

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 5 March 2012

**Public Authority:** Brent Council  
**Address:** Brent Town Hall  
Forty Lane  
Wembley  
Middlesex  
HA9 9HD

#### Decision (including any steps ordered)

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1. The complainant requested information held by Brent Council ('the Council') regarding the Council's Libraries Transformation Project concerning library provision in the London Borough of Brent.
2. The Information Commissioner's ('the Commissioner') decision is that the Council appropriately refused the request on the grounds of the costs of compliance under section 12(1) of the FOIA. However the Commissioner has also decided that the Council failed to provide appropriate advice and assistance to the complainant in order for him to be able to submit a refined or revised request. It therefore breached section 16(1) of the FOIA. In addition the Council breached section 17(5) in issuing a late refusal notice.
3. The Commissioner requires the Council to take the following steps:
  - Provide the complainant with advice and assistance in accordance with the section 45 Code of Practice, to enable him to submit a refined his request which may fall within the costs limit.
4. The public authority 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.

## Background

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5. The complainant has entered into a considerable amount of correspondence with the Council with respect to the Library Transformation Project. Some of this correspondence has been in the form of FOI requests. The first request which specifically concerned Preston Library was sent on 18 March 2011 followed by the substantive request in this case, dated 28 March 2011, and a third request on 20 April 2011.
6. The Council aggregated the three requests and relied on section 12 in its refusal notice of 5 May 2011.
7. The complainant explained to the Commissioner that:  
  
"I have given up on most [requests] but determined to not let my request of 28 March go unchallenged."

## Request and response

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8. On 28 March 2011 the complainant wrote to the Council and requested information in the following terms:  
  
"As I understand it, today (28 March) is when your final report to the Council is submitted.  
  
May I please have copies of:  
  
1 All associated correspondence  
  
2 Your analysis and assessment of the responses to the Library Consultation Questionnaire  
  
3 Your analysis and assessment of the various submissions in response to the Council's proposal document?  
  
If I have the date wrong, please will you provide the requested information correct as at the appropriate date)."
9. On 29 March 2011 the Council sought clarification of the first point of this request and explained that the information requested in points two and three would be covered in the 'Libraries Report' with appendices which was to be placed on the Council website on 1 April 2011.

10. The complainant replied the same day explaining:

"The purpose of my FOI request is to see what analysis, debate and discussion has been generated by the responses to your consultation and to identify the criteria and methodology used to make such assessments.

I am sure the report will contain the outcome of such discussion and analysis, etc but I am particularly interested in the thinking leading to these outcomes.

Hence the request for relevant correspondence – obviously limited by what has been recorded in emails, working papers, earlier drafts, etc – and also for copies of work done on the submissions leading up to the final report. I have termed this 'analysis and assessment' and it may cover more than is in the report and appendices."

11. On 5 May 2011 the Council responded to this request and the first request dated 18 March 2011. However the Council explained that it had aggregated three of the complainant's requests and refused to provide information relying on the exclusion contained in section 12 (Cost of compliance). Despite the complainant's clarification provided on 29 March 2011 the Council suggested to the complainant that he read the report and appendices, stating:

"Most if not all of what you are seeking should be there. We consider we have gone to considerable lengths to make all relevant information available. But what we would ask you to do, as I'm sure you will, is to examine the report and appendices closely. If there is specific information that you can identify is missing we will consider if this can be made available to you."

12. Following the complainant's request for an internal review on 12 June 2011 the Council responded on 13 June 2011 seeking clarification of which request the complainant wished to be reviewed by the Council.

13. The complainant confirmed that it was his second request dated 28 March 2011 which he wished the Council to consider again. At the same time he summarised the request as:

"I have asked particularly for internal correspondence relating to the work done for the final report. This covers only a few weeks and the correspondence should be limited. It is manifestly NOT in the final report.

If you are at all unclear about any aspect of the request please do ask for further clarification which I will willingly provide."

14. The Council responded on 9 August 2011 with a review of its response to three related requests. The Council acknowledged procedural breaches of the FOIA and upheld the application of section 12 with respect solely to point 1 of the request of 28 March 2011.

## Scope of the Case

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15. The complainant wrote to the Commissioner on 27 August 2011 to complain about the Council's handling of his requests. He later clarified his complaint stating that he wished only to challenge the Council's response to the second request, dated 28 March 2011.
16. The Commissioner has investigated whether the Council has appropriately relied on section 12 of the FOIA to refuse the request.

## Reasons for decision

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### Section 12

17. Section 12 of FOIA allows a public authority to refuse to comply with a request if to do so would exceed the appropriate limit. In the case of the Council this limit 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.

When refusing a request on the basis of section 12 a public authority does not need to have made a precise calculation of the costs of complying with the request, rather it only needs to have made an estimate of the cost. However, in the Commissioner's opinion, such estimates need to be sensible, realistic and supported by persuasive evidence.

18. 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 thus as long as there is an overarching theme or common thread running between them in terms of the nature of the information that has been requested, then the cost of complying with the similar requests can be aggregated. Furthermore, the Fees Regulations allow for the aggregation of similar requests which have been received a public authority over a period of 60 consecutive working days.

19. In this case the Council was able to aggregate the requests as they were received within 60 working days, notwithstanding that the Council should have responded to the first request before receiving the third request. The request received on 18 March 2011 should have been responded to by 15 April 2011. The Commissioner also notes that the Council had received the request of 28 March 2011 eighteen days before the third request
20. The Commissioner notes that the complainant had provided clarification of the second request dated 28 March 2011 and explained his purpose and requirements. The Council does not appear to have taken this clarification into account when responding initially. The Council reiterated its opinion that 'most if not all of what you are seeking should be there' [contained in the report]. It did not provide any breakdown of the costs it anticipated incurring or any assistance in specifying the type information it holds that is not included in the Report but could be included in the scope of the requests. The Commissioner notes the Council's suggestion [as detailed in paragraph 11] that it may be able to provide some information if the complainant was able to advise it on specific 'missing' information.
21. The complainant informed the Commissioner that he was unable to refine his request to be any more specific as he was unaware of the nature of any 'unreported discussion and analysis'. The Commissioner has considered this point and accepts that the Council could have assisted the complainant by providing examples of the information held which could have been provided within the appropriate cost limits.
22. The complainant specified that his request for an internal review was in respect of the second request only. However, the Council reviewed the first and second request and concluded that in consideration of only the first part of the second request the appropriate limit would be exceeded as its estimate of 1500 emails sent and received by the main author of the report would 'impose a significant burden' to review.
23. The Council provided the Commissioner with a little more detail in respect of the 1500 emails and explained that each email would take one minute to review resulting in a cost of £625. This estimate included

time to determine whether the information was held and retrieving the information but did not include time for extracting information from any correspondence which addressed other issues not covered by the request.

24. The Council informed the Commissioner that the review of library provision in the control of Brent Council, with regard to the Libraries Transformation Project, has been a protracted matter. The process has been subject to a judicial review in the High Court (October 2011) and an appeal to the Court of Appeal (December 2011) against the decision of the Council, both of which have been rejected. The Council has explained that, although not strictly relevant to the application of section 12 to the second request, the scale of the project and the correspondence generated are germane to the Council's response. The Commissioner acknowledges this point; however, the Commissioner must focus his investigation on the information held by the Council at the time of the request which is relevant to the request.
25. The Commissioner recognises that a significant amount of very detailed information is available on the Council's website<sup>1</sup>. The large and complex report, which followed the public consultation, is provided in three parts (an executive report, consultation report and an equalities impact assessment), which includes the Council's responses to the alternative proposals for community libraries, the factors used by the Council to appraise the various alternative proposals, and a detailed correspondence log amongst many other documents.
26. Prior to the report being available on the Council website the complainant anticipated that the report would contain the outcome of discussion and analysis of the responses and alternative proposals. However he made clear to the Council that the information he sought was information in respect of 'the thinking leading to these outcomes' (as detailed in paragraph 10) which he did not consider would be provided in the report. Therefore, although the Council could reasonably assume that the second and third points of the second request may be covered in the report, the complainant considers that other, excluded information appertaining to those points is held along with the correspondence referenced in point one. The complainant is not able to

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<sup>1</sup><http://www.brent.gov.uk/librariestransform.nsf>

be more specific as to what this information may comprise (referenced in paragraph 21).

27. The Commissioner has given full consideration to the points raised by the complainant and the Council and has concluded that it is reasonable that the time taken to fully comply with the second request would take in excess of 18 hours due largely to the volume of correspondence received by the Council concerning the Library Transformation Report. The Commissioner notes in his consideration of the website the significant interest and contributions forthcoming from the residents of the London Borough of Brent. The Commissioner has therefore determined that the Council appropriately applied section 12 in this case.

### **Section 16 - Duty to provide Advice and Assistance**

28. If a request is determined to require a public authority to exceed the appropriate limit under section 12 the public authority is neither required to comply with the request as a whole nor to work up to the appropriate limit. It is entitled to refuse to comply with such a request. However, under section 16 of the FOIA there is a duty to offer advice and assistance to the requestor on how to narrow the request to bring it within the costs limit.
29. The Commissioner has determined that in this case the Council did not provide sufficient advice to assist the complainant to refine his request to bring it within the costs limit. The Commissioner notes the Council's request to the complainant to: "examine the report and appendices closely. If there is specific information that you can identify is missing we will consider if this can be made available to you". However the Commissioner does not consider that this is a helpful or sufficiently meaningful suggestion as the complainant would have difficulty determining 'missing' information as considered above. For example, the Council could have advised the complainant of the types / categories of information it holds within the scope of the request which were not covered in the Report. Alternatively / additionally it could have suggested a limited time frame for the request whereby the complainant could have received some of the correspondence or analysis he sought (subject to the fairness provisions of the Data Protection Act 1998).
30. Accordingly, in consideration of the evidence available, the Commissioner considers that the Council breached section 16(1) and therefore did not comply with the section 45 code of practice as despite the complainant's explanations, it did not offer sufficient advice and assistance in order to narrow or refine the request.

## **Section 17 – Refusal of request**

31. Section 17(5) provides that -

“A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.”

32. The Council stated in its internal review that it had breached section 10 of the FOIA in responding to the complainant’s requests after the twenty working days. The Commissioner notes the Council’s admission of late compliance. However, he finds that the Council is in breach of section 17(5).

## **Other Matters**

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33. The Commissioner also notes that there was a delay in responding to the request for internal review which was provided after 41 working days.



## Right of appeal

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34. 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: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

35. 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.
36. 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** .....

**Alexander Ganotis**  
**Group Manager – Complaints Resolution**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**