

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 October 2014

Public Authority: Somerset County Council
Address: County Hall
Taunton
Somerset
TA1 4DY

Decision (including any steps ordered)

1. The complainant requested information from Somerset County Council (the Council) which was either redacted, or not previously published, in 36 separate datasets which detailed the Council's spending on items over £500. The Council estimated that the cost of complying with the request exceeded the appropriate cost limit of £450 and therefore it was relying on section 12(1) of FOIA to refuse to comply with the request. The Commissioner has concluded that the Council is entitled to rely on section 12(1).

Request and response

2. The complainant submitted the following requests to the Council on 21 February 2014 regarding the datasets published on its website¹:

'1. Will the authority re-publish Dec 2010 – Feb 2011 datasets and reveal the names of those suppliers whose large value payments were redacted but which were evidently not payments to individuals? (see 1st attachment)

¹ <http://www.somerset.gov.uk/information-and-statistics/open-data/open-data/>

2. Will the authority confirm whether it has removed any payments from the datasets that were made to any of the WS Atkins or Viridor companies?

3. Will the authority commit to re-publishing the historical datasets without omitting any payments, and redacting the names of only those suppliers whose payments should be redacted, in accordance with the guidelines, including a non-corrupted dataset for June 2013

4. Will the authority change its policy (as explained beneath the table on the transparency page) so that in future it will redact rather than exclude altogether those payments that should only be redacted, and will it commit not to exclude any payments from publication?

5. Will the authority commit to improving on its detailed expense type categorisation in order to allow users to conduct meaningful analysis on the published data? In particular, the three highlighted categories below are meaningless but between them account for 65% of the published spending to date by value.'

3. The Council responded on 9 April 2014. In relation to request 1 the Council explained that it would not be republishing the December 2010 to February 2011 reports. In relation to request 2 the Council explained that redactions had been made to the datasets in line with the explanation set out on its website; it did not however explicitly confirm whether or not it had removed details of any payments to WS Atkins or Viridor companies. In relation to request 3, the Council explained that it would not commit to re-publishing historical data sets with fewer redactions. In response to requests 4 and 5 the Council explained that it was reviewing its policy towards publishing the 'over £500 spend reports' albeit that it could not change the categories under which spending was detailed.
4. The complainant contacted the Council on 11 April 2014 in order to ask for an internal review. In relation to requests 1 to 3, he argued that the Council had failed to cite any exemptions contained within FOIA to withhold the information falling within the scope of these requests. He also explained that he was dissatisfied with the Council's response to requests 4 and 5.
5. The Council informed him of the outcome of the internal review on 29 April 2014. The review concluded that the initial response to his request had not been provided within 20 working days. The review also suggested that the Council was intending to revise its approach to redacting information from the datasets in the future, albeit that the internal review did not specifically consider the nature of the redactions

actually applied to the datasets falling within the scope of requests 1 to 3.

Scope of the case

6. The complainant contacted the Commissioner on 9 May 2014 to complain about the way his requests for information had been handled. The complainant explained that he essentially submitted these requests in order to access two categories of information: a) details of payments redacted from the published datasets for the months December 2010 to February 2011 and b) details of payments which had been excluded (ie rather than redacted) from the published datasets for subsequent months.
7. The complainant emphasised that in his view both categories of information (save for a very small number of legitimate redactions) should already have been published by the Council in line with Department for Communities and Local Government's (DCLG's) '*Code of recommend practice for local authorities on data transparency*' which was published in September 2011.²
8. The Commissioner agreed with the complainant that request 1 - which sought the information described in a) - was, in effect, a subset of request 3. Consequently, the Commissioner agreed with the complainant to focus his investigation simply on whether the information falling within the scope of request 3 should be disclosed under FOIA and that such a request sought:
 - Details of all payments – over £500 - that would have been included in the datasets for the period December 2010 to November 2013 but for whatever reason the Council simply choose to exclude them. (That is to say, such payments were simply not included in datasets as opposed to being published in the datasets in a redacted form.)
 - The removal of any redacted information concerning payments over £500 where such payments do actually appear in the datasets for the period December 2010 to November 2013.³

² <https://www.gov.uk/government/publications/local-authority-data-transparency-code>

³ The Commissioner limited the date range up to and including November 2013 because this was the latest dataset that was available at the point the complainant made his request.

9. When the Commissioner contacted the Council to explain the scope of his investigation, the Council argued that the requests did not specifically ask for the information redacted or simply not published in the historical datasets. Rather in its opinion the requests simply asked whether the Council would take steps to publish such information and such a requests only required a 'Yes/No' answer, responses which had clearly been provided.
10. In response, the Commissioner acknowledged that that requests could arguably have been phrased more clearly, i.e. the complainant could have explicitly stated that he actually wanted to be provided with the redacted information and the information not previously published. However, the Commissioner suggested to the Council that in his opinion in the context of the complainant's other correspondence with the Council regarding this matter (i.e. the detailed attachment he provided alongside his requests of 21 February and the internal review request of 11 April) that his requests could be objectively interpreted as actually seeking a copy of the information redacted from the datasets for December 2010 to February 2011 and the unpublished data from the datasets for the months March 2011 to November 2013.
11. The Council agreed to proceed on the basis that this was the information that request 3 had in fact sought. However, during the course of the Commissioner's investigation the Council explained that it believed that providing this information would take more than 18 hours work and thus it sought to refuse to comply with this request on the basis of section 12 of FOIA. (In line with its obligations under section 16 of FOIA to provide advice and assistance, the Council subsequently contacted the complainant and invited him to discuss how his request could be refined in order to bring it within the appropriate cost limit.)
12. The complainant raised concerns with the Commissioner regarding the Council's reliance of section 12 and therefore this decision notice considers its application of this part of FOIA to refuse to comply with request 3.

Reasons for decision

Section 12 – cost of compliance

13. Section 12(1) of FOIA allows a public authority to refuse to comply with a request if the estimated cost of doing so exceeds the appropriate cost limit. With respect to the Council this limit it is £450, representing 18 hours work at a charge of £25 per hour. The only activities that a public authority can take into account are set out in The Freedom of

Information and Data Protection (Appropriate Limit and Fees) Regulations (the 'Fees Regulations') and are the following:

- determining whether it holds the information;
 - 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. When considering the application of section 12, the Commissioner follows the approach of the Information Tribunal, which took the view that estimates for the purposes this section, have to be 'reasonable' which means that it is not sufficient for a public authority to simply assert that the appropriate limit has been met; rather the estimate should be realistic, sensible and supported by cogent evidence.

The Council's position

15. The Council explained that providing the information falling within the scope of request 3 would take 54 hours, which equates to £1,350. The Council's basis for reaching this figure is based on the following:
16. For each monthly spending report it would need to carry out the following processes to 'extract and recover' the requested information:
- Master data team to configure and compile each monthly report = 30 minutes (determining information held)
 - IT time to schedule and set up data recovery = 20 minutes (locating and retrieving information)
 - Finance team sense check, format and reconcile = 40 minutes (confirming accuracy of the data extraction)
17. The total time taken to compile the information for each monthly report would therefore be 90 minutes.
18. Given that there are 36 reports for the period in question (i.e. December 2010 to November 2013), the time taken to comply with the entire request comes to 54 hours.
19. The Council confirmed that the estimate of 90 minutes per report was based on preliminary work, involving similar volumes of data and similar variables, it had undertaken in order to ensure it is ready to comply with the requirements of the Statutory Transparency Code once it comes into

force.⁴

The complainant's position

20. In submissions to the Commissioner complainant questioned the process of compiling the requested information as adopted by the Council. He noted that the Council had reached its total by estimating the time to produce one monthly report and multiplying that by 36. He acknowledged that this might be a reasonable approach going forward when one is working with fresh data. However, in respect of historical data he argued that the logical approach was to select all 36 months at once, and thus do the data configuring and extracting just once and then spilt the output into individual monthly reports at the end of the process. By using this approach the complainant estimated that the time of 54 hours could be drastically reduced, albeit that he acknowledged that the amount of time would still just exceed the limit of £450.
21. However, the complainant's primary concern focused on the Council's approach to the publication of open data and as result whether it was in fact 'reasonable' for the Council to rely on section 12 to refuse this request.
22. The complainant argued that the Council had made a conscious decision first to redact payments at a rate of £14m per month from the datasets for the period December 2010 to February 2011, and then to remove similar payments from public view altogether by excluding them from the subsequent months' datasets. The complainant argued that the result of this approach is that only a tiny fraction of what the Council spends on external suppliers has been disclosed. Such a position was in his view against the public interest, totally against the spirit of the DCLG code published in September 2011, and indeed contrary to the suggestion on the Council's website that such datasets are published to aid transparency of its spending:

'We publish reports which provide detailed information of council spending over £500. This is part of our drive to make our information more transparent, and is supported by guidance from The Secretary of State for Communities and Local Government.'
23. Moreover, the complainant argued that by citing the appropriate cost limit the Council was looking in isolation at the financial cost of publishing information that it should have already disclosed as part of

⁴ <https://www.gov.uk/government/publications/local-government-transparency-code-2014>

the code of practice. Rather the complainant argued that it was failing to consider the opportunity cost, many orders of magnitude higher, of *not* correcting the historical data. In other words the complainant argued that the Council was assuming that revealing more than £500m of spending would produce less than £900 worth of benefits (i.e. £1350 minus £450). Such benefits, in the complainant's view could include:

- Duplicate payments identified
- Fraud/inappropriate spend identified by the public
- Useful statistical insights provided by the richer dataset
- Better visibility for managers, members and the public leading to more informed decision making
- Greater visibility leading to a general downward nudging of service expenditure (especially relevant for external consultants).
- Fewer costly FOI requests because the data would be transparent.

24. In summary the complainant argued that the Commissioner should not accept that the Council's cost was realistic one because it does not take into account the associated costs with the option of not disclosing the data falling within the scope of request 3.

The Commissioner's position

25. Based on the above calculations, and given that these are based on similar work undertaken the Council, the Commissioner accepts that the estimate of 54 hours work to provide the information falling within the scope of request 3 is a sensible one. Even, if one adopted the method of compiling the data as suggested by the complainant, this would still, taken more than 18 hours work.

26. With regard to the complainant's broader line of argument, in the Commissioner's view this does not – and indeed cannot – affect the application of section 12(1) in this case. This is because this aspect of the legislation is quite simple: if it takes more than 18 hours for a public authority to comply with a request (taking into account the four activities set out in the Fees Regulations) then it does not have to answer the request. Section 12 is not subject to the public interest test and thus any broader benefits which may flow from complying with a request that exceeds the cost limit are not relevant to the application of this section. Nor does the Commissioner believe that the test of whether an estimate is 'reasonable' requires such broader considerations to be taken into account. Rather whether an estimate is 'reasonable' is simply a matter of determining whether the time taken to undertake certain activities is plausible and whether such activities represent the most efficient way of compiling the requested information.

27. The Commissioner is therefore satisfied that the Council can correctly rely on section 12(1) to refuse to comply with request 3.

Other matters

28. Although the Commissioner has concluded that the Council is entitled to rely on section 12(1) of FOIA to refuse request 3, he has considerable sympathy with the broader points made by the complaint regarding the Council's approach to the publication of the datasets which are the focus of this complaint. Whilst the Commissioner does not have a role in considering whether local authorities have followed the code of recommended practice issued by the DCLG in September 2011 regarding data transparency, it seems clear to him that the limited amount of information published in these datasets did not follow the recommendations set out in the code in respect of payments above £500. The Commissioner understands that the Council accepts that its approach has fallen short of the spirit of the DCLG guidance.
29. Moreover, from his role as the regulator of FOIA, in the Commissioner's view it seems reasonable to suggest that if the Council had included more data in the respective datasets at the point they were published, the complainant may not have needed to submit his requests of February 2014 and thus by inference the Commissioner would not have needed to deal with this section 50 complaint. The Commissioner would also highlight the guidance for local authorities on implementation of publication schemes under FOIA⁵. The guidance document explains that the Commissioner would expect information published within the class "What we spend and how we spend it" to be available for at least for the current and previous two financial years. The most relevant guidance related to this class is:

Financial statements, budgets and variance reports

Details of expenditure over £500, including costs, supplier and transaction information (monthly).

Financial information in enough detail to allow the public to see where money is being spent, where a council or department is or

⁵ ICO guidance on FOIA Publication Schemes: Definition document for principal local Authorities
http://ico.org.uk/for_organisations/freedom_of_information/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/definition_document_local_authorities.pdf

has been planning to spend it, and the difference between the two. Financial information should be published at least annually and, where practical, we would also expect half yearly or quarterly financial reports to be provided. Revenue budgets and budgets for capital expenditure should be included.

30. The Commissioner therefore recommends that the Council review its publication scheme. The review should also consider whether the Council needs to take any further steps to comply with the dataset provisions in FOIA that came into force in September 2013. The Commissioner has also published detailed guidance on the provisions⁶. Section 192A of the Freedom of Information Act states:

A publication scheme must, in particular, include a requirement for the public authority concerned— .

(a) to publish—.

(i) any dataset held by the authority in relation to which a person makes a request for information to the authority, and.

(ii) any up-dated version held by the authority of such a dataset, .

unless the authority is satisfied that it is not appropriate for the dataset to be published,

(b) where reasonably practicable, to publish any dataset the authority publishes by virtue of paragraph (a) in an electronic form which is capable of re-use, .

(c) where any information in a dataset published by virtue of paragraph (a) is a relevant copyright work in relation to which the authority is the only owner, to make the information available for re-use in accordance with the terms of the specified licence.

⁶ ICO FOIA datasets guidance
[http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/datasets-foi-guidance.pdf](http://ico.org.uk/for_organisations/guidance_index/~/media/documents/library/Freedom_of_Information/Detailed_specialist_guides/datasets-foi-guidance.pdf)

Right of appeal

31. 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

32. 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.
33. 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

Steve Wood
Head of Policy Delivery
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF