

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 5 July 2017

**Public Authority:** Oldham Metropolitan Borough Council

**Address:** Civic Centre  
West Street  
Oldham  
OL1 1UG

#### Decision (including any steps ordered)

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1. The complainant has requested from Oldham Metropolitan Borough Council (the council), information regarding the numbers of buildings closed since 2010 due to government cuts. The council provided some information within the scope of the request, but stated that to locate and provide any further information that may be held would exceed the cost limit and that section 12 therefore applied.
2. The Commissioner's decision is that the council was entitled to rely on section 12 to refuse the request in this case. She has also found that the council has provided appropriate advice and assistance and has therefore complied with section 16.
3. The Commissioner does not require the council to take any steps in this case.

#### Request and response

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4. Following a substantially similar request made to the council on 8 October 2016, on 28 October 2016 the complainant submitted a request as follows:

*"Please kindly provide a list of council-run buildings (including Libraries, Day Care Centres, Community Centres, Schools and Administrative bases) which your Council has had to close since 2010. Please provide the name of the buildings and the postcodes of the buildings.*

*Such closures would include those where people have to seek the same type of service from a different location\* which already exists (or maybe there is no alternative available). \* If there are any scenarios where a service provision is not closed but relocated across the road to another council building I don't require information on that.*

*I require the list to include buildings closed and disposed plus buildings that are re-let following service closures. If there is a scenario where the building is closed but still under council ownership then please include that in the list.*

*The primary reason I require this information is to get a picture of the effect of any Government cuts to council budgets which in turn is forcing councils to find ways to make savings. If you can't be sure of the reason for closure then kindly provide the information anyway and indicate what is known about the reason for closure (if known)."*

5. The council responded on 8 November 2016 and advised that it estimated that to respond to the request would take in excess of 18 hours, and therefore section 12 applied.
6. The complainant requested an internal review on 8 November 2016. He considered that the council's reliance on section 12 called into question its compliance with the section 46 code of practice. He also outlined that of the 200 councils he had made identical requests to, the council was one of a very small number that had so far not provided the requested information.
7. The council provided an internal review on 23 December 2016 in which it maintained its original position in the main, providing additional reasons regarding the application of section 12. It also attempted to supply some information which it considered to be within the scope of the request. This information was in the form of a list of search results from the public facing online decision making system, along with instructions as to how he might conduct his own searches, and a spreadsheet containing a list of the disposed of buildings from 2011 to 2017. During the course of the Commissioner's investigation it transpired that the link to the spreadsheet had not been active as the response had been sent as a .pdf copy of a hardcopy document. The council then resupplied this information during the investigation.

## **Scope of the case**

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8. The complainant contacted the Commissioner 23 December 2016 to complain about the way his request for information had been handled.

He stated that he did not agree with the council's application of section 12 to the request.

9. On 16 February 2017 he outlined that he was now concerned that the council was one of only four that had not responded to his request to his satisfaction. He explained that one council had stated that it could not provide the requested information, but that it was undertaking an Information Management Programme to ensure compliance with the section 46 code of practice with regard to records management. The complainant stated that he would be satisfied if the council undertook to complete a similar Information Management Programme to ensure compliance with the section 46 code of practice.
10. The Commissioner considers therefore that the primary scope of this case is to determine whether the council was entitled to rely on section 12 to refuse the request in this case. She will also consider the extent to which the council has complied with its obligations under section 16 of the FOIA to offer advice and assistance.
11. With regard to the complainant's concerns about the council's compliance with the section 46 code of practice, the Commissioner is not able to consider this aspect of the complaint in this decision notice. This is because decision notices are issued under section 50 of the FOIA which specifies that *"any person may apply to the Commissioner for a decision whether, in any specified respect, a request for information made by the complainant to a public authority has been dealt with in accordance with the requirements of Part 1."* Part 1 concerns the right to information. Section 46 of the FOIA is in Part 3 of the FOIA which is regarding the general functions of the Commissioner. As such, compliance with section 46 does not fall to be considered by a decision notice under section 50.

## Reasons for decision

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12. The council has provided some information to the complainant both in the course of dealing with the request and during the Commissioner's investigation. The first tranche provided was a screenshot list of the results of a search to the council's public facing decision making system. It advised the complainant that some of the information he sought would be available online should he wish to conduct his own searches, and the list provided was not intended to be exhaustive, but rather an indication of the information that could be located in this manner. This information was provided at internal review, and as the complainant then submitted a complaint to the Commissioner, it is clear that he was not satisfied with the response.

13. The second set of information provided was the spreadsheet of a list of disposed buildings. This was incomplete in terms of the complainant's request as it did not contain the postcodes of a large number of buildings and also did not include any indication of the nature of council service run in the majority of cases. As the list concerned disposals, it did not include any instances where buildings are re-let following service closures, or where a service has been closed but the building is still council owned. The council considered that this information was similar to some of the information provided to the complainant by other councils in respect of the same request.
14. The complainant confirmed to the Commissioner that he was not satisfied with the information as it was incomplete, and the question of section 12 therefore remains.

### **Section 12 – costs limit**

15. Under section 12(1) of FOIA 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 limit. The cost limit is set out in section 3(2) of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations") and is currently set at £450.
16. The £450 limit must be calculated at the rate of £25 per hour. This effectively provides a time limit of 18 work hours. Additionally regulation 4(3) the Fees Regulations only allows for four activities which can be considered in relation to complying with the requests. These activities are:
  - Determining whether the public authority holds the information requested;
  - Locating the information or documents containing the information;
  - Retrieving such information or documents; and
  - Extracting the information from a document or other information source.
17. The cost of redacting relevant but exempt information may not be included in the calculations.
18. The council has provided the Commissioner with its reasons for applying section 12. It states that the main reason for applying this section is that the information is not held by the council in a specific data set. The Commissioner understands that there is no requirement on the council to hold the requested information in such a way. The way in which the

council holds information about property disposals and building closures means that it must conduct a variety of manual and electronic searches of different sets of information, which must then be cross referenced in order to be in a position to say with certainty that it has identified all the information that is held within the scope of the request.

19. The council states that information on major service changes, which is likely to include a large proportion of the decisions on building closures or disposals would likely be held in the information repositories, specifically including Council Committee decisions and delegated decisions. It advised that it undertook some keyword searches of the public facing decision making system using the key words 'sale', 'lease', 'disposal'. This resulted in some 190 potential records which it would need to review in order to determine if they contain any information relevant to the request. It estimated that the time taken to review all records at 5 minutes a record would be almost 16 hours.
20. The council has not provided confirmation that this estimate was obtained from a sampling exercise, and having conducted her own exercise, the Commissioner is not in agreement that it would take as long as 5 minutes per record to open the record and review its contents. The majority of decision records checked by the Commissioner were no longer than one page and the decision to sell or dispose of property was for the most part fairly prominent, and she therefore considers a reduced estimate of 1-2 minutes per record would be more appropriate to check whether it contained information pertinent to the request. This gives an estimate of time for the 190 potential records identified by the council of roughly between 3 and 6 hours.
21. However, the Commissioner noted that in multiple records that she checked, it was for approval to put a property to market, and she therefore anticipates that a further decision may be held by the council confirming when the property has been sold and to whom, particularly where there has been a competitive tender exercise. Further searches would therefore need to be undertaken to confirm that a property has actually been closed, and this would add time to the estimate. The Commissioner has also considered that additional search terms should be used which would return relevant information, such as 'closure', 'dispose' or 'close', and again this would add additional time to the estimate. Finally on this search method, the Commissioner noted that some of the decisions were closed decisions and contained exempt information under the Local Government Act 1972. Therefore, further additional searches would be required to locate that information, even though time cannot be included for redacting any such information which the council considers is ultimately exempt under the FOI – it still needs to be located.

22. The council provided the complainant with screen shots of the list for his reference as part of the internal review response. The council has also stated that it could not be certain that the search will have located all information held within the scope of the request. Additionally, those entries the search has returned would not necessarily show all the requested information such as the underlying reason behind a closure or whether the service has been relocated and if so where to. This additional information would need to be obtained from other sources within the council, which would take further time
23. The council has therefore considered the option of cross referencing the decision making reports with other relevant records, or contacting the separate service areas to establish whether information is held regarding detail of the disposal to include reason for closure, or relocation of service.
24. It argues that to add this work to the initial extraction of records from the decision making system would likely exceed the time, based on its initial estimate of 16 hours to extract information from the In addition to this, it stated that it would be unlikely to provide details of all those buildings in which services have been closed, but the building remains in the possession of the council.
25. The council has stated that it would therefore need to consider other options for locating the requested information in a more complete way. In this vein it has advised that a search of its property database may hold some of the requested information as it contains information about council owned property dating from its inception in 2015. It has explained the searches that would be required to locate information about buildings that have been disposed of and buildings where services have been closed. It highlighted that the categorisation of property assets does not include the category 'closed'. There are a number of different categories such as 'non-operational – general', 'not known' and 'various'. In addition there is no facility to search within a given time frame. Therefore the results from a search would need to be manually checked to confirm the status of the asset. And again, the council stressed that this would not provide results prior to 2015, and so would not be a complete response, and further searches would need to be undertaken of the manual property records.
26. The final way in which information could be located and retrieved is a search of the paper files. Based on the council's explanations, the Commissioner considers that this appears to be the only way that information in relation to all records from 2010 could be located and extracted. However, as these are manual records, this will not be a fast process. The council states that there are over 1900 assets filed by asset reference, which are held in 5 cabinets each with 6 shelves

containing an average of 63 files. It states that once closed/disposed properties are located and extracted, further checks would then need to be undertaken with the relevant service area to determine if there is any information held as to the reason for closure. Even at a cautious estimate of 1 minute per asset to check its status and date of closure or disposal, the estimate of time taken exceeds 31 hours. This does not include an estimate of time taken to liaise with the relevant service areas where necessary to determine if any information is held regarding the reasons for closure.

27. The Commissioner considered whether the quickest way of locating and extracting the requested information would be to conduct an electronic search of the post 2015 property records, and then a search of the manual records pre 2015. However, based on the council's description of the filing system, it appears that there is no way to separate out the pre 2015 disposals and closures, and therefore a search of all the records would likely be required, meaning that the quickest way to obtain all the requested information regarding disposals and closures of properties is to search the paper files.
28. The main question in this case in order to decide whether or not responding to the request would exceed the appropriate limit is to determine the quickest way to locate all the requested information. The council does not hold a specific dataset concerning closed buildings and closed or cancelled services. Various parts of the requested information are held in different ways and locations. It appears to the Commissioner that even when using the quickest method to gather some of the information, such as electronically searching the decision making systems, there is no way to avoid a manual search of the property asset files as the other searches are all incomplete in one respect or another which would require further searches of the property assets. Therefore the Commissioner is satisfied that the council was correct to apply section 12 to the request in this case.
29. The Commissioner recognises the complainant's frustration that the information in this case could not be provided within the appropriate limit, and that this has led to concerns about the way in which the council holds its information on this subject. It is not necessarily the case that a public authority relies on section 12 as a result of poor records management. More often it is that the information is held for its own specific business purposes, and this sometimes is not compatible with the nature of a specific request.

### **Section 16 – Advice and assistance**

30. Section 16(1) of the FOIA provides that a public authority should give appropriate advice and assistance where reasonable, to help the

complainant refine the request so as to bring it within the cost limit, or to explain why this would not be possible.

31. At internal review stage, the council provided the complainant with both partial information and a detailed explanation for the application of section 12. In the circumstances of the case, there is no clear advice and assistance that could be given with regard to narrowing the scope of the request, beyond the advice given regarding how and why section 12 applies. Therefore, the Commissioner is satisfied that the council has complied with section 16 in this case.

## Right of appeal

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32. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

33. 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.
34. 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**