

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 18 July 2013

**Public Authority:** London Borough of Haringey  
**Address:** Civic Centre  
High Road  
Wood Green  
London N22 8LE

### Decision (including any steps ordered)

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1. The complainant has requested nationality information about employees at the London Borough of Haringey (the "Council"). It provided links to relevant information available online but argued it did not hold other information within the scope of one of the requests. After internal review, it said that it would exceed the cost limit set out in section 12 of the FOIA to provide the requested information.
2. The Commissioner's decision is that the Council is entitled to rely on section 12 as a basis for withholding the requested information.
3. No steps are required.

### Request and response

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4. Following an exchange of correspondence (including FOIA requests) on broadly similar topics, the complainant wrote to the Council on 29 October 2012 and requested information in the following terms:  
  
"1. How many people was hired by Haringey Council in 2011, 2010, 2009?  
  
2. Which nationality they were people employed by Haringey council in 2011, 2010, 2009,  
  
3. Which positions there were employed for?"
5. For ease of future reference, this Notice will now refer to these as Request 1, Request 2 and Request 3.

6. On 1 November 2012, the Council responded. In response to Requests 1 and 3, it directed the complainant to a link on its website and stated that the complainant had already made requests for this information in an earlier request of 26 September 2012. In response to Request 2 it said that it did not hold this information.
7. The complainant requested an internal review in the following terms:  
"Reply provided by Council is not accordance to emigration regulation (duty of checking nationalities of employees as well as with information gathered by Council (on each Council application for anything (e.g Council flat, benefits etc) there is question about nationality)."
8. In an email of 14 November 2012, the Council gave the complainant the outcome of its internal review. It explained that it was relying on section 12 of the Act as its basis for refusing to provide the information described in Request 2. It would exceed the cost limit to search its records in order to provide this information because it was not held in a readily searchable format.

### **Scope of the case**

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9. The complainant first contacted the Commissioner on 1 January 2013 to complain about the way his request for information had been handled. The Commissioner sought clarification from him including full copies of relevant correspondence in order to take the investigation forward.
10. He disputed the Council's use of section 12 in relation to Request 2 and drew attention to his experience of dealing with the Council. He said that he was always asked for his nationality by council employees whenever he interacted with the Council. He also noted that the Council would need to provide this information to the UK Border Agency upon request. He doubted, therefore, the Council's argument that it did not hold this information in a readily searchable format.
11. The Commissioner has therefore looked at whether the Council is entitled to rely on section 12 as a basis for refusing to provide the information described in Request 2.

## Reasons for decision

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12. Section 12(1) of FOIA states:

*"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") provide that the appropriate limit for non-central government public authorities is £450. This must be calculated at the rate of £25 per hour, providing an effective time limit of 18 hours. If a public authority estimates that the time spent on complying with a request would exceed 18 hours, or £450, section 12(1) provides that the request may be refused.

14. A public authority can only take certain activities into account when assessing whether compliance with a request would exceed the cost limit. These activities are:

- determining whether it holds the information;
- locating a document containing the information;
- retrieving a document containing the information; and
- extracting the information from a document containing it.

15. The Commissioner asked the council to provide a detailed reasonable estimate of the time taken and costs that would be incurred by providing the information falling within the scope of the request. He also asked it to provide a detailed explanation as to how it had investigated, assessed and calculated those costs.

16. He also drew the Council's attention to the complainant's reported experience whereby he said he was regularly asked for his nationality by employees of the Council and that this always appeared to be recorded electronically. Recognising that a person's nationality is not necessarily the same as their citizenship status, he asked the Council to explain the circumstances when it would collect nationality or citizenship status details from its employees or from people using its services.

17. The Council explained:

"Although we hold copies of passports, Birth Certificates, Home Office documents etc. in our Human Resources files, this information is

requested and held as proof of identity and eligibility to work in UK/EEA<sup>1</sup> – not as a proof of nationality.

Please note also that the proof of identity is requested (and provided) when the new staff member starts the job and the nationality/citizenship of the person might have changed since that date. As the nationality does not equal eligibility to work in UK/EEA they would not be required to provide details of changes to their nationality/ citizenship.

If we were to go through our files and create a new record of staff nationalities we estimate it would take 2002 hours to provide the information. The estimated cost is therefore £50,050.

The estimated time is approximately 5-10 minutes per file to check the documents and record the nationality. This would be based on locating the copy of the relevant document (passport, birth certificate, ID, Home Office documents etc) and recording the nationality.”

18. It explained that it had calculated this figure in the following way:

2009-10	Haringey Council employed 4687 staff excluding Schools.
2010-11	Haringey Council employed 3866 staff excluding Schools.
2011-12	Haringey Council employed 3462 staff excluding Schools.

4687 x10 min	= 781h
3866 x10 min	= 644h
3462 x10 min	= 577h
Total	2002 h

2002 h x £25 = £50050.”

19. It explained that it only held this information on manual files and did not record it because it did not have a business purpose for doing so.

20. When asked about what information it collects from its service users it explained:

“We do not seek information regarding nationality or citizenship from our clients or staff. We do ask information regarding ethnicity to ensure equal access to our services. (This information is provided voluntarily.)”

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<sup>1</sup> European Economic Area

21. As regards the complainant's point regarding enquiries from the UK Border Agency, it said:

"Despite [the complainant's] beliefs the UK Border Agency does not make routine or random enquiries as to whether our employees are entitled to work in the UK. If they did, they would not be requesting information regarding staff nationalities but work permits/ proof of the right to work in UK."

22. The Commissioner finds the Council's explanation both cogent and reasonable. The Commissioner notes that even if the Council had over-estimated the amount of time it would take to search each file and it would take, on average, 5 minutes (rather than 10 minutes) or even 2 minutes, this would still exceed the limit of 18 hours by a considerable margin.
23. The code of practice issued under section 46 of the FOIA (the "section 46 code") provides guidance to public authorities as to the practice which it would, in the opinion of the Lord Chancellor, be desirable for them to follow in connection with the keeping, management and destruction of their records.
24. The section 46 code recommends that authorities should ensure they keep the records they will need for business, regulatory, legal and accountability purposes. Where an authority has decided that a record needs to be kept for any of these purposes, the section 46 code advises that a further decision needs to be made about the medium in which the information is retained and its accessibility, relative to its operational function.
25. The Commissioner endorses the recommendations of the section 46 code and accepts that it is for authorities to decide what records should be kept and how they should be retained. He acknowledges that, in this case, the council has confirmed that it has no operational need to retain the requested information in a readily accessible format and he has no reason to doubt that this is indeed the case.
26. He has sympathy with the complainant where he feels he is repeatedly asked for information about his nationality when engaging with Council services. It would be natural that he would feel disquiet about this and query whether this is a standard approach by the Council. It may be the result of a misunderstanding arising from the collection of ethnic monitoring data. This may indicate a customer service question which the Council would wish to reflect on. In any event, this is not a matter which falls for consideration by the Commissioner under the FOIA.

27. On the basis of the above, the Commissioner is satisfied that the council has correctly applied section 12(1), as compliance with Request 2 would exceed the appropriate cost limit. The council was therefore correct to apply the exclusion in section 12(1) of FOIA to this request.

## 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: 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)

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** .....

**Alexander Ganotis**  
**Group Manager – Complaints Resolution**  
**Information Commissioner's Office**  
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**Water Lane**  
**Wilmslow**  
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