

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: **1 December 2022**

Public Authority: **Swansea Council**

Address: **Civic Centre
Oystermouth Road
Swansea
SA1 3SN**

Decision (including any steps ordered)

1. The complainant requested information from Swansea Council ("SC") on 22 January 2021 relating to a personal data breach from 25 May 2018. SC aggregated this request with an earlier request for information made on 3 December 2021. SC refused to comply with the request citing section 12(1) of FOIA.
2. The Commissioner's decision is that SC was entitled to aggregate the requests under section 12(4) of the FOIA and is entitled to rely on section 12(1) of the FOIA to refuse the requests. The Commissioner also finds that SC failed to comply with its obligations under section 16 to offer advice and assistance. Finally, the Commissioner has found that SC breached both section 10 and section 17 of FOIA because of the delays in its response.
3. The Commissioner requires SC to take the following steps to ensure compliance with the legislation.
 - Provide the complainant with reasonable advice and assistance to help them refine their request so that it falls within the appropriate cost limits
4. SC must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 3 December 2021, the complainant made the following request for information to SC.

"I'm looking for recorded information held by the Council in relation to personal data breaches since the UK General Data Protection Regulation (UK GDPR), tailored by the Data Protection Act 2018, came into force.

From 25 May 2018 to present, please provide:

- 1) The total number of personal data breaches reported to the Council for each month.

For all personal data breaches since 25 May 2018, please provide:

- a) Date the breach was reported to the Council (ie SII A29WG 'become aware' of a breach)
- b) Section/department of the Council responsible
- c) General description of each personal data breach (eg. Oracle database deleted requiring all pupil/parent/guardian records to be re-captured and re-entered, diary left on bus containing vulnerable service users, P45 sent to wrong household etc.)
- d) the number of individuals affected by each personal data breach"

6. On 20 January 2021, SC provided a response to the complainant, It provided an overview of recorded monthly personal data breaches between May 2018 and December 2021 by service area and general breach description.

7. On 21 January 2021, the complainant made the following request for information to SC.

"For all personal data breaches since 25 May 2018, please provide:

- a) Date and time the breach was reported to the Council
- b) Date and time the Data Breach Panel met
- c) Yes or No, whether the Panel met within 72 hours of the breach being discovered as recorded in 2.1 of BR140
- d) Yes or No, whether the Panel decided to refer the breach to the ICO as recorded in 2.3 of BR140
- e) Yes or No, whether the Panel decided to inform the data subject(s) as recorded in 2.4 of BR140
- f) Section/department of the Council responsible

g) General description of each personal data breach (eg. Oracle database deleted requiring all pupil/parent/guardian records to be re-captured and re-entered, diary left on bus containing vulnerable service users, P45 sent to wrong household etc.)

h) the number of individuals affected by each personal data breach

To avoid duplication of your work, please update the previously disclosed/reviewed spreadsheet to add the additional information requested.”

8. SC responded on 18 February 2022. It stated that it held information within the scope of the request, but that the cost of complying with the request would exceed the cost threshold of £450 for local authorities when consideration was given to the time already taken in answering the previous FOI request of 3 December 2021 on the same or similar subject. SC therefore relied on section 12(1) of FOIA to refuse the request
9. SC explained that, due to the nature of the request, it was not possible to offer advice and assistance which would enable the information to be provided without exceeding the cost limit.
10. SC upheld its initial application of section 12 of FOIA in its internal review of 6 October 2022.

Scope of the case

11. The complainant contacted the Commissioner on 24 March 2022 to complain about the way their request for information had been handled. The complainant disagrees with SC's application of section 12 of FOIA.
12. The Commissioner considers the scope of this case to be to determine if SC has correctly aggregated the requests under section 12(4) of the FOIA and, if so, whether the combined cost would exceed the appropriate limit.
13. The Commissioner has also considered whether SC met its obligation to offer advice and assistance, under section 16 of FOIA.

Reasons for decision

Section 12 – cost of compliance

14. If a public authority receives two or more requests, from the same person, within 60 working days, it is entitled to consider the combined cost of responding to those requests if the requests seek the same or similar information.
15. Having also reviewed the wording of the complainant's requests, the Commissioner is satisfied that there is an overarching theme in that both requests seek information on personal data breaches.
16. The Commissioner, therefore, finds that the Council was entitled to rely on section 12(4) of FOIA to aggregate the requests.
17. Section 12(1) of the FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the "appropriate limit" as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations").
18. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 at £600 for central government, legislative bodies and the armed forces and at £450 for all other public authorities. The appropriate limit for SC is £450.
19. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 18 hours for SC .
20. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the cost it reasonably expects 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.
21. Section 12 is not subject to a public interest test; if complying with the request would exceed the cost limit then there is no requirement under FOIA to consider whether there is a public interest in the disclosure of the information.

22. Where a public authority claims that section 12 of 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 FOIA.

Would the cost of compliance exceed the appropriate limit?

23. As is the practice in a case in which the public authority has informed the complainant that it holds the information, the Commissioner asked SC to provide a detailed estimate of the time and cost calculations taken to provide the information falling within the scope of this request.
24. In its explanations to the Commissioner SC stated that a manual audit of 210 records was required as their existing recording systems were insufficient to locate, retrieve and extract information for the FOIA request. SC had spent approximately 16 hours 45 minutes in identifying and extracting information for the request of 3 December 2022 based on 5 minutes required per record and 202 records examined. The second request of 21 January 2022 would require audit of a further 8 data breaches equating to an additional 40 minutes. A total of 17 hours and 20 minutes was spent before the addition of additional time to locate and retrieve information requested at question b) to e) of the second request.
25. SC confirmed that a sampling exercise was conducted to determine the time required to retrieve and locate the additional information at question b) to e) and this equated to an additional 6 hours and 17 minutes was required to check the 210 files that may contain information.
26. The Commissioner considers that SC estimated reasonably that the combined cost of both requests would exceed the £450 cost limit. SC was therefore entitled to apply section 12(1) of FOIA to the complainant's request.

Section 16(1) – The duty to provide advice and assistance

27. Section 16(1) of FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45

code of practice¹ in providing advice and assistance, it will have complied with section 16(1).

28. The Commissioner notes that SC stated it had considered the ways in which the request could be narrowed sufficiently to provide the information requested, including the download of additional free software as suggested by the complainant, however the commissioner accepts that SC IT policies restrict the downloads of free software to protect it from importing virus and ransomware into the network.
29. There is no record of any advice or assistance given to the complainant. Given that SC has effectively confirmed that the January request (if considered in isolation) could have been responded to without exceeding the cost limit, it was open to SC to ask the complainant to resubmit his request after the 60 working day period had concluded. Given how long SC had spent on the December request, even a very limited request would have caused the aggregated cost to exceed the appropriate limit.

Procedural matters

30. SC breached section 10 of FOIA as it failed to confirm, within 20 working days, that it held information within the scope of the January request.
31. SC breached section 17 of FOIA as it failed to issue a refusal notice within 20 working days.

¹ <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

Right of appeal

32. 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

33. 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.
34. 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

**Catherine Fletcher
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**