

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 December 2022

Public Authority: Pembrokeshire County Council
Address: County Hall
Haverfordwest
SA61 1TP

Decision (including any steps ordered)

1. The complainant requested information in respect of charitable organisations and churches occupying property owned by Pembrokeshire County Council ('the Council') on concessionary terms. The Council confirmed that subsidised rents are not granted, but informed the complainant that it was aware that there are historical agreements whereby the rent could be considered to be subsidised, and cited section 12 (cost of compliance) to refuse to comply with this aspect of the request.
2. The Commissioner's decision is that the Council has complied with its obligations under section 1(1) FOIA in respect of the request. He has also determined that the Council was entitled to rely on section 12(2) FOIA to establish whether it held relevant information in respect of possible historical agreements.
3. The Commissioner does not require the Council to take any steps.

Request and response

4. On 27 March 2022, the complainant wrote to the Council and requested the following information:

"I am writing to request details of charitable organisations and churches occupying PCC property under concessionary terms.

I request:

- Name of organisation
- Address of such

- Rent (if any) charged”
5. The Council responded on 26 April 2022. It stated that:

“In accordance with the Council’s Strategic Asset Management Plan and the Local Government Act, subsidised rents are not granted.”
 6. It did however confirm that there are historical agreements which have been granted whereby the rent could be considered to be subsidised. It added that to manually check all of its records to identify them would exceed the appropriate limit and cited section 12 FOIA to refuse this part of the request.
 7. Following an internal review the Council wrote to the complainant on 14 June 2022. It confirmed that its property department does not record whether a tenant is a charitable organisation or church as it has no requirement to do so.

Scope of the case

8. The complainant contacted the Commissioner to complain about the way their request for information had been handled. They stated that they were disappointed with the Council’s response and felt it had been deliberately evasive and unhelpful. They further stated that whilst the request was primarily with regard to charitable organisations and churches, that any concessionary letting would be of interest.
9. The scope of the Commissioner’s investigation is to consider whether the Council has complied with its obligations under section 1(1) FOIA and whether it was correct to apply section 12 to the ‘historical information’ referred to in its original response.

Reasons for decision

Section 1 – general right of access

10. Section 1 of the FOIA states that any person making a request for information is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request and, if that is the case, to have that information communicated to them.
11. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant’s evidence and arguments. He will also consider the actions taken by the authority to check that the information is not held and he will consider any other

reasons offered by the public authority to explain why the information is not held. The Commissioner will also consider any reason why it is inherently likely or unlikely that information is not held.

The complainant's position

12. The complainant has stated that whilst their request was primarily with regard to charitable organisations and churches, any concessionary letting would be of interest. The complainant believes that it is obvious that there are concessionary lettings within the Council's portfolio as they have acknowledged this to be the case.
13. The complainant asked the Council to provide them with a list of historical concessionary rents and does not consider that stating that its records are not structured in such a way as to be able to provide this information to be a valid reason for refusal. They suggested that suitable officers apply their knowledge and experience in order to focus investigations in areas likely to hold relevant information.
14. The complainant has added that other Councils can provide such information and believes there is no reason why the Council cannot do so.

The Council's position

15. The Council confirmed to the complainant that it does not grant subsidised rents. It added that under the FOIA it is not required to create information that does not already exist. It further stated that when compiling a response to a request for information it may draw information from multiple sources it holds, but it is not required to make up an answer or find out information from elsewhere if it does not already hold the relevant information in recorded form.

The Commissioner's conclusion

16. When, as in this case, the Commissioner receives a complaint that a public authority has not disclosed some or all of the information that a complainant believes it holds, it is seldom possible to prove with absolute certainty that the public authority holds no relevant information. However, as explained earlier in this notice, the Commissioner is required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.
17. The Commissioner understands that the complainant wants the historical information to which the Council referred in its original response. However, for the purposes of this section the Commissioner is solely considering whether it holds relevant information within the

narrow definition of the request, namely for details of charitable organisations and churches occupying Council property under concessionary terms. The Commissioner notes that under this narrow definition, the Council has confirmed that, in accordance with its Strategic Asset Management Plan and the Local Government Act, subsidised rents are not granted.

18. In the Commissioner's view therefore, if subsidised rents are not granted by the Council, it cannot reasonably be expected to hold relevant information. On this narrow interpretation of the request, the Commissioner has therefore concluded that the Council has complied with its obligations under section 1(1) FOIA.
19. However, as the Council has referred to the possible existence of historical information, the Commissioner has gone on to consider the Council's application of section 12 in relation to a broader reading of the request.

Section 12 – cost of compliance exceeds the appropriate limit

20. Section 12 of the FOIA states that:

"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."

21. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the 'Regulations') sets the appropriate limit at £450 for the public authority in question. Under these Regulations, a public authority can charge a maximum of £25 per hour for work undertaken to comply with a request. This equates to 18 hours work in accordance with the appropriate limit set out above.
22. A public authority is only required to provide a reasonable estimate or breakdown of costs and in putting together its estimate it can take the following processes into consideration:
 - (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.
23. The Council has applied section 12 to the 'historical' information referred to in its original response to the request.
 24. It informed the Commissioner that its Service Manager for the Property section carried out extensive searches of their database using the words 'charity' and 'church' to try to identify any records referring to these rental types. However, as there is no requirement to record this information, no records were found. It provided a screenshot to the Commissioner of a search which confirmed this.
 25. The Council would therefore need to review its files in relation to each tenant to establish if the tenant was a registered charity or representative of the church. The files are held in digital and hard copy format, however, even this search is not guaranteed to provide the necessary detail as there is no requirement for it to record this information.
 26. It added that it has 1221 managed records, some of which will be easier to check than others such as leasehold flats sold under the Right to Buy, County Farms etc. The files have some standardised forms within them and where a digital record exists there are standard fields. However, there is no standard lease as every agreement with a tenant is different due to various restrictions, clauses or the status of the property.
 27. The Council further stated that the files range in size with some in excess of 100 pages whilst others may contain as few as 10 pages. The Council undertook a sample of timings and whilst it could take as little as 1 minute to check a small file, it took an hour or more to check a larger file.
 28. Based on this sample exercise, it settled on an average of 10 minutes per file. Assuming that only 50 per cent of the entries would need to be reviewed (because of the leasehold flats and county farms), it multiplied this by 610 files, which equated to just in excess of 100 hours.
 29. The Council further informed the Commissioner that this is not the end of the process as in some cases it would be necessary to retrieve and review the deed packet (an envelope of legal documents) from its archives as most are not held on its electronic system.
 30. Additionally, even if it was able to identify whether a tenant was a charity or church, the Council would still be required to carry out a full examination of the files or agreements to establish whether there was a subsidised rent. It further explained that what could be perceived as a subsidised rent may have been a market rent at the time the agreement was granted and there may be no rent reviews included in the agreement to enable the rent to be increased until it is renewed.

Further, some agreements are attached to concessions etc for service delivery or for land only, so again could be mistaken for subsidised rent.

The Commissioner's conclusion

31. The Commissioner has considered the estimate provided by the Council and acknowledges that, in order to provide the requested information, it would firstly need to determine which of its leases are with registered charities or representatives of the church. However, as recording this information is not a requirement, the process of establishing this is lengthy, with no guarantee of success.
32. He is also mindful that although the files have some standardised forms within them, that there is no standard lease and the size of the files are subject to considerable variation. He has considered the Council's estimate of 10 minutes per file which he believes is reasonable and notes that even taking an average of 2 minutes per file would equate to over 20 hours.
33. The Commissioner also acknowledges that the process would not be complete at this stage, and further work would need to be done with some of the files requiring a further search of the deed packets from the Council's archive, followed by a search of the relevant files to establish whether there was a subsidised rent.
34. The Commissioner has therefore concluded that the search would exceed the appropriate limit and that the Council was entitled to rely on section 12(2) FOIA to refuse to comply with the request.

Right of appeal

35. 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: 0203 936 8963
Fax: 0870 739 5836
Email: grc@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

36. 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.

37. 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 Dickenson
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**