

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 20 July 2023

**Public Authority:** Essex County Council  
**Address:** County Hall  
Chelmsford  
Essex  
CM1 1QH

### Decision (including any steps ordered)

---

1. The complainant has requested information from Essex County Council ("the Council") in relation to the DigiGo operation and the original area in which it covered. The Council refused to provide the information, citing section 12 of FOIA – cost of compliance exceeds the appropriate limit.
2. The Commissioner's decision is that the Council has correctly applied section 12(1) to refuse the request and has met the requirements of section 16 of FOIA.
3. The Commissioner requires does not require the Council to take any steps as a result of this decision notice.

### Request and response

---

4. On 4 January 2023, the complainant wrote to the Council and requested information in the following terms:  
  
"Please provide the following information in relation to the DigiGo operation between start date and end of October 2022. Please restrict this information to the original operational area, NOT including the most recent expansion."

The Forecast column is the number on which the bid to DfT was predicated and the Actual the number of passenger journeys made.

1. Passenger journeys to and from the Parish of Rayne.
  2. Number of passenger journeys on whole (original) operating area i.e. South Braintree and North Chelmsford.”
5. The Council responded on 27 January 2023. It stated that it was relying on section 12 of FOIA to withhold the information.
  6. Following an internal review the Council wrote to the complainant on 13 March 2023. It revised its position slightly by providing the complainant with some information in relation to part 1 of the request. However, for part 2 of the request, it stated that section 12 of FOIA was still applicable.

### **Scope of the case**

---

7. The complainant contacted the Commissioner on 26 May 2023 to complain about the way their request for information had been handled.
8. The Commissioner considers that the scope of this complaint is to determine if the Council has correctly refused to comply with the request as it would exceed the cost limit under section 12 of FOIA.

### **Reasons for decision**

---

#### **Section 12 – cost of compliance exceeds the appropriate limit**

9. 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”).
10. 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 the Council is £450.
11. 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 the Council.

12. 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.
13. A public authority does not have to make a precise calculation of the costs of complying with a request; instead only an estimate is required. However, it must be a reasonable estimate. In accordance with the First-Tier Tribunal in the case of *Randall v Information Commissioner & Medicines and Healthcare Products Regulatory Agency EA/2007/0004*, the Commissioner considers that any estimate must be "sensible, realistic and supported by cogent evidence". The task for the Commissioner in a section 12 matter is to determine whether the public authority made a reasonable estimate of the cost of complying with the request.
14. 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.

**Would the cost of compliance exceed the appropriate limit?**

15. As is the practice in a case in which the public authority has informed the complainant that it holds the information, the Commissioner asked the Council to provide a detailed estimate of the time/cost taken to provide the information falling within the scope of this request.
16. In its submissions to the Commissioner, the Council explained that the total passenger number is held but not in a way which allows it to be separated into the Parishes, as requested.
17. The Council explained that in order to provide the requested information, it would need to carry out the following tasks:
  - Production of actual passenger data for the whole area into a dashboard. (A graph was pulled from this information and provided in the internal review response). Completing this took the officers more than 5 hours.
  - Reading original submissions to Department for Transport to identify if the requested information is held, reviewing all

supporting documents, project plans and similar, which took officers more than 4 hours.

- Analysing reporting options within the app platform to establish if information could be obtained, which was another 4 hours of officer time.
  - Conversations with the App supplier to determine whether there was any scope to enhance the App to enable them to answer the request. This took another hour of officer time.
18. The Council explained that it holds origin and destination for all bookings within the App. However, this is not recorded against the Parish Council boundary. Therefore, to supply the request, the Council advised that a development to the App would be required. It estimates that this would take approximately 70 hours to carry out.
  19. The Council explained that the 70 hours would include not only the time of its own officers, but also the supplier of the App. It advised that software developments require highly skilled individuals and it considers that it is reasonable to assume it would run into thousands of pounds to carry out.
  20. The Council also advised that in response to the forecast data; it was not required to submit monthly demand forecasts by the area to Department for Transport.
  21. The Council explained that a sampling exercise was not conducted as a technical development is needed to supply the information requested, as explain in the above points. It added that it has no business need to hold the data by the Parish as requested.
  22. The Council also explained to the Commissioner that the requested information is held within an application and it allowed customers to journey plan, and to see if DigiGo is an option for them to book and pay for their journey. It says that the information the App collects regarding start and end of journeys does not include information on Parish boundaries, and it does not enable them to interrogate data directly against those boundaries. It advised that this is because there is no legal requirement or business need for this data to be collected.
  23. From the information provided by the Council, the Commissioner is satisfied that for it to provide the requested information, it would excessively exceed the appropriate limit as set out in FOIA. The Commissioner considers that the estimate is credible and it is based on the work that would need to be carried out in order to provide the information.

24. Having considered the tasks that would need to be carried out to obtain the information, the Commissioner's conclusion is that the Council has reasonably estimated the time and costs involved in providing the requested information. As such, the Council was entitled to rely on section 12(1) of FOIA to withhold the requested information.

### **Section 16 – advise and assistance**

25. Section 16(1) of FOIA provides that a public authority is required to provide advice and assistance to any individual making an information request where it would be reasonable to do so.
26. In general, where section 12 is cited, a public authority should advise the requester how their request could be refined to bring it within the cost limit, albeit the Commissioner does recognise that where a request is far in excess of the limit, it may not be practical to provide any useful advice.
27. In this case, the Council provided the complainant with the total number of passenger journeys. It advised that it was the only way it could provide the data, as it was unable to produce it in the requested breakdown. It advised that it did not provide advice on how to reframe the request to bring it under the cost limit, as the data is not held in a way which would allow the journeys to be identified by Parish boundaries. It also explained that there is not a similar dataset that could have given the complainant the information they sought.
28. As the Council has provided the complainant with some information and explained that, even if the request was reduced, it could still not provide the requested information, the Commissioner is satisfied that the Council met its obligations under section 16 of FOIA.

## Right of appeal

---

29. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

30. 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.
31. 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 .....**

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