

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: **8 September 2014**

Public Authority: **Wirral Metropolitan Borough Council**

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

Decision (including any steps ordered)

1. The complainant has requested information from Wirral Metropolitan Borough Council ("the council") about the last minuted meetings that were held by 24 different committees. The council refused to comply with the requests on the basis that to do so would exceed the appropriate limit in costs set by section 12(1) Freedom of Information Act ("the FOIA"), and would be manifestly unreasonable under regulation 12(4)(b) of the Environmental Information Regulations ("the EIR").
2. The Commissioner's decision is that the council has failed to provide sufficient evidence for the application of section 12(1) of the FOIA and regulation 12(4)(b) of the EIR, and has breached the requirement of section 16(1) of the FOIA and regulation 9(1) of the EIR by failing to provide advice and assistance to the complainant. The council has further breached section 10(1) of the FOIA and regulation 5(2) of the EIR failing to respond to the request within 20 working days.
3. The Commissioner requires the council to take the following steps to ensure compliance with the legislation:
 - Issue a response to the complainant's request that does not rely upon section 12(1) of the FOIA or regulation 12(4)(b) of the EIR.
 - Provide advice and assistance to the complainant about which of the requested information is held by the council, and therefore falls under the terms of the FOIA or EIR.

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

5. On 29 March 2013, the complainant wrote to the council and requested the following:

"Please could you provide minutes of the previous meetings of the following committees. If minutes whether in draft form or not are not available of the previous meeting, please provide the minutes of the meeting directly before. I have given each of the committees a number in order which can be used in future communications to avoid misunderstandings.

If minutes for any of these committees are not available in electronic form and to provide them in digital form would exceed the 18.5 hours rule then I am happy to collect paper copies from Wallasey Town Hall instead.

1. *Complaints Panel (School Curriculum and Related Matters)*
2. *Education Staff Panel*
3. *Headteacher Appointments Panel*
4. *School Appeals Panel*
5. *Standing Advisory Committee on Religious Education (SACRE)*
6. *Wirral Schools Forum (Funding Consultative Group)*
7. *School Admissions Forum*
8. *Adoption / Fostering Panels*
9. *Housing Review Panel*
10. *Unified Waiting List Management Advisory Board*
11. *Discharge from Guardianship by Wirral Council under the Mental Health Act 1983 Panel*
12. *Independent Remuneration Panel*
13. *Youth and Play Service Advisory Committee*
14. *Corporate Parenting Group (formerly known as Virtual School Governing Body)*
15. *Headteachers and Teachers JCC*
16. *SEN Advisory Committee*
17. *Wirral Schools' Music Service Consultative Committee*
18. *Members' Training Steering Group*
19. *Members' Equipment Steering Group*
20. *Birkenhead Park Advisory Committee*

21. *Hilbre Island Nature Reserve Management Committee*
 22. *Wirral Climate Change Group*
 23. *Anti-Social Behaviour Partnership Body*
 24. *Birkenhead Town Centre Consultative Group*
 25. *Wirral Trade Centre Working Party*
 26. *Safeguarding Reference Group*
6. The council responded on 30 April 2013 and refused the requests under section 12(1) of the FOIA, but advised that the information sought by request 12 was available on the council's webpages.
 7. The council provided an internal review on 30 July 2013 in which it revised its position and refused the requests under section 14(1), and further advised that the information sought by request 13 was available on the council's webpages.

Scope of the case

8. The complainant contacted the Commissioner on 14 August 2013 to contest the council's response.
9. Following the Commissioner writing to the council on 10 February 2014, the council further revised its position on 19 June 2014 and refused the requests under section 12(1) of the FOIA and regulation 12(4)(b) of the EIR. The complainant subsequently advised the Commissioner that he wished to contest this new position.
10. The Commissioner has identified that the information sought by requests 12 and 13 is available on the council's webpages. This was confirmed in the council's initial response and subsequent internal review. The complainant has subsequently confirmed to the Commissioner that he accepts that this information is already publically available, and only wishes to contest the council's response in respect of the remaining 24 requests.
11. The Commissioner therefore considers that the scope of this case is the determination of whether the council's refusal under section 12(1) of the FOIA and regulation 12(4)(b) of the EIR is correct.

Reasons for decision

Is part of the requested information environmental?

12. Information is “environmental” if it meets the definition set out in regulation 2 of the EIR. Environmental information must be considered for disclosure under the terms of the EIR. In the circumstances of this case, the Commissioner does not have sight of the requested information, but has identified that part of it derives from committees that are responsible for environmental matters, including climate change and local parkland. As such, the Commissioner considers it highly likely part of the requested information that derives from those committees would be environmental information as defined by regulation 2 of the EIR.

Section 12 (FOIA) and regulation 12(4)(b) (EIR) – Cost of compliance

13. Section 12(1) of the FOIA 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.

14. 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.
15. 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.
16. The EIR do not have a provision where a request can be refused if the cost of complying with it would exceed a particular cost limit. Rather the EIR contain an exception, namely regulation 12(4)(b), which the public

authority can rely on to refuse a request if they consider it to be 'manifestly unreasonable' on the basis that the cost of compliance with the request would be too great.

17. Although the Fees Regulations are not directly applicable to the EIR, in the Commissioner's view they can provide a useful point of reference when public authorities argue that complying with a request would incur an unreasonable cost and therefore could be refused on the basis of regulation 12(4)(b).
18. However, there are additional factors that should always be considered in assessing whether the costs of complying with a request for environmental information are manifestly unreasonable, in particular the proportion of burden on the public authority's workload (taking into consideration the size of the public authority), and the individual circumstances of the case (including the nature of the information requested and the importance of the issue at stake). In addition to these factors, regulation 12(4)(b) is also subject to a public interest test.

Can the requests be aggregated?

19. 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)*.
20. 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.
21. In the circumstances of this case the Commissioner has reviewed the correspondence in which the complainant requested information, and has identified that it contains 24 numbered requests for specific information. The complainant has advised the Commissioner that he has made these requests for the purpose of ensuring transparency on the part of councillors who have taken part in committees. The Commissioner is therefore satisfied that the requests are connected through an overarching theme, and that the cost of compliance can therefore be aggregated.

Can the requests spanning different access regimes be aggregated?

22. It is the Commissioner's position that when considering the cost of compliance under section 12(1) of the FOIA or regulation 12(4)(b) of the EIR, requests that clearly fall under one access regime cannot be aggregated with those that fall under the other.
23. However, when an individual request is likely to span both access regimes, then the Commissioner recognises that the initial collation of the information will incur costs before the information can be subsequently assessed to decide which access regime applies. As such, the Commissioner considers it appropriate to consider the costs of such collation under the FOIA.
24. In the circumstances of this case, the Commissioner considers it highly likely that the information sought in requests 20, 21, and 22 will include environmental information (such as that relating to the environmental remit of the committee), and non-environmental information (such as that relating to the administration of the committee). The Commissioner is therefore satisfied that it is appropriate to consider the initial collation of any held information under the FOIA.

Does the aggregated cost of compliance exceed the appropriate limit?

25. The council's position is that the combined costs of identifying whether the information is held in response to the 24 requests, in conjunction with any ensuing costs of locating and retrieving the information, would exceed the appropriate limit of 18 hours.
26. The council has explained to the Commissioner that the requests cover a broad range of committees, many of which are advisory in nature, and have minutes that are not electronically available through the information system that the council uses to manage its committees. The council has also suggested that due to many of the committees being advisory in nature, they may not be subject to the terms of the FOIA or EIR.
27. The Commissioner, in reviewing the content of the council's response, has identified that it has not provided the results of any sampling exercise, nor has it provided a detailed time or cost estimate to support its position that the cost of compliance would exceed the appropriate limit.
28. The Commissioner has further identified that whilst committee minutes may not be directly retrievable through the normal information system that the council uses to administer committee minutes, he considers it reasonable to consider that the information would still be contained within a relevant filing system, either manual or electronic, which would

allow the council to both identify whether the information was held, and take steps to collate it.

29. The Commissioner also considers that the council's position that a proportion of the committees are not subject to the FOIA or EIR, further weakens the council's grounds for refusal. Should specific committees not fall under the council's responsibility, this would suggest to the Commissioner that the council's compliance with the requests would only comprise meeting its duty to confirm or deny whether the information is held under section 1(1) of the FOIA or regulation 5(1) of the EIR.
30. 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) of the FOIA and regulation 12(4)(b) of the EIR. As the Commissioner has concluded that regulation 12(4)(b) of the EIR is not engaged, he does not need to consider the required public interest test under regulation 12(1)(b).

Section 16 (FOIA) and regulation 9 (EIR) – Advice and assistance

31. 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 ("the Code of Practice") in relation to the provision of advice and assistance.
32. Regulation 9(1) of the EIR likewise imposes an obligation on a public authority to advice and assistance to a person making a request, as far as it would be reasonable to do so.
33. In the circumstances of this case, the Commissioner has reviewed the council's refusal dated 19 June 2014, does not consider that advice and assistance has taken place, despite the council refusing the request on the basis of cost. The Commissioner further considers that the council's position that some of the relevant committees do not fall under the control of the council, suggests that advice and assistance about the extent of what information is held by the council could have been provided. Therefore, in respect of its revised position dated 19 June 2014, the council has breached section 16(1) of the FOIA and regulation 9(1) of the EIR.

Section 10(1) of the FOIA and regulations 5(2) of the EIR – Time for compliance

34. Section 10(1) of the FOIA and regulation 5(2) of the EIR requires that an information request should be responded to within 20 working days following the date of receipt. In this case a response was not provided until after that length of time. The council therefore breached section 10(1) of the FOIA and regulation 5(2) of the EIR.

Right of appeal

35. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

36. 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.
37. 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