

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 29 September 2014

**Public Authority:** Wirral Metropolitan Borough Council

**Address:** Wallasey Town Hall  
Brighton Street  
Wallasey  
Wirral  
CH44 8ED

### **Decision (including any steps ordered)**

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1. The complainant has requested information from Wirral Metropolitan Borough Council ("the council") about business trips to Halifax by senior council officers in the preceding three years. The council responded that some of the requested information was not held, and that to provide the remainder would exceed the appropriate limit in costs set by section 12(1) of the Freedom of Information Act ("the FOIA").
2. The Commissioner's decision is that further information is likely to be held. He has further concluded that the council has failed to provide sufficient evidence for the application of section 12(1), and that it has breached the requirement of section 16(1) by failing to provide advice and assistance to the complainant. In failing to provide its response within the time for compliance, the council has also breached the requirement of section 10(1).
3. The Commissioner requires the council to take the following steps to ensure compliance with the legislation:
  - For parts 1 and 2 of the request, complete its searches for information and issue a fresh response to the complainant.
  - For parts 3, 4 and 5 of the request, issue a fresh response to the complainant that does not rely upon section 12(1).

4. 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**

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5. On 20 April 2012, the complainant made the following request for information:
  1. *Number of business trips to Halifax by Senior Officers in the past 3 years.*
  2. *The dates of each visit.*
  3. *The senior officers attending on each of these dates.*
  4. *The cost in mileage / travel / accommodation / hotels / expenses.*
  5. *The cost in other expenses for these trips.*
  6. *The reason for each of these visits.*
  7. *Minutes of each of these meetings.*
  8. *The reason for the location of the meetings being Halifax.*
6. The council responded on 23 April 2013. It confirmed that for parts 1 and 2 the information was no longer held; for parts 3, 4 and 5 providing a response would exceed the appropriate limit in costs provided by section 12(1); for part 6, it was able to provide information; and for parts 7 and 8 the information was not held in recorded form.

## **Scope of the case**

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7. The complainant contacted the Commissioner on 17 July 2013 to contest the council's response.
8. The Commissioner considers that the scope of this case is the determination of whether the council has correctly responded to parts 1 to 5 of the complainant's request. The Commissioner will therefore consider:
  - a) The likelihood of whether information is still held in respect of parts 1 and 2.
  - b) Whether to provide a response in respect of parts 3, 4 and 5 would engage the exclusion provided by section 12(1).

## Reasons for decision

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### Section 1(1) – Duty to make information available on request

9. Section 1(1) of the FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds the information, and if so, to have that information communicated to them. This is subject to any exemptions or exclusions that may apply.
10. The council's response to the Commissioner's investigation has confirmed that it has revisited the request, and has identified that it is likely to hold some information, albeit limited, that falls within the scope of parts 1 and 2 of the complainant's request.
11. Based on this submission, the Commissioner must conclude that further information is likely to be held, and that the council's response has not fulfilled its duty under section 1(1).

### Section 12 – Cost of compliance

12. Section 12(1) states 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.*

13. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations") sets the appropriate limit at £450 for the public authority in question. Under the Fees Regulations, a public authority may charge a maximum of £25 per hour for work undertaken to comply with a request. This equates to 18 hours work in accordance with the appropriate limit set out above.
14. A public authority is only required to provide a reasonable estimate or breakdown of costs and in putting together its estimate it can take the following processes into consideration:
  - determining whether it holds the information;
  - locating the information, or a document which may contain the information;
  - retrieving the information, or a document which may contain the information; and
  - extracting the information from a document containing it.

*Can the requests be aggregated?*

15. In cases where a single piece of correspondence contains multiple requests for information, the Commissioner's position is that each request is separate. This was confirmed by the Information Tribunal in the case of *Fitzsimmons v Information Commissioner and the Department for Culture, Media and Sport (EA/2007/0124)*.
16. Under the Fees Regulations, public authorities can aggregate the cost of complying with requests if they 'relate, to any extent', to the same or similar information'. The Commissioner interprets this phrase broadly, and considers that providing there is an overarching theme or subject matter that connects the requests, the cost of compliance with each request can be aggregated.
17. In the circumstances of this case the Commissioner has reviewed the correspondence in which the complainant requested information, and has identified that the council's refusal under section 12(1) related to parts 3, 4 and 5. Each part requests different information about business trips made by senior officers to Halifax. The Commissioner is therefore satisfied that the three parts are connected through an overarching theme, and that the cost of compliance can therefore be aggregated.

*Does the aggregated cost of compliance exceed the appropriate limit?*

18. The council, in providing its submission to the Commissioner, has explained that it considers section 12(1) to be engaged in respect of all eight parts of the complainant's requests. The council has proposed that the combined costs of identifying whether the information is held in response to the eight requests, in conjunction with any ensuing costs of locating, retrieving and extracting the information, would exceed the appropriate limit of 18 hours.
19. The Commissioner, having reviewed the content of the council's original response to the complainant, notes that section 12 was only engaged in respect of parts 3, 4 and 5 of the complainant's request, and that his investigation proceeded on this basis.
20. Based on this context, the Commissioner does not consider that the council's arguments for the application of section 12(1) can extend to all eight parts of the request. The council has already informed the Commissioner that further searches are being undertaken for parts 1 and 2, and the council's original response to parts 6, 7, and 8 have not been disputed by the complainant, and so do not fall within the scope of this investigation.
21. The Commissioner has therefore considered the council's arguments for the application of section 12(1) only in respect of parts 3, 4 and 5.

22. The council has explained to the Commissioner that the different types of information requested would require the council to search its electronic archives for a three year period. However, the Commissioner has not been provided with a detailed time or cost estimate that would suggest that providing a response would exceed the appropriate limit, nor has he been provided with the supporting outcome of any sampling exercise.
23. Having considered the above factors, the Commissioner has concluded that the council has not provided sufficient evidence to support its refusal under section 12(1).

### **Section 16 – Advice and assistance**

24. Section 16(1) of the FOIA imposes an obligation on a public authority to provide advice and assistance to a person making a request, so far as it would be reasonable to do so. Section 16(2) states that a public authority is to be taken to have complied with its section 16 duty in any particular case if it has conformed with the provisions in the Section 45 Code of Practice in relation to the provision of advice and assistance.
25. In the circumstances of this case, the Commissioner has reviewed the council's refusal dated 19 June 2014, and does not consider that advice and assistance has taken place, despite the council refusing parts 3, 4 and 5 of the request on the basis of cost. The council has therefore breached section 16(1).

### **Section 10(1) – Time for compliance**

26. Section 10(1) requires that a public authority must respond to a request within the time for compliance, which is 20 working days following the date of receipt.
27. In this case the Commissioner has identified that the council responded outside 20 working days, and therefore breached the requirements of section 10(1).

## Right of appeal

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28. 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@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

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

29. 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.
30. 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 .....**

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