

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 January 2023

Public Authority: Birmingham City Council
Address: Council House
Victoria Square
Birmingham
B1 1BB

Decision

1. The complainant requested information from Birmingham City Council ("the Council") relating to penalty charge notices.
2. The Commissioner's decision is that the Council is entitled to rely on section 12(1) (cost limit) of the FOIA to refuse to provide the information requested in part 2 of the request.
3. However, the Commissioner finds that the Council failed to provide reasonable advice and assistance and therefore failed to meet its obligations under section 16(1) of the FOIA.
4. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Provide the complainant with advice and assistance to help them refine part 2 of their request so that it falls within the appropriate limit.
5. The Council 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 FOIA and may be dealt with as a contempt of court.

Request and response

6. The complainant made the following information request to the Council on 17 March 2022:

"I'm seeking the following information under the Freedom of Information Act 2000. The data I would like to request covers penalty charge notices (PCNs) for Birmingham's Clean Air Zone (CAZ).

My request is based on the issue of car cloning - where criminals use another vehicle's identity/registration plate to disguise the identity of their own.

1) How many PCNs were issued to drivers by Birmingham City Council for failing to pay the CAZ charge from 1 June 2021 to 1 March 2022? Please could you provide a total figure and a month by month breakdown.

2) How many of the PCNs issued to drivers by Birmingham City Council for failing to pay the CAZ charge were cancelled by the Council on the grounds the vehicle was cloned? Please could you give figures for 1 June 2021 to 1 March 2022. Please could you provide a total figure and a month by month breakdown.

3) How much revenue was raised from Birmingham CAZ payments from 1 June 2021 to 1 March 2022? Please could you provide a total figure and a month by month breakdown.

4) How much revenue was raised from PCNs for the Birmingham CAZ from 1 June 2021 to 1 March 2022? Please could you provide a total figure and a month by month breakdown.

I would like this information as a data set (ideally Microsoft Excel). If some parts of this request are easier to answer than others, I would ask that you release the available data as soon as possible. If you need any clarification, please do not hesitate to contact me before the deadline."

7. The Council informed the complainant that information within the scope of questions 1, 3 and 4 of the request is available within the public domain and provided the complainant with links to where the information could be located.
8. The Council refused to provide the information requested in question 2 of the request citing section 12(1) (cost limit) of the FOIA as its basis for

doing so. However, the Council informed the complainant that it would be willing to provide the requested information if a fee of £925 was paid.

Scope of the case

9. The scope of this case and the following analysis is to determine whether the Council is entitled to rely on section 12(1) of the FOIA to refuse to provide the information requested in part 2 of the request.
10. Section 13 of the FOIA states that a public authority may charge a requestor for complying with a request if complying with that request would exceed the appropriate limit. A public authority may charge for the costs which may be taken into account in calculating whether the appropriate limit is exceeded.
11. However, whilst a public authority can comply with a request if that request exceeds the appropriate limit and charge the requestor for doing so, the public authority is not obliged to comply with the request if it exceeds the appropriate limit. Therefore, this notice will not cover whether the Council is entitled to charge the complainant a fee to comply with part 2 of the request.

Reasons for decision

12. 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 cost limit. The appropriate limit for the public authorities such as the Council is £450. As the cost of complying with a request must be calculated at the rate of £25 per hour, section 12(1) effectively imposes a time limit of 18 hours for the Council.
13. 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

14. In its submissions to the Commissioner, the Council explained that it has conducted a search of its notice processing system to determine how many PCN cases had been closed due to the Council being unable to trace a registered keeper. This search showed that 1107 PCN cases had been closed due to the Council being unable to trace a registered keeper between 1 June 2021 and 1 March 2022.
15. The Council explained that PCN cases can be closed as unable to trace a registered keeper for various reasons. For example, a PCN case will be closed as unable to trace a registered keeper if the DVLA is unable to supply keeper details at the date of the contravention, if the details held are incorrect, or if a vehicle has been cloned.
16. Therefore, in order to provide the information requested in part 2 of the request, the Council explained that it would have to review the correspondence on all the 1107 PCN cases that were closed due to the Council being unable to trace a registered keeper to determine whether the PCN were cancelled as the vehicle had been cloned.
17. Based on a sampling exercise, the Council estimates that it would take approximately 2 minutes to review the correspondence on each case. Therefore, the Council calculated that in total, it would take 37 hours to provide the information requested in part 2 of the request (1107 PCN cases x 2 minutes = 37 hours). This equates to £925 (37 hours x £25 = £925).
18. The Commissioner considers the Council's estimate of 2 minutes to review the correspondence on each of the 1107 PCN cases that were closed due to the Council being unable to trace the registered keeper to be reasonable. Even if the cost estimate provided by the Council was halved it would still be far in excess of the cost limit specified in the Fees Regulations.
19. The Commissioner's decision is that the Council estimated reasonably that the cost of complying with part 2 of the request would exceed the appropriate limit. Therefore, the Council is entitled to apply section 12(1) of the FOIA to part 2 of the request.

Section 16 – advice and assistance

20. Section 16(1) of the 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).

21. The Council did not advise the complainant that they could refine part 2 of their request to bring it within the cost limit instead of paying a fee. Furthermore, the Council did not provide the complainant with suggestions on how to narrow the scope of part 2 of their request.
22. The Commissioner's decision is that the Council did not provide the complainant with adequate advice and assistance and therefore breached section 16(1) of the FOIA.

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

Right of appeal

23. 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

24. 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.
25. 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

Christopher Williams
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF