

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 April 2024

Public Authority: Warrington Borough Council
Address: East Annexe
Town Hall
Sankey Street
Warrington
WA1 1UH

Decision (including any steps ordered)

1. The complainant requested information from Warrington Borough Council ("the Council") relating to Council investments.
2. The Commissioner's decision is that the Council is entitled to rely on section 12(1) (cost limit) to refuse to provide some information within the scope of part 1 of the request. However, he finds that the Council failed to provide reasonable advice and assistance and therefore failed to meet its obligations under section 16(1) of FOIA.
3. The Commissioner also finds that the Council breached section 10(1) (time for compliance) of FOIA by failing to respond to the request within the statutory timeframe of 20 working days.
4. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - The Council must provide the complainant with advice and assistance to help them submit a request falling 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 Act and may be dealt with as a contempt of court.

Request and response

6. On 9 December 2022, the complainant wrote to the Council and requested information in the following terms:

"I am writing under the Freedom of Information Act 2000. Could you please provide me with copies of the following:

 1. Minutes or other available details/notes, diary entries etc of meetings between the Council members or officers (including details of the attendees) and [name redacted] of Altana Wealth dating from 2016 to the present.
 2. Copy of the Legal Due Diligence Report provided to the Council, dated 4 April 2017, on its proposed investment in Redwood Bank. Details of how much the council paid to its advisers for the provision of this due diligence report?
 3. Did any other party pay towards the provision of this report? If so, who?
 4. Could the Council provide details of the fees paid to all outside consultants/advisers (including details of these individuals and organisations) involved in the preparation of its investment in Redwood and the subsequent annual costs of advice for its continued participation in the investment in the Bank broken down by year and advisory organisation."
7. The Council responded on 28 September 2023 and provided the complainant with information in response to parts 3 and 4 of the request but withheld the information requested in part 2 of the request citing section 42 (legal professional privilege) of FOIA its basis for doing so.
8. In response to part 1 of the request, the Council provided the complainant with some information. However, it also withheld some information citing section 43 (commercial interests), section 42 (legal professional privilege) and section 12 (cost limit) of FOIA as its basis for doing so.
9. On 29 September 2023, the complainant requested an internal review. To date, the Council has not provided the complainant with the outcome of its internal review.

Scope of the case

10. The complainant contacted the Commissioner on 14 December 2023 to complain about the way their request for information had been handled. They stated that they do not consider the Council to have correctly applied section 12 to their request.
11. Therefore, the scope of this case and the following analysis is to determine whether the Council is entitled to rely on section 12(1) of FOIA to withhold some information within the scope of part 1 of the request. Specifically, information held in the diaries of a specific Council officer.

Reasons for decision

Section 12(1) – cost of compliance

12. Section 12(1) of 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 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 stated that it has conducted a search of the diaries of a Council officer for information within the scope of the request using the name of the individual referred to in the request and "Altana" as search terms. This search located 125 diary entries which may fall within the scope of the request.
15. The Council explained that in order determine if the diary entries fall within the scope of the request, it would need to review each diary entry. As each diary entry contains multiple email chains and

attachments with a large number of pages, the Council estimates that it would take approximately 10 minutes to review each diary entry. It confirmed that this estimate is based on a sampling exercise. The Council calculated that in total, it would take in excess of 20 hours to provide any information held in the diary entries of the Council officer that falls within the scope of the request.

16. The Commissioner has calculated that if the Council were to take 10 minutes to review each diary entry to determine whether it falls within the scope of the request, in total, it would take the Council 20.8 hours to review all 125 diary entries (125 diary entries x 10 minutes = 20.8 hours). The Commissioner considers the Council's estimate of 10 minutes to review each diary entry to be reasonable as each diary entry contains multiple email chains and attachments. The estimate is also based on a sampling exercise.
17. Therefore, the Commissioner's decision is that the Council estimated reasonably that the cost of providing the information held in the diary of a specific Council office would exceed the appropriate limit. The Council is entitled to rely on section 12(1) of FOIA to refuse to provide the information.

Section 16 – advice and assistance

18. 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).
19. In its initial response to the request the Council informed the complainant that they could refine the scope of their request so that it falls within the appropriate limit. However, it did not provide the complainant with suggestions on how to reduce the scope of the request such as narrowing the timeframe of the request.
20. 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>

Procedural matters

Section 10 – Time for compliance

21. Section 1(1) of FOIA states that:

“Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.”

22. Section 10(1) of FOIA states that a public authority must respond to a request promptly and “not later than the twentieth working day following the date of receipt”.

23. In this case, the complainant submitted their request for information to the Council on 9 December 2022 and the Council did not respond until 28 September 2023. Therefore, the Commissioner finds that the Council breached section 10(1) of FOIA by failing to respond to the request within 20 working days.

Other matters

24. The Commissioner cannot consider in a decision notice the amount of time it took a public authority to complete an internal review because such matters are not a formal requirement of FOIA. However, it is good practice to offer an internal review, and, where a public authority chooses to do so, the code of practice established under section 45 of FOIA sets out, in general terms, the procedure that should be followed. The code states that reviews should be conducted promptly and within reasonable timescales.

25. The Commissioner has interpreted this to mean that internal reviews should take no longer than 20 working days in most cases, or 40 working days in exceptional circumstances. By the date of this notice, the Council has not provided the complainant with the outcome of its internal review, 6 months after it was originally requested. The Commissioner considers that the Council has failed to act in accordance with the section 45 code of practice.

26. These concerns will be logged and used by the Commissioner when considering the overall compliance of the Council.

Right of appeal

27. 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

28. 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.
29. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Daniel Perry
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