

**Freedom of Information Act 2000
(Section 50)**

Decision Notice

Date: 10 May 2011

Public Authority: London Borough of Brent Council
Address: Brent Town Hall
Forty Lane
Wembley
Middlesex
HA9 9HD

Summary

The complainant requested statistical information relating to the council's response to FOI requests. He requested this information through the WDTK website and asked the council to respond directly to that site. The council initially refused to respond directly to the site and asked the complainant for an alternative address. The complainant eventually agreed to do this. The council then issued a refusal notice under section 12 of the Act (appropriate limit). However, although it refused the request on that basis, the council did provide the complainant with much of the information which it held. The Commissioner's decision is that the Council was correct to apply section 12 to the information.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. On 15 February 2010 the complainant wrote to the council asking for the following:

“(1) Please provide the number of FOI Requests received each month by the council for calendar year 2009 and January 2010, and the overall total.

(2) Please confirm whether it is council policy to acknowledge all FOI Requests, and how quickly.

If it is, provide the % which met that target in each month and overall.

If not, explain how the council considers this complies with ICO guidance and the council's duties under the Act, in particular s16 to be helpful.

(3) For each month and the whole period, include how many received the council's response

(a) within 15 working days,
(b) in 16-20 working days,
(c) after 20 working days,
and (d) any still awaiting response

(4) Include also how many were met

(a) in full,
(b) partly,
(c) rejected, with a note of the numbers for each reason for rejection - not held, too costly, fees notices etc.

(5) Include how many were referred to Internal Review, how long these took as per (3) above, and the outcome

(6) Lastly for each month and total, include the number of requests that had ICO involvement, distinguishing between numbers where the ICO asked the council to respond due to delay by the council, or where the ICO made a ruling after the council process was exhausted.

Itemise each of these presumably very few cases individually with full dates and outcome.

Please provide this electronically, preferably in an XLS spreadsheet."

3. The council acknowledged the request on the same day.
4. The council responded on 16 February 2010 stating that it would not respond directly to the WDTK website. On the same day the complainant responded asking the council to reconsider its position.
5. On 17 February 2010 the council wrote to the complainant stating that some information could be disclosed to him and explained how it could be communicated to him. It explained that in order to receive the information he would need to provide it with an alternative email address. However in response to the request itself the council claimed that the information was exempt under section's 12(1) and (4) (responding would be above the appropriate limit).
6. The complainant responded, providing an alternative email address, and the available information was supplied to him on 18 February 2010.
7. On 15 March 2010 the complainant wrote to the council asking it to respond to his questions because he was not satisfied with the information which had been provided to him
8. The complainant made a complaint to the Commissioner on 18 September 2010 on the basis that the council had not responded to his request.

The Investigation

Scope of the case

9. On 18 September 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
 - whether the information should have been disclosed to him, and
 - whether the council was able to refuse to provide information to the email address he had provided to it for its response.

Chronology

10. The Commissioner wrote to the council on 18 October 2010 stating that it had not responded to the complainant's request for review.
11. The council responded on 22 October 2010 outlining the above chronology. It had replied to the complainant's response to a request for review on 17 February 2010. It had not therefore reviewed the request again following the complainant's request of 15 March 2010.
12. On 15 February 2011 the Commissioner telephoned the council and asked it for further information to support its case. He emailed the council on the same day asking further questions about the council's reliance on the exemption.
13. The council responded to this email on 16 February 2011.
14. The Commissioner emailed the council on 30 March 2011 asking further questions. The Council responded on 31 March providing that information to him.

Analysis

Substantive Procedural Matters

Section 12

15. The council applied section 12 to the information. Section 12 provides that the obligation to provide information to a requestor provided by the Act "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.
16. The appropriate limit is set by the secretary of state in The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. The set limit is set for local authorities at £450. The Information tribunal has clarified that this is chargeable at an officer time of £25 per hour which is equivalent to 18 hours of officer time.
17. The council's Refusal Notice stated that responding to the complainant's request would exceed the appropriate limit as it had been aggregated with another similar request. It added however within the Notice that it had calculated that responding to the request without aggregating it with the other request would also exceed the appropriate limit.

18. However, in spite of this finding the council provided the complainant with the raw data that it could retrieve easily from its case management system, stating that it was doing so in light of its obligations under section 16 of the Act.
19. The council stated in its Refusal Notice that it was not able to provide all of the information which the complainant had requested. It stated that no information was held for part 2 of the complainant's request. The Commissioner also notes that other sections cannot be collated from the base information which it provided to the complainant. He is satisfied provision of the base data, does respond in part to the complainant's request, however it does not respond to the request in its entirety.

The aggregation argument

20. The Commissioner asked the council to provide him with details of the other complaint with which this complaint had been aggregated, and to provide him with details as to why they were suitable for aggregation. The council responded stating that although the refusal notice had stated this, in fact it had not calculated in its estimate for the appropriate limit using an aggregated approach. Its decision was that the complainant's request on its own would require the council to carry out work which would exceed the appropriate limit. The Commissioner has not therefore considered this aspect further, however he fails to understand why the Council raised this as an issue within its refusal notice when, according to its own calculations, it had no need to do so.

Reasonable estimates

21. It is up to the public authority to estimate whether it would exceed the costs limit to comply with a request although any estimate must be reasonable. However in considering the reasonableness of that estimate, the Commissioner can investigate and challenge the public authority's process of investigation, assessment and calculation which led to their estimation that it would exceed the costs limit to comply with the request.
22. The issue of what constitutes a reasonable estimate was considered in the case of Alasdair Roberts v the Information Commissioner EA/2008/0050. It found that:
 - "Only an estimate is required" (i.e. not a precise calculation)
 - The costs estimate must be reasonable and only based on those activities described in Regulation 4(3).

- Time spent considering exemptions or redactions cannot be taken into account.
- Estimates cannot take into account the costs relating to data validation or communication.
- The determination of a reasonable estimate can only be considered on a case-by-case basis and
- Any estimate should be "sensible, realistic and supported by cogent evidence".

The calculations used to estimate whether the response would exceed the appropriate limit

23. Although it is not a statutory requirement, as a matter of good practice a public authority should provide a breakdown of how they arrived at their estimate so that the applicant can consider refining his request to come within the costs limit. The council in this case did not do so. It simply explained that responding to the request would exceed the appropriate limit. The Commissioner therefore asked the council to explain how it calculated that responding would exceed the appropriate limit.
24. The council stated that it had taken the following points into consideration:
 - a. It was not able to retrieve data on the acknowledgements it had sent out for point 2 of the complainant's request, and would therefore need to check each file individually for that information.
 - b. The information which it could obtain from its management information database was not accurate and so could not be used to respond to the complainant's request. The database was used for the day to day management of cases rather than for providing accurate reporting statistics, which is what the council believe the complainant actually requested. Again therefore each file would need to be checked to obtain the statistics which the complainant had actually requested.
 - c. The council runs a delegated system of FOI action officers across the Council. Requests for information are entered on the management system and assigned as appropriate, but it is up to the action officers to process the requests. Although there is a facility to store documents on the system this is not mandatory and the correspondence relating to requests can be stored in a mixture of ways; manually, electronically in Microsoft files or on the management system.

- d. There are records of approximately 950 requests on the management database. The council would therefore need to go through all 950 files simply to respond to this part of the request.
- e. For 950 files it estimated that it would have approximately 1 minute to locate, retrieve and extract the relevant information from the file, and that as its filing systems are as outlined above, this was not possible within the appropriate limit.
- f. It added that in any event it had already spent 5 hours or more providing the management database records it holds to the complainant. Therefore even if the information could be extracted from the files at an average of 1 minute per file the appropriate limit would still be exceeded. The Officer responsible for preparing the report which was sent to the complainant stated that it took this time due to the fact that the reporting facilities on the management system had recently been upgraded and time was required to investigate what information could be extracted. Time was therefore spent working out what information was available and constructing an ad-hoc report on the management system, then running it and testing it.
- g. The management information it could provide did not take into account normal course of business requests. This would also need to be obtained by reference to the individual files prior to the information being accurate.
- h. The management database records did not fit with the way that the complainant's had requested some information and so the council would have needed to revert to the complainant had it not applied section 12. It would have needed to ask him to consider what information it could provide from its management data to respond to the request.

Why the council estimated that responding to the request exceed the appropriate limit

Acknowledgements

- 25. In response to the Commissioner's investigation the council argued that although it had said to the complainant that it did not hold this information, it had reconsidered its position, and following the Tribunals decision in the case of Johnson v The Information Commissioner (EA/2006/0085) it considered that it did hold that information, albeit that retrieving it could only be achieved by looking at each individual case file.

26. It explained that its policy is that officers are told to send acknowledgements when the case is first referred to them, however there are no specific targets set for these to be issued. Acknowledgements would therefore have been sent in the vast majority of cases but the council's case management system did not have a 'field' to record this. Each individual Action Officer would need to confirm whether acknowledgements had been sent or not by reference to the individual case file. It therefore argued that this, along with other arguments it submitted would lead to the appropriate limit being exceeded if it was required to respond to the request.
27. The Commissioner has considered this argument further. The first part of the complainant's request was asking the council whether it had a policy on sending acknowledgements, and if there was such a policy, how quickly acknowledgements were meant to be sent. The council's response was that there is no formal policy, and therefore no target. The council stated that it recognised that technically it's response to the request as written was that no information was held, however it explained that:
- "It would have been in accordance with the duty to provide help and assistance to provide any readily held management information about acknowledgements, but these were not available because acknowledgements were not a reportable field on the case management system."
28. The Commissioner considers that using an objective reading of the request there is no information which can respond to the second part of the complainant's request – what percentage of the acknowledgements met with the council's targets for acknowledgements. The council had no target to be met for issuing acknowledgements. This information is therefore not held by the council. The Council cannot therefore include the time it would take to check each file for acknowledgements in this respect.
29. The Commissioner notes however that this factor cannot have formed part of the initial estimate which it used in calculating the estimate which the council used in its Refusal Notice to the complainant. This is because its refusal notice stated that acknowledgement information was not held.

Would the information from the management database suffice to respond to the request?

30. The council argues that the request relates not to the management information which the Council has already collated in relation to FOI

requests to assist it in the management of those request, but to the actual factual situation as reflected in the base data.

31. It stated that on a day to day basis the data on the case management system is provided to help individual Action Officers manage their cases and to help the Corporate FOI Officer administer cases, internal reviews etc. The database provides management data but these need to be verified each year before they are collated into reportable statistics. It stated to the complainant that once this was done this information would be available, but that verification had not yet been done for the period covered by the request. It added that it would, in time, implement a system for meeting with the Ministry of Justice's criteria for reporting on freedom of information requests however its systems were not capable of meeting those reporting measures at the time.
32. However it believed that the complainant was not seeking the management information but accurate statistics on the requests received. The Council stated that complying with the request as it relates to first requests (rather than reviews) would include checking the management information against the following data in the original documentation:
 - The date of a request
 - The date of response
 - The outcome
 - The exemptions applied
33. It added that further checks against the original documentation would have been required in relation to the information requested about Internal Reviews.
34. The excel files which the council provided to the complainant show that approximately 950 freedom of information requests were recorded as received by the council between January 2009 and February 2010 on the case management system.
35. According to the council's arguments, each of these case files would need to be evaluated to and the data above extracted in order to be able to provide the complainant with accurate information in the format he wished.
36. Based on the base data, which shows that approximately 950 requests were received within the relevant period of time:

37. For 950 files:
- If each file took 1 minute to obtain the file, then check and retrieve the information requested and record the results then this would take approximately 14½ hours. This falls within the appropriate limit.
 - At 1 minute 15 seconds to check it would take approximately 20 hours to check. This exceeds the appropriate limit.
 - At 1 minute 30 it would take approximately 24 hours. This also exceeds the appropriate limit.
38. The Commissioner considers that this is clearly a very close estimation. A matter of an additional 15 seconds per file would mean that responding would substantially exceed the appropriate limit. However the council added that it had spent an additional 5 hours providing the management reports to the complainant under its obligations under section 16 of the Act.
39. In any event the Council provided arguments why locating and extracting the information would exceed, on average 1 minute per file as explained above. It explained that its records were held across individual departments, in different formats.
40. The Commissioner has also taken into account the 5 hours taken to provide the complainant with the management database information. To an extent this time might be excluded on the basis that the council admits itself that this information was not the information sought by the complainant, and therefore the time taken to provide that information to him should not be considered as part of the response time.
41. However the Commissioner is satisfied that in fact it was necessary to obtain some of that information in order to be able to estimate the work which would be required to respond in full to the complainant's request. It was necessary in the first instance to identify the amount of files held by the council in order to facilitate estimating a figure for retrieving and locating those files.
42. The Commissioner is therefore satisfied that the council has provided cogent evidence that locating each file, and checking its contents to extract the relevant information would be likely to require work which exceeds the appropriate limit.

Normal course of business requests

43. The council also argued that its policy was that any requests which could be dealt with as a 'normal course of business request' were responded to outside of the recording system for freedom of information requests. It recognised that, in reality, these requests were however freedom of information requests but they were not recorded as such on its case management system. The council's therefore argued that it would also need to check all of its files which might include such requests prior to being able to provide accurate figures to the complainant.
44. The Commissioner considers that responding to the request when including the normal course of business requests, would have exceeded the appropriate limit. Details of the normal course of business requests would be likely to be held by all departments at the council. However, as these figures do not appear on the management information database obtaining them would require each department to search through their own files and collate the figures to add to those to the information held on the management information database.
45. The Commissioner has considered the above. Although normal course of business requests are freedom of information requests in technical terms, in actuality he doubts that the vast majority of authorities consider these to be FOI requests when calculating information of this kind. The nature of such requests is that they are dealt with as part of the normal day to day functions of the authority.
46. As an example, a request by an employee of an authority for a wage slip or an annual leave record is a request for information which could be regarded as a request for information under the Act. Similarly a request from a member of the public for an information leaflet could also technically be considered to be a request for information under the Act if they meet with the other requirements of the Act, such as the requirement for the request to be made in writing.
47. In fact, as the request forms part of the normal course of business for the authority however, many authorities would simply deal with the request and it would not be treated or recorded as a request under the Act. The Commissioner accepts however that as any request for information which meets with the requirements of the Act can be construed as an FOI request the council is able to consider that it would need to include these requests in its response to the complainant's request if it were to provide accurate statistics to the complainant.

48. The Commissioner considers however that in reality the public would also not consider such requests to be requests under the Act, and he considers that it is possible that the complainant in this case would not have been trying to include such information within the statistics he was seeking.
49. However, the Commissioner must take account of the obvious number of such requests which the council would have received, together with the fact that this information would not have been recorded in a manner suitable to easily retrieve that information for the purposes of responding to the complainant's request. The Commissioner considers that taking into account normal course of business requests in its responses would therefore exceed the appropriate limit under the Act.
50. However he considers that excluding normal course of business requests would have been a relatively simple and obvious way in which the council could have narrowed down the complainant's request in order to facilitate being able to respond within the appropriate limit.

Conclusions

51. Given all of the above, the Commissioner considers that the council did provide realistic arguments supporting its view that responding would exceed the appropriate limit and cogent evidence to support that position.
52. He considers that the request for acknowledgement data could have been answered quite simply, and that the arguments submitted for checking accuracy were not applicable.
53. He further believes that the council could have easily asked the complainant for his agreement to exclude information on normal course of business requests.
54. However the Commissioner considers that even with that being the case, the council would have exceeded the appropriate limit locating and extracting and collating the relevant information from the 950 files.
55. The Commissioner therefore considers that the council was correct to apply section 12 to the information.

Responding to the WDTK website

56. The Complainant's first complaint was that the council had refused to respond to his request directly to the 'What do they know' website, (the 'WDTK' website). Shortly after this response however the

Commissioner made a decision on a separate complaint, and informed the council that it was required to respond in this way. That decision notice can be found on the Commissioner's website at [http://www.ico.gov.uk/~media/documents/decisionnotices/2010/fs_50296350.ashx](http://www.ico.gov.uk/~/media/documents/decisionnotices/2010/fs_50296350.ashx) (Decision Notice ref: FS50296350)

57. The Commissioner's decision on this part of the complainant's request would therefore follow in line with his decision in that case. The council was not correct to refuse to respond to the complainant by responding directly to the WDTK website.
58. The application of Section 12 of the Act provides an exemption to the council's duty to communicate the information to the applicant under section 1(1)(b) of the Act. It does not provide an exemption to section 1(1)(a), which requires the authority to confirm that it holds relevant information unless doing so would itself exceed the appropriate limit. However the council did reply to the complainant that it held relevant information, other than information for part 2 of the request.
59. The Commissioner is therefore unable to find that the council breached its obligations under the Act in refusing to respond to the complainant at the WDTK address he provided because it provided all of the relevant information which was it was required to do in its initial response to the complainant at that address.

The Decision

60. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

Steps Required

61. The Commissioner requires no steps to be taken.

Right of Appeal

62. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

63. 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.
64. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 10th day of May 2011

Signed

Andrew White
Group manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Legal Annex

General Right of Access

Section 1(1) provides 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."

Section 2(3) provides that –

"For the purposes of this section, the following provisions of Part II (and no others) are to be regarded as conferring absolute exemption –

- (a) section 21
- (b) section 23
- (c) section 32
- (d) section 34
- (e) section 36 so far as relating to information held by the House of Commons or the House of Lords
- (f) in section 40 –
- (i) subsection (1), and
- (ii) subsection (2) so far as relating to cases where the first condition referred to in that subsection is satisfied by virtue of subsection (3)(a)(i) or (b) of that section,
- (iii) section 41, and
- (iv) section 44"

Section 12(1) provides 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."

Section 12(2) provides that –

“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.”

Section 12(3) provides that –

“In subsections (1) and (2) “the appropriate limit” means such amount as may be prescribed, and different amounts may be prescribed in relation to different cases.”

Section 12(4) provides that –

“The secretary of State may by regulations provide that, in such circumstances as may be prescribed, 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.”

Section 12(5) – provides that

“The Secretary of State may by regulations make provision for the purposes of this section as to the costs to be estimated and as to the manner in which they are estimated.”

The Commissioner has considered whether the council can include the time it would take to confirm the accuracy of the data as part of its estimate. In *Alasdair Roberts v the Information Commissioner EA/2008/0050* the Tribunal found that any time taken to validate data could not be considered as part of the estimate. The Commissioner therefore considers that this argument is not appropriate in the circumstances.

However the council argues that it is not simply a question of validating that information. It would be necessary to go through each file in order to be able to respond to the request in the format that the complainant's has asked for, and it considers that the provision of the management data is not what the complainant wishes in any event. The council argues that in order to do this it would be necessary to go through each individual case file to extract the relevant information.