

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 March 2016

Public Authority: Birmingham City Council
Address: Council House
Victoria Square
Birmingham
B1 1BB

Decision (including any steps ordered)

1. The complainant requested information in relation to wheelie bins. Birmingham City Council (the council) provided some of the information but refused two parts of the request under section 12(1) of the FOIA as it determined that it would take over the appropriate limit to respond.
2. The complainant asked the Commissioner to consider if section 12(1) was engaged to the remaining part of his request, and also whether the council has complied with regulation 16 of the FOIA – providing appropriate advice and assistance.
3. The Commissioner's decision is that the council is able to rely on section 12(1) of the FOIA to refuse the parts of the request it has and also it has complied with section 16 of the FOIA.
4. The Commissioner does not require the council to take any steps.

Request and response

5. On 26 May 2015 the complainant requested the following information from the council:

"In your email dated 21/05/15 you state that you, "Have delivered over 204,360 bins" You also state you, "Have received extremely few incidents where the bins have been stolen"

I ask the following, using the Freedom of Information Act.

1] I believe Birmingham City Council has received a grant to use wheelie bins. How much was that grant.

2] Of the "extremely few incidents" of bins being stolen out of the "204,360 bins delivered" How many bins have actually been stolen.

3] With regard to the answer for question 2] how many of the stolen bins were replaced.

4] With regard to the answer for question 3] how many of the replaced bins was a charge made.

5] With regard to the answer for question 4] was that charge £20 per bin replaced.

6] If £20 was not charged what was the figure used to replace the bins.

7] In your email dated 22/05/15 you state that I would be "expected to pay" to replace stolen bins. Are there any circumstances where a charge has not been made to replace stolen bins.

8] With regard to the answer for question 7] what were the circumstances.

9] Has there been a charge made to replace a stolen bin but not paid.

10] With regard to question 9] how many.

11] With regard to question 9] was the stolen bin replaced without payment."

6. The council responded on the 22 June 2015 providing information for each part of the request except for parts 4 and 6, which it refused under section 12 of the FOIA because it determined that to provide this information would take over the appropriate limit.
7. The complainant requested an internal review on 29 June 2015 as he was not satisfied with the council refusing parts 4 and 6 of his request under section 12 of the FOIA. He also considered that the council breached section 16 of the FOIA in not providing advice and assistance alongside the refusal.
8. The council provided the complainant with its internal review on the 13 July 2015, upholding its decision to refuse parts 4 and 6 of the request under section 12 of the FOIA.

9. With regards to section 16 of the FOIA, the council found that it should have explained what information could be provided within the appropriate limit set by section 12 of the FOIA. The council therefore referred the request back to the service area asking it to provide the complainant with an estimate of what information could be provided within the 18 hours.

Scope of the case

10. The complainant contacted the Commissioner on 11 August 2015 to complain about the council refusing parts 4 and 6 of his request under section 12(1) of the FOIA and because he considered that it has not complied with section 16 of the FOIA – providing appropriate advice and assistance.
11. The Commissioner notes that council mentioned in its response to the complainant that a fee would be charged for information going over the appropriate limit. The Commissioner sought clarification from the council as to whether it was charging a fee in this case. The council advised that it was not and that it was solely relying on section 12(1) of the FOIA to refuse parts 4 and 6 of the request.
12. The Commissioner therefore considers the scope of the case is to determine whether section 12(1) of the FOIA is engaged to parts 4 and 6 of the complainant's request and to consider whether the council has complied with section 16 of the FOIA.

Reasons for decision

Section 12 of the FOIA – Appropriate limit

13. Section 12 of the FOIA states that a public authority does not have to comply with a request for information if it 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 council.
15. A public authority can charge £25 per hour of staff time for work undertaken to comply with a request in accordance with the appropriate limit set out above. If a public authority estimates that complying with a request may cost more than the cost limit, it can consider time taken in:
 - a) Determining whether it holds the information;

- b) Locating the information, or a document which may contain the information;
 - c) Retrieving the information, or a document which may contain the information; and
 - d) Extracting the information from a document containing it.
16. In determining whether the council has correctly applied section 12 of the FOIA in this case, the Commissioner has considered the council's rationale as provided to the Commissioner during his investigation.
 17. The council, in its explanation to the Commissioner, has told him that it has determined that it would take over 18 hours in order to locate and retrieve the requested information for parts 4 and 6 of the request.
 18. It has told the Commissioner that the process it would need to undertake in order to obtain the requested information would be to firstly run a report listing all occurrences of 'missing bins' – this is because its system logs both missing and stolen bins as 'missing' and does not differentiate the two. The council states there are 224 records of 'missing' bins. A member of staff would then need to read the call notes written by the call centre agent who would have made the written record of the call in the Customer Records Management (CRM) system to determine whether the bin was reported stolen or missing.
 19. Assuming that the call centre agent recorded that the customer told them that it had been stolen, the officer reading these notes would then need to create a list of 'stolen bins'. Using this newly created list of 'stolen bins', the council has explained to the Commissioner that the member of staff would then have to use this list to check against the Fleet & Waste MAPSS system which records whether a replacement bin was issued in each case and whether a replacement fee was waived or not.
 20. The council has confirmed to the Commissioner that this information is not held in a single reportable field, so a combination of searching and manual checking is required to obtain this information. It determined that the time it would take to cross reference the information on the two systems in order to provide the information would take in excess of 5 minutes to access and analyse each of the many records.
 21. The Commissioner asked that the council carry out a timed exercise and it reported that; it had to firstly run a report to locate the record. This took one hour to run. The council then selected ten records and recorded how long it took to review each one, providing the Commissioner with the individual results. These results ranged between just over 2.5 minutes to just over 10 minutes per record.

22. Of these 10 records checked, the average time it took the council to review each record to obtain the required information was 5 minutes 24 seconds. Taking this as an average to check each record, of which there are 224 of them, this equates to 20.16 hours.
23. Adding this to the 1 hour preparation work the council would need to do in order to extract the records firstly, brings the time to 21.16 hours.
24. The Commissioner's guidance on section 12 of the FOIA¹ at paragraph 21 states that "*A public authority does not have to make a precise calculation of the costs of complying with a request; instead only an estimate is required. However, it must be a reasonable estimate*"
25. On reviewing the above processes the council has explained it would need to undertake in order to obtain the required information, the Commissioner is satisfied in this case with the council's reasoning's and the sampling exercise it has undertaken.
26. Therefore the Commissioner has determined that for the council to provide the required information to parts 4 and 6 of the request, it would take over the appropriate limit, and so finds section 12(1) of the FOIA to be engaged.

Section 16 of the FOIA – Advice and assistance

27. Section 16 of the FOIA imposes an obligation for 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 not conformed with the provisions in the section 45 Code of Practice² in relation to the provision of advice and assistance.
28. Paragraph 14 of the Section 45 Code of Practice states that where a public authority is not obliged to comply with a request because it would exceed the appropriate limit to do so, then it:

¹ https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/235286/0033.pdf

"...should consider providing an indication of what, if any, information could be provided within the cost ceiling. The authority should also consider advising the applicant that by reforming or re-focusing their request, information may be able to be supplied for a lower, or no, fee."

29. The complainant has stated to the Commissioner that because he did not tell the council in his request why he wanted the information it would not give him advice and assistance in how he might alter the request.
30. The Commissioner has reviewed the council's 22 June 2015 response under its section 16

"It is difficult for the Council to provide any specific advice about how you may wish to refocus your request in order that it could be dealt with because we do not know the purpose for which you are seeking information. In their guidance, the ICO suggest that a public authority may wish to refer a requester to their webpages in order that a requester may consider how to phrase a request so that is less likely to be refused under section 14(1). Accordingly, you may wish to review the ICO's advice via the following web link:

http://ico.org.uk/for_the_public/official_information

We would be grateful if your request can be narrowed or refocused to allow us to locate specific information that you are seeking rather than details of all the replaced bins where a charge made.

*You have until **19th September 2015** to provide us with more focussed request. As soon as we have received your revised request, we will respond within 20 working days."*

31. In its internal review the council did then go back to the service area to get an estimate of what information it could provide within the prescribed 18 hours. It advised that it would be possible to undertake the necessary searches to collate the information for a specific area of the city if he could specify one. Or it determined that searching approximately 140 of the records could be achievable within 18 hours.
32. Also, with regards to the issue of the council asking why he required the information, it addressed this in its internal review response stating:

"In the Appeal Decision letter, the Panel have also asked us to address the issue regarding the concern that you raised in your email that we would not provide advice and assistance because

of not knowing the purpose of your request. The Panel inferred from that that we had asked you to provide details of such, which was not the case.

I would like to assure you that there was certainly no intention in our original response to indicate that you were obliged to provide details of the purpose of your request before we would provide advice and assistance. We were merely indicating that based on the information we had available to us, namely the request details, we were unsure as to how to assist you in revising the request in a way that would be useful to you. I apologise for any misunderstanding on this matter."

33. It appears to the Commissioner from this explanation that the council were trying to establish a way of providing appropriate advice and assistance to the complainant that would be of use to him in order for him to possibly refine his request.
34. As it has advised that it would be possible to undertake the necessary searches to collate the information for a specific area of the city if he could specify one, or that searching approximately 140 of the records could be achievable within 18 hours the Commissioner is satisfied that the council has provided sufficient advice and assistance in this case.

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