of information, which would require sorting through to establish which projects were relevant.
24. Even if each of the seven officers were able to identify all relevant projects within a single hour, that would equate to seven hours of staff time. If each project could have its costs identified and extracted within a further half hour, that would mean that it would take just 22 identified projects to tip the cost of complying with the request over the 18 hour threshold. As the Commissioner considers it likely that Caerphilly Borough Council was involved in more than 22 projects over the 15 years (the Council made a conservative estimate of 25), identifying and extracting the relevant costs would exceed the appropriate limit.
25. When determining whether section 12 is engaged, the Commissioner is only required to consider the manner in which the requested information is held – and not whether the information ought to be more readily accessible.

26. How a public authority chooses to hold information is a matter for the public authority itself to take – in accordance with its statutory duties and business needs.
27. As complying with the request would exceed the cost limit, the Commissioner considers that the Council was entitled to rely on section 12(1) of the FOIA to refuse the request.

Advice and Assistance – Section 16

28. Section 16 imposes a duty upon a public authority to provide reasonable advice and assistance to requestors and would-be requestors. In cases where a public authority estimates that complying with a request would exceed the appropriate limit, the Commissioner considers that such advice and assistance would normally extend to explaining how a request might be refined so as to bring it within the appropriate limit.
29. In this particular case, the Council noted that the most recent four years' worth of data was available electronically and thus costs could be isolated more swiftly and within the appropriate limit. In the Commissioner's view this was reasonable advice and assistance.

Refusal Notice

30. Section 17(5) of the FOIA states that:

"A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact."

31. The Council did not cite section 12 of the FOIA until 14 February 2019, when it had completed its internal review. This is significantly beyond 20 working days from the day it received the request. The Council therefore breached section 17(5) of the FOIA in responding to the request.

Other matters

32. Whilst there is no statutory time limit, within the FOIA, for carrying out an internal review, the Commissioner considers that internal reviews should normally take no longer than 20 working days and never longer than 40 working days.
33. In this particular case, the Council took in excess of six months to complete its internal review. The Commissioner considers such a delay to be unacceptable.

Right of appeal

34. 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@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

35. 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.
36. 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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