

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 August 2015

Public Authority: Liverpool City Council
Address: Municipal Buildings
Dale Street
Liverpool
L2 2DH

Decision (including any steps ordered)

1. The complainant has requested information relating to council tax accounts with credit balances where the liable party is deceased.
2. The Commissioner's decision is that Liverpool City Council has not provided sufficient reasons for applying the exemption where the cost of compliance exceeds the appropriate limit at section 12(1) of the FOIA. He has also decided that Liverpool City Council did not provide adequate advice and assistance under section 16 of the FOIA.
3. The Commissioner requires the public authority to take the following step to ensure compliance with the legislation:
 - Issue a fresh response under the FOIA without relying on section 12(1) of the FOIA, providing appropriate advice and assistance if necessary.
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 Act and may be dealt with as a contempt of court.

Request and response

5. On 20 March 2015, the complainant wrote to Liverpool City Council ('the council') and requested information in the following terms:

"I wish to request a list of all closed/ended Council Tax accounts with credit balances from 1993 (or earliest records) to 2015 where the liable party is deceased.

I would like the following fields returned in Excel format via email:-

Full name
Address*
End date on the account
Amount of credit on the account

*If the account address of the deceased is considered exempt for any reason, then I would still request that the other criteria is returned."

6. The council responded on 31 March 2015 and refused to provide the requested information citing section 12(1) of the FOIA.
7. The complainant requested an internal review on 1 April 2015. The council provided its internal review response on 23 April 2015 in which it maintained its original position.

Scope of the case

8. The complainant contacted the Commissioner on 23 April 2015 to complain about the way his request for information had been handled.
9. The Commissioner has considered whether the council was correct to apply the exemption at section 12 of the FOIA to the requested information.
10. He has also considered whether the council was in breach of its obligation under section 16 to provide advice and assistance.

Reasons for decision

Section 12 – Exemption where cost of compliance exceeds appropriate limit

11. Section 12 of FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate cost limit which, in this case, is £450 as laid out in section 3(2) of the fees regulations.

12. Regulation 4(3) of the Fees Regulations states that an authority, when estimating whether complying with a request would exceed the appropriate limit, can only take into account the costs it reasonably expects to incur in:
 - determining whether it holds the information;
 - locating the information, or documents containing it;
 - retrieving the information, or documents containing it; and
 - extracting the information from any documents containing it.
13. As the costs are calculated at £25 per person per hour for all authorities regardless of the actual cost or rate of pay, in this case the limit will be exceeded if the above activities exceed 18 hours.
14. 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 and what amounts to a reasonable estimate has to be considered on a case by case basis. The Information Tribunal in the case of *Randall v Information Commissioner and Medicines and Healthcare Products Regulatory Agency*¹ said that a reasonable estimate is one that is "...sensible, realistic and supported by cogent evidence".
15. In his guidance on this subject², the Commissioner states that a sensible and realistic estimate is one which is based on the specific circumstances of the case and should not be based on general assumptions.
16. In the aforementioned guidance, the Commissioner also states that;

"A public authority is not obliged to search for, or compile some of the requested information before refusing a request that it estimates will exceed the appropriate limit. Instead, it can rely on having cogent arguments and/or evidence in support of the reasonableness of its estimate. It is good practice to give these arguments or evidence to the requestor at the outset to help them understand why the request has been refused. This reasoning is also likely to be required if a complaint is made to the Information Commissioner.

¹ Appeal number EA/2006/0004, 30 October 2007

² https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

However, it is likely that a public authority will sometimes carry out some initial searches before deciding to claim section 12. This is because it may only become apparent that section 12 is engaged once some work in attempting to comply with the request has been undertaken.”

17. In its initial response to the complainant, the council said that the information requested is not collated into a reportable format and its provision would necessitate an extensive manual examination of its records in order to identify and provide any relevant information. It said that it identified 1,691 potential credits that could meet the request criteria but this figure represents raw data and each record would have to be manually reviewed to ensure it's relevant to the request. It provided the following breakdown:

One officer at an average of 10 minute per record = $1,691 \times 10 = 16,910$ minutes $\div 60 = 282$ hours

18. The Commissioner sought further information from the council in relation to the costs estimate undertaken, in order to assess whether its estimate was reasonable and based on cogent evidence. He specifically asked for an explanation of how 1691 potential credits were identified – he asked whether this was from a search of the Northgate system and if so, what search terms were used. He requested confirmation that the number referred to relates to deceased customers and that the 1691 records relate to closed/ended accounts with credit balances from 1993 to 2015. He also asked for an explanation as to why each record would need to be manually reviewed to ensure its relevance to the request.
19. In addition to the enquiries above, the Commissioner also asked for clarification as to whether a sampling exercise had been undertaken to determine the estimate provided and whether the estimate had been based upon the quickest method of gathering the requested information.
20. The council explained that a search was conducted on its Northgate customer account database and that the search terms were to look for any council tax account which was in credit and which was either profiled as 'Deceased' or had the title 'Executors of'. It confirmed that this search produced the 1691 records. It said that the search looked for both open and closed accounts and that the credit will relate to Council Tax accounts from 1997/8 to date.
21. In relation to why each record would need to be manually checked, the council explained that the data produced from the search is raw data which requires checking manually as the reporting can only provide a list

of accounts that are in credit, it cannot say why the account is in credit. It said that the factors to be checked include:

- Checking that the liability dates are correct.
 - Checking that appropriate reductions have been applied correctly and for the correct date range.
 - Checking that council tax benefit and/or support has been applied correctly, at the correct rate & for the correct date range.
22. The council said that the above checks can only be done manually and require a member of staff to view each account in the Northgate database. It also said that its document management system will need to be checked for each case to ensure there is no correspondence which may require amendment to the account or other changes where an error is suspected. In addition, it said that it must also verify that the raw data does not contain any information relating to a living individual as this would not be disclosable without that person's consent and this can only be done via a manual check of the data.
23. The Commissioner has examined the nature of the search undertaken by the council and considered that the results produced from that search would appear to produce the requested information. The search has produced a list of council tax accounts of deceased customers with credit balances from 1997/1998 to date. The Commissioner notes that search looked for both open and closed accounts and that the council has not explained why the search wasn't restricted to closed accounts only. However, it considers it relevant that the search did identify accounts where the liable party is deceased.
24. As stated in the Commissioner's Guide to Freedom of Information³, the Commissioner considers that the FOIA is solely concerned with access to information and does not address the issue of the accuracy of information provided in response to a request for information:
- "The Act covers recorded information, whether or not it is accurate. You cannot refuse a request for information simply because you know the information is out of date, incomplete or inaccurate. To avoid misleading the requester, you should normally be able to explain to them the nature of the information, or provide extra information to help put the information into context."

³ <https://ico.org.uk/media/for-organisations/guide-to-freedom-of-information-4-4.pdf>

25. The Commissioner does not consider that any of the reasons offered by the council as to why it needs to manually check the data are relevant to the activities that can be taken into account in estimating the cost of compliance, as stated in paragraph 12. For example, checking that the appropriate reductions have been applied correctly is not relevant to the request nor is the reason why the account is in credit as this has not been asked for in the request. In the internal review request, the complainant specifically said that he is willing to accept data without a manual check of each account for accuracy and that he only wants the data that is currently held in the council's system.
26. The Commissioner has considered the council's submission that it must verify that the raw data does not contain any information relating to a living individual which can only be done via a manual check of the data. However, he does not consider this to be a relevant argument as the search has been based on accounts for deceased customers and the request does not ask for details of a living individual and such details, if contained on the list produced by the database, could be excluded from the fields to be provided in the response.
27. The council has confirmed that a sampling exercise was not undertaken for this particular request but said that it receives this type of request on a regular basis and the relevant team have previously conducted sampling exercises in order to supply accurate data regarding the application of Section 12. It also confirmed that the estimate has been based on the fastest method of providing the information as the only method of providing the information requested is via the process outlined. Given the Commissioner's view that the time stated to manually review each record is not something that can be taken into account in estimating whether the request would exceed the appropriate limit in this case, he does not consider these submissions to be relevant.
28. It is clear to the Commissioner that the council's calculation includes activities that cannot be taken into account when calculating the cost of compliance. In the circumstances, particularly given that the costs estimate includes time spent considering the accuracy of the data, the Commissioner considers that the council has not provided an adequate explanation for him to conclude that the cost of compliance would exceed the limit of £450 or 18 hours. He therefore has no choice but to conclude that the exemption at section 12(1) of the FOIA is not engaged.

Section 16 - Duty to provide advice and assistance

29. Section 16 of the FOIA states that it shall be the duty of a public authority to provide advice and assistance to requesters, so far as is reasonable, and where a public authority conforms with the code of

practice under section 45 in relation to the provision of advice and assistance, it will be taken to comply with the duty imposed.

30. Where a public authority cites section 12, paragraph 14 of the section 45 code of practice indicates that the authority should consider providing an indication of what, if any, information could be provided within the costs limit. This allows the applicant to choose how to refine the request to successfully obtain a more limited piece or section of the requested information.
31. The Commissioner asked the council to clarify the nature of any advice and assistance given to the applicant in this case. The council confirmed that no advice or assistance was offered in this case. It said it acknowledges this was an error and apologises.
32. By not sufficiently indicating what information, if any, could be provided within the appropriate limit, the Commissioner considers that the council breached section 16 of the FOIA.

Right of appeal

33. 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

34. 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.
35. 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
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