

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 October 2019

Public Authority: Cheshire East Council
Address: C/O Municipal Building
Earle Street
Crewe
Cheshire
CW1 2BJ

Decision (including any steps ordered)

1. The complainant has requested all information relating to a range of works undertaken at Sandbach Leisure Centre. Cheshire East Council ("the Council") refused to comply with the request under section 14(1).
2. The Commissioner's decision is that the Council is entitled to apply section 14(1). However, in applying section 14(1) outside the time for compliance, the Council breached section 17(1).
3. The Commissioner does not require the Council to take any steps.

Request and response

4. On 8 January 2019, the complainant wrote to the Council and requested information in the following terms:

"Under the terms of the Freedom of Information Act I am requesting copies of any recorded information including but not exclusively limited to emails, memos, minutes of meetings, letters and such like pertaining to the installation of the new 'internal' corridor doors, installation of CCTV cameras within the Sports Hall and Social Area (and adjacent corridor/stairwells), installation of new 'locks' on the external doors to the Sports Hall and the revised 'access' arrangements as introduced/implemented with effect from 1 January 2019.

The requested recorded information relates to all that sent by Cheshire East Council or on its behalf.

Please provide the information in the form of hardcopy.

If it is not possible to provide the information requested due to the information exceeding the cost of compliance limits identified within the Act, please provide advice and assistance as per the terms of the Act, as to how I can refine the request.

If you can identify any ways that the request could be refined I would be grateful for any further advice and assistance."

5. The Council responded on 30 January 2019. It advised that, under section 10(3), it was extending the time for compliance until 19 February 2019, so that the public interest test for sections 42 and 36 could be considered.
6. The Council responded further on 15 February 2019. It advised that the collation and preliminary review of the information in respect of exemptions had taken in excess of 18 hours, and that it was withdrawing reliance upon sections 42 and 36, and instead refusing the request as vexatious under section 14(1). The Council also advised that it would be able to consider a reduced request, such as that based on specific officers.
7. The Council provided an internal review outcome on 18 March 2019. It upheld the application of section 14(1)

Scope of the case

8. The complainant contacted the Commissioner on 19 March 2019 to complain about the way his request had been handled, and specifically that the Council was incorrect to apply section 14(1).
9. The Commissioner considers the scope of the case to be whether the Council is entitled to apply section 14(1) to the request.

Reasons for decision

Section 14(1) – Vexatious requests

10. Section 14(1) of the FOIA states that:

"Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious."

11. The Commissioner has published guidance on vexatious requests¹. As discussed in the Commissioner's guidance, the relevant consideration is whether the request itself is vexatious, rather than the individual submitting it. Sometimes, it will be obvious when requests are vexatious, but sometimes it may not. In such cases, it should be considered whether the request would be likely to cause a disproportionate or unjustified level of disruption, irritation or distress to the public authority. This negative impact must then be considered against the purpose and public value of the request. A public authority can also consider the context of the request and the history of its relationship with the requester when this is relevant.
12. In the circumstances of this case the Council applied section 14(1) on the basis of the grossly oppressive burden that it considers the request would impose upon it.
13. Ordinarily, where the concern of a public authority is about the burden of a request, the relevant provision of the FOIA would be section 12(1). This section provides that a public authority is not obliged to comply with a request where the cost of doing so would exceed a limit. However, a public authority cannot claim section 12(1) for the cost and

¹ <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

effort associated with considering exemptions or redacting exempt information, which was the concern of the Council in this case.

14. A public authority may apply section 14(1) where it can make a case that the amount of time required to review and prepare the information for disclosure would impose a grossly oppressive burden upon it. This can include time spent on considering exemptions and making redactions.
15. However, the Commissioner considers there to be a high threshold for refusing a request on such grounds. This means that a public authority is most likely to have a viable case where:
 - The requester has asked for a substantial volume of information **and**
 - The authority has real concerns about potentially exempt information, which it will be able to substantiate if asked to do so by the ICO **and**
 - Any potentially exempt information cannot easily be isolated because it is scattered throughout the requested material.

Context

16. The Commissioner understands that the request relates to Sandbach Leisure Centre ("the Leisure Centre"), the ownership and use of which has been disputed between the Council and Sandbach High School and Sixth Form College ("the School") since 2006, when the School was established. The dispute was partly addressed in 2009, when the Office of the School's Adjudicator determined that the ownership and management of the Leisure Centre should be retained by the Council. However, since that time, the parties have failed to agree and complete the appropriate legal documentation for the necessary transfer of specific land (to the School) and the terms of joint use (of the Leisure Centre).
17. A particular area of contention between the parties is the use of the Leisure Centre as a pupil entrance into the School, as the two buildings are connected by a corridor. The Commissioner understands that this matter was escalated in late 2018, following the School requesting pupils to access the School through the Leisure Centre, which the Council did not consider to be appropriate.
18. In early 2019, the Council made changes to the access arrangements between the Leisure Centre and School. This included the addition of corridor doors, the installation of CCTV cameras, and the new locks on

external doors in the Sports Hall. The Commissioner understands that these changes are contested by the School, and are the focus of the request.

The Council's position

The detrimental impact of complying with the request

19. The Council has explained that it has contacted all officers and members who have been involved, or otherwise communicated about, the substantive matter, in order to request copies of any relevant information. Following this exercise, approximately 1080 separate pages of information were collated, of which the majority are email chains containing exchanges between the relevant parties. The Council's FOI team have preliminarily reviewed this information, and have identified that there are parts where it will need to consider the application of an exemptions. The collation and preliminary review of the information has so far taken in excess of 18 hours.
20. Following the preliminary review, the Council considers the following exemptions are reasonably likely to apply:
 - Section 42: The Council considers that this may apply to legal advice that the Council received from its internal legal advisers. This information relates to the merits of the work being undertaken to safeguard Leisure Centre users, and specifically the Council's rights and obligations to both public and the School.
 - Section 41: The Council considers that this may apply to information provided by the Ward Councillors to officers. This information relates to the content of representations that the Ward Councillors have received from local residents about the substantive matter.
 - Section 21: The Council considers that this will apply to information that the complainant has privileged access to as a representative of the School, and specifically those responses and email chains that the complainant has previously been copied into it.
21. The Council has explained that the FOI Team would need to manually review the information and liaise with the relevant parties in order to correctly identify only that information relevant to the request, and then consider the potential application of exemptions. This is because the subjects considered in the correspondence are intertwined and not easily isolated. These actions would require officers to be diverted from their public duties, and would impose significant burden upon the Council.

The purpose or value of the request

22. The Council considers that the request relates to the longstanding disagreement between the Council and School about the joint use of the Leisure Centre. Whilst the Council recognises that the School is dissatisfied with the changed access arrangements, the Council argues that it is required to manage the Leisure Centre as a public facility that can be used by both the School and the wider community.
23. The Council does not consider that compliance with the request would lead to any apparent conclusion. The whole Leisure Centre site remains in the Council's legal ownership because the parties have not yet agreed the wording of the land transfer agreement; should this remain unresolved the School has the right to refer the matter to the Courts to seek an independent determination. Similarly, any joint use agreement must be agreed between the parties, and the future use of the Leisure Centre will be governed by this agreement.

The Commissioner's view

24. The Commissioner has considered the Council's position, and recognises that the request seeks a substantial volume of information contained within 1080 individual pages.
25. Having considered the circumstances in which part of the requested information has been created in, the Commissioner is satisfied that it is reasonable the Council would need to consider the exemptions provided by sections 21, 41, and 42 in the event that it complied with the request.
26. In addition to these exemptions, the Commissioner also notes that it is highly likely the requested information will include the personal data of council officers, elected councillors, and third parties outside the Council. The Commissioner reminds both parties that disclosure under the FOIA is to the public, and not the requester in isolation; the inclusion of personal data within the requested information would require the Council to consider whether such information will fall under the exemption provided for third party personal under section 40(2), and additionally, the exemption provided for the personal data of the requester under section 40(1).
27. The Commissioner is further satisfied that, due to the nature of the information and the circumstances in which it is held, the potentially exempt information cannot be easily isolated, and that the information would need to be manually reviewed by the FOI Team, in conjunction with involved officers, to consider the application of exemptions.

28. Having noted the wider context of the request, it is evident to the Commissioner that the request is connected to the prolonged dispute between the two public authorities, and the current disagreement about pupil access to the Leisure Centre. However, having considered the basis of this dispute, and the length of time that it has continued, the Commissioner does not perceive how compliance with the request would address this, or otherwise address a compelling public need.
29. It is also relevant for the Commissioner to note that a formal resolution to the matter appears to lay either in the two public authorities reaching an agreement, or the matter being referred to the courts for an independent determination. The availability of appropriate routes by which the substantive matter can be formally addressed further reduces the value of the request.

The Commissioner's conclusion

30. In conclusion, all information requests impose some burden and public authorities have to accept that in order to comply with their FOIA obligations. However, in some cases the burden imposed by a request will be disproportionate to its value.
31. In this case, the Commissioner recognises that the request seeks a significant volume of recorded information across 1080 separate pages. The Council has substantiated its position that this information contains potentially exempt information, and the Commissioner recognises that compliance with the request would require the Council to review the information prior to any disclosure. Over 18 hours of officer time has been spent collating and reviewing the information, and whilst the Council has not provided an indication of how much further time would be required to prepare each page for disclosure, including the consideration of exemptions, the Commissioner notes that even allowing a cursory 1 minute per page, this would take a further 18 hours.
32. The FOIA does not contain a limit at which a request is considered to impose a grossly oppressive burden, and any such request is considered by the Commissioner based on the individual circumstances of a case. In this case, the Commissioner is mindful that the total required time would be significantly in excess of the appropriate limit of 18 hours (or £450 at a flat rate of £25 per person, per hour) that Parliament set for section 12(1) in *The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004*. It is reasonable for the Commissioner to consider that compliance with the request would therefore represent a substantial diversion of the Council's resources, and limited public interest has been evidenced that would justify this.

33. The Commissioner has therefore concluded that the request would impose a grossly oppressive burden, and that the Council has correctly applied section 14(1).

Section 17(1) – Refusal of request

34. Section 17(1) specifies that a refusal notice must be provided no later than 20 working days after the date on which the request was received.
35. In this case the Council issued its refusal notice for section 14(1) outside 20 working days, and therefore breached section 17(1).

Right of appeal

36. 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

37. 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.
38. 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

Phillip Angell
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF