

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 June 2022

Public Authority: South Somerset District Council
Address: The Council Offices
Brympton Way
Yeovil
Somerset
BA20 2HT

Decision (including any steps ordered)

1. The complainant submitted a 4 part request regarding South Somerset councillors non-payment of council tax. South Somerset District Council (the Council) refused part 1 of the request as it considered it would exceed the cost limit under section 12(1) of FOIA. It also considered section 40(2) would provide a basis for withholding some of the information at the remaining parts of the request.
2. The Commissioner's decision is that the Council has correctly applied section 12 of FOIA to refuse to comply with part one of the request. Because of this, section 12 of FOIA also applies to the rest of the request by default, as if the cost to comply with part one alone exceeds the appropriate limit, then the cost to comply with the request in its entirety will further exceed the appropriate limit. He has therefore not gone on to consider the application of section 40(2). However, the Council has breached section 16 as it failed to provide advice and assistance to the complainant in relation to part one of the request. The Commissioner also finds that the Council has breached section 10(1) of FOIA by failing to provide a valid response to the request within 20 working days.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Provide advice and assistance to the complainant to assist them in submitting a refined request.

4. The public authority 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 FOIA and may be dealt with as a contempt of court.

Request and response

5. On 7 May 2021, the complainant wrote to the Council and requested information in the following terms:

“Please provide the following:

1. All correspondence between officers, councillors and members of the public regarding any South Somerset councillors' non-payment of council tax and their inability to vote on council tax setting at the February 2021 Full Council that considered the Budget and associated matters.
All correspondence should include all correspondence, meaning mobile phone calls, emails, letters, text messages and all social media including Whatsapp, Facebook and Twitter.
2. The names of all councillors who did not pay council tax during the Municipal Year of 2019-20, the reasons they gave for non-payment, the amounts they were in arrears, how long they were in arrears, whether they paid up in full or partially, and whether they voted on the council tax setting and associated votes at the 2020 Budget Full Council that set council tax for 2020-21.
3. The names of all councillors who did not pay council tax during the Municipal Year of 2020-21, the reasons they gave for non-payment, the amounts they were in arrears, how long they were in arrears, whether they paid up in full or partially, and whether they voted on the council tax setting and associated votes at the 2020 Budget Full Council that set council tax for 2020-21.
4. All actions the Council has taken against any councillor regarding non-payment of council tax, including but not limited to court action and the deduction of the council tax due from their councillor allowance.”
6. The Council responded on 24 June 2021. It stated that it was unable to comply with parts 1 and 4 of the request within the cost limit for compliance (section 12) as the scope of these parts was too broad. It disclosed some information in response to parts 2 and 3 of the request,

but withheld all names and addresses by virtue of it being third party personal data (section 40(2)).

7. The complainant requested an internal review on 30 June 2021, in which they disputed the Council's decision to withhold information within the scope of parts 1,2 and 3 of the request, and they also clarified that part 4 of the request was in relation to 2019-2020 and 2020-21, rather than the entirety of the Council's existence as it appeared to have been interpreted in the Council's initial response.
8. Following an internal review the Council wrote to the complainant on 26 July 2021. It stated that it was upholding its position in relation to withholding the correspondence requested in part 1 of the request. The Council amended its position regarding parts 2 and 3 of the request, so far as it would only disclose the names of those councillors who had remained in default for over 2 months with the result that section 106 of the Local Government Finance Act 1992¹ applied, and on the provision that none of the names should be withheld due to non-payment occurring as a result of exceptional and compelling personal circumstances.

Scope of the case

9. The complainant contacted the Commissioner on 21 June 2021 to complain about the way their request for information had been handled, at which point they had not received any response from the Council to their information request.
10. After receiving the initial response to their request, as well as the internal review outcome and subsequent further disclosure of some of the councillors names, the complainant confirmed that they remained dissatisfied with the reasons provided by the Council for withholding the rest of the information within the scope of the request.
11. The complainant further highlighted their dissatisfaction at the amount of time it had taken for the Council to provide them with a response.
12. During the course of the Commissioner's investigation the Council provided a cost estimate to support its application of section 12(1) to part 1 of the request. It also provided further detailed arguments in

¹ <https://www.legislation.gov.uk/ukpga/1992/14/section/106>

relation to its reliance on section 40(2) to withhold the names of the councillors in less than 2 months arrears for parts 2 and 3 of the request. Finally, the Council stated in its submissions to the Commissioner, that it had made arrangements with its Revenues Team to disclose the information at part 4 of the request to the complainant.

13. The Commissioner considers that the scope of his investigation is to determine if the Council has correctly refused to provide the requested information by virtue of section 12 and/or section 40(2).

Reasons for decision

Section 12 – cost of compliance exceeds appropriate limit

14. Section 12(1) of FOIA states:

“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.”

15. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations')² at £450 for public authorities such as the Council.
16. The Fees Regulations also specify that the cost of complying with a request must be calculated at a flat rate of £25 per hour. This means that the Council may refuse to comply with a request for information if it estimates that it will take longer than 18 hours of staff time to comply.
17. In estimating whether complying with a request would exceed the appropriate limit, regulation 4(3) states that a public authority can only take into account the costs it reasonably expects to incur in:
 - determining whether it holds the information;
 - locating the information, or a document which may contain it;
 - retrieving the information, or a document which may contain it;
 - extracting the information from a document containing it.
18. Section 12(1) FOIA states that public authorities are only required to estimate cost, and are not required to give a precise calculation of the costs.

² <https://www.legislation.gov.uk/uksi/2004/3244/contents/made>

19. 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.
20. 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.

The Council's position

21. In clarifying its application of section 12 of FOIA to part 1 of the request, the Council explained that it receives in the region of 60,000 emails per week, and it is possible that correspondence within the scope of the request could have been sent to any member of staff at the Council. There would also be letters and social media posts and messages to consider as well.
22. The Council also notes that it does not keep a record of individuals who have contacted it about councillor's non-payment of council tax and their inability to vote, so the Council would not be able to rely on their names or personal details to narrow down its searches for information within the scope of the request.
23. In taking a more pragmatic approach, the Council considers if it were to search the mailboxes of individuals and teams who it considers best placed and most likely to be receiving correspondence regarding councillors non-payment of council tax, it would still need to search a total of 80 email inboxes. These include:
 - CEO
 - s.151 Officer
 - Monitoring Officer
 - Service Delivery Director
 - PA to the Senior Leadership Team
 - Revenues Team
 - Finance Team
 - Democratic Services Team
 - Customer Connect Team
 - Communications Team
24. The Council estimates that it would take a minimum of 15 minutes each, or 20 hours in total, to complete a reasonable search on each of the mailboxes, covering search terms such as "full council", "overdue council tax", "councillors", etc. This estimate was based on the Council's

experience of undertaking regular searches of a similar nature in response to FOI requests.

25. The Council also considers that it would need to complete a search of the Revenues computer systems to locate any written correspondence which had been received and subsequently indexed. It estimates that this would take a minimum of 1 hour to complete, but more than likely could take far longer.
26. Finally, the Council would require the Communications Team to search through its social media accounts (Facebook, Twitter and LinkedIn) to determine if any comments or messages had been received within the scope of the request. It estimates that this would a minimum of 30 minutes.
27. The Council considers that the above breakdown is a reasonable estimate totalling 21.5 hours to conduct the searches alone and locate information within the scope of the request.
28. However, due to the broad nature of the key words that will need to be used in the searches, it is highly likely that the searches will return a high volume of emails which will need to be sifted through to remove any information which does not fall within the scope of the request. The Council estimates that this work will require a substantial amount of time on top of the initial 21.5 hours required to conduct thorough searches to locate the information.

The Commissioner's decision

29. The Commissioners guidance³ states that a public authority's estimate of time/cost incurred to comply with a request for information must be reasonable. The Commissioner follows the approach set out by the Information Tribunal in the case of *Randall v Information Commissioner and Medicines and Healthcare Products Regulatory Agency* (EA/2007/0004, 30 October 2007) which stated that a reasonable estimate is one that is "...sensible, realistic and supported by cogent evidence".
30. The Council may refuse to comply with a request for information if it reasonably estimates that it would take longer than 18 hours to comply.

³ https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

31. It is not the Commissioner's role to decide what information the Council should hold, or say how it should hold it. He is not concerned with how the Council holds information, or the business reasons for holding information in the way that it does. His role is simply to decide whether or not the requested information can, or cannot, be provided to the complainant within the appropriate cost limit, i.e. whether or not the Council has demonstrated that the work involved in providing the information specified by the complainant would be likely to exceed 18 hours, and thus the £450 cost limit. It is not necessary for the Council to have complied with as much of the request as it could until that limit was reached. It is only necessary for the Council to show that the work needed would exceed 18 hours, and that its estimate is reasonable.
32. The Commissioner considers that the Council's estimate of 21.5 hours to search for and locate information within the scope of the request is reasonable. This estimate was based on a sensible and realistic approach in terms of where to search for the relevant information and which search terms to use.
33. The Commissioner is further satisfied that the search terms which are necessary in this particular case, such as "councillor" and "overdue council tax", would return a very large amount of information. For the Council to extract the information which is within the scope of the request, from that which is not within the scope, would be likely to add a substantial amount of time on the 21.5 hours already estimated just to locate the information.
34. The Commissioner's decision is that the Council estimated reasonably that the cost of complying with part 1 of the request would exceed the appropriate limit. Therefore, to comply with the request in its entirety would clearly exceed the appropriate cost limit. The Council has demonstrated that section 12(1) is engaged.
35. Section 12(4) of FOIA states that, where two or more requests for information are made to a public authority—
 - (a) by one person, or
 - (b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them.
36. The Commissioner's guidance on cost of compliance, referenced earlier in this notice, explains that multiple requests within a single item of correspondence, i.e. a multi-part request whereby all parts are about

the same or similar subject, are separate requests for the purpose of section 12 of FOIA. This was confirmed by the Information Tribunal in the case of *Fitzsimmons v ICO & Department for Culture, Media and Sport* (EA/2007/0124, 17 June 2008)⁴.

37. Therefore, the Council would be entitled to rely on it to refuse the full request.

Section 16 – Duty to provide advice and assistance

38. 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 practice in providing advice and assistance, it will have complied with section 16(1).
39. The Commissioner is not aware that the Council has provided any advice or assistance to the complainant to assist them in narrowing their request so that the Council would be able to comply with it within the appropriate cost limit. He is therefore not satisfied that the Council has met its obligations under section 16 of FOIA.

Other matters

40. The Commissioner notes that the Council did provide some information to the complainant relevant to parts 2 and of 3 of the request in this case. However, once it has been demonstrated that section 12(1) and 12(4) have been correctly applied to refuse a request, a public authority is in fact not obliged to provide any information within the scope of the request. Nor does the Commissioner need to consider any further exemptions cited by the public authority. The Commissioner has therefore not gone on to consider the Council's application of section 40(2) in this case.

⁴ <https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i242/Fitzsimmons.pdf>

Right of appeal

41. 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

42. 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.
43. 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

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