

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 October 2018

Public Authority: Milton Keynes Council
Address: Civic Offices
1 Saxon Gate East
Central Milton Keynes
MK9 3EJ

Decision (including any steps ordered)

1. The complainant requested information about any payments made to voluntary organisations by Milton Keynes Council ("the Council") during the 2015-2016 and 2016-2017 financial years. The Council responded that it was unable to determine whether any recorded information was held. During the course of the Commissioner's investigation, the Council clarified that the determination of whether any recorded information is held would exceed the appropriate limit provided for section 12.
2. The Commissioner's decision is that the Council has correctly refused to comply with the request under section 12(2), and has complied with the requirement of section 16(1). However, in failing to issue a refusal notice within the time for compliance, the Council breached section 17(1).
3. The Commissioner does not require the Council to take any steps.

Request and response

4. On 21 March 2018, the complainant wrote to the Council and requested information in the following terms:

Under the general requirements of the Freedom of Information Act 2000, I would be grateful if you would provide the following information in relation to Voluntary Organisations supported financially by Milton Keynes Council over the last two financial years (2015/16 and 2016/17) inasmuch:

- 1. Name of Voluntary Organisation*
 - 2. Total Grant/Payments etc.*
 - 3. Public email address of Voluntary Organisation as used by MKC*
5. The Council responded on 21 March 2018. It denied holding the information.
6. Following an internal review the Council wrote to the complainant on 26 April 2018. It stated "*there is nothing on our financial system to distinguish a supplier record as relating to a charity/voluntary organisation, therefore we are unable to provide a response*".

Scope of the case

7. The complainant contacted the Commissioner on 26 April 2018 to complain about the way his request for information had been handled, and specifically that the Council's internal review outcome did not represent a valid refusal under section 17(1).
8. The Council subsequently clarified to the Commissioner that it should have refused to comply with the request under the provision of section 12(2).
9. The Commissioner considers the scope of the case to be the determination of whether the Council has complied with sections 12(2), 16(1), and 17(1).

Reasons for decision

Section 12 – Exemption where cost of compliance exceeds appropriate limit

10. Section 12(2) of the FOIA states that:

Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.

11. Section 12(2) is applicable to a request when a public authority estimates that it would exceed the appropriate limit to confirm whether or not the requested information is held.
12. The *Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004*¹ ("the Regulations") sets the appropriate limit at £450 for the public authority in question. Under the Regulations, a public authority may charge a maximum of £25 per hour for work undertaken to comply with a request. This equates to 18 hours work in accordance with the appropriate limit set out above.
13. A public authority is only required to provide a reasonable estimate or breakdown of costs and in putting together its estimate it can take the following processes into consideration:
 - determining whether it holds the information;
 - locating the information, or a document which may contain the information;
 - retrieving the information, or a document which may contain the information; and
 - extracting the information from a document containing it.

Has section 12(2) been correctly applied?

The Council's position

14. The Council has informed the Commissioner that all information about payments made to suppliers (including any which may be termed as 'voluntary organisations') is held on its SAP Enterprise Resource Planning ("ERP") system. However, within the coding structure to record payments, there is no marker to identify the types of suppliers (e.g. voluntary organisations). As such, the Council is not able to run a report to automatically retrieve any invoice records for payments made to voluntary organisations, and the Council would need to undertake a

¹ <http://www.legislation.gov.uk/uksi/2004/3244/contents/made>

manual search through the invoice records to identify if any such information is held.

15. The Council has therefore undertaken a sampling exercise to determine an estimate of the total time that may be required to comply with the request.
16. In this sampling exercise the Council searched for any relevant information deriving from April 2015. The process followed by the Council was as follows:
 - a) The ERP system was opened and a report was run to retrieve the full list of invoice records made in April 2015.
 - b) The full list was exported to Microsoft Excel, where it was 'filtered' by invoice number to identify only those invoice records starting "520" (which represent 'non-commercial payments' - the assumption being that any payments to voluntary organisations would fall into this category).
 - c) This filtering resulted in 136 invoice records. A proportion of these were reviewed to determine whether they are likely to relate to voluntary organisations. This involved reviewing each invoice record alongside the full transaction data held on the ERP system, and undertaking an internet search to determine the status of the recipient.
17. Having undertaken this sampling exercise, the Council found that the retrieval, review and any necessary research of each invoice record took approximately 5 minutes. For April 2015, this equates to a total approximate time of 11 hours and 33 minutes. To multiply this approximate total time by 24 (months) would result in a total approximate time of 272 hours to comply with the whole request.
18. The Council has asked the Commissioner to note that this sampling exercise was undertaken by a specialist officer with both familiarity with the ERP (and therefore the quickest way to search for the information), and a historic knowledge of the way the transactions were recorded for two financial years that the request relates to (and therefore the most able to quickly review the information). However, even should the necessary work be undertaken by this specialist officer, the process cannot guarantee an accurate result as it is ultimately dependent on the officer's applied knowledge, rather than an automated process.

The Commissioner's conclusion

19. The Commissioner has considered the Council's submissions and recognises that the information, if held, is not recorded in a manner that

allows it to be automatically retrieved, such as by running a report on the Council's ERP system. As such, the Council would need to undertake a manual review of each of the 'non-commercial payments' made in order to determine whether the payment relates to a voluntary organisation.

20. The Council has provided a cogent explanation of the process that a specialist officer would need to undertake to search for any relevant information. The Commissioner also finds that the Council has provided a compelling explanation of why the officer would need to apply knowledge to first identify any relevant information, and secondly, undertake the necessary research to determine the identity of the recipient (and whether such identity represents a voluntary organisation). The Commissioner recognises that the work would need to be undertaken by the specialist officer who would, out of necessity, be diverted from their principal duties.
21. Whilst it is noted that the Council's total approximate time (of 272 hours) is based on an assumption that the sampling exercise taken for April 2015 is 'representative' of the other 23 months, it is reasonable for the Commissioner to consider that, even with variation in the number of relevant invoice records for each month, the total time taken to comply with the request is extremely likely to far exceed the appropriate limit of 18 hours.
22. Having considered these factors, the Commissioner finds that section 12(2) has been correctly applied.

Section 16 – Duty to provide advice and assistance

23. Section 16(1) of the FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the *Section 45 Code of Practice*² ("the Code") issued by the Secretary of State, it will have complied with section 16(1).
24. The Code advises that, where an authority is not obliged to comply with a request for information because, under section 12 and the Regulations made for that section, the cost of complying would exceed the

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/722165/FOI-Code-of-Practice-July-2018.pdf

appropriate limit, it should provide the requester with reasonable advice and assistance.

25. The Commissioner's guidance³ explains that the question of whether advice and assistance will be 'reasonable' will depend on the particular circumstances of the case. Once such circumstance may be where it is feasible for a refined request to be made.
26. In this case the Council has indicated to the Commissioner that it did not provide advice and assistance to the requester because it did not consider it to be reasonable. The reason for this being the way that any relevant held information would be recorded, and the associated high cost of compliance indicated by the sampling exercise.
27. The Commissioner recognises that the information sought by the request would not be held in a manner that allows it to be easily retrieved. The Commissioner also recognises that the sampling exercise undertaken by the Council (for only one calendar month) resulted in an estimate of over 11 hours of required time for that month alone. As such, the sampling exercise indicates that it is unlikely the request can be meaningfully refined to within the appropriate limit whilst still providing useful annual information to the public (for example, by reducing to the parameters of the request to one, rather than two, financial years).
28. On this basis the Commissioner has concluded that, in the particular circumstances of the case, it would not be reasonable for the Council to provide advice and assistance.

Section 17 – Refusal of request

29. Section 17(1) of the FOIA specifies that a refusal notice must be provided no later than 20 working days after the date on which the request was received.
30. In this case the Council failed to issue a valid refusal notice within the time for compliance, and therefore breached section 17(1).

³ https://ico.org.uk/media/fororganisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

Other matters

31. The Commissioner appreciates that the findings of this decision are likely to be frustrating to the complainant, who states that the requested information clearly relates to how public monies have been recently spent by the Council. However, the FOIA does not proscribe how a public authority should record information, and the Commissioner recognises that an authority is likely to only record information in a way that addresses any business or statutory needs. Notwithstanding this, the Commissioner notes that the Council has acknowledged that the request has highlighted an issue (i.e. whether the coding structure of the ERP system can incorporate a way of identifying more payment types) that it will seek to address.

Right of appeal

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

Website: 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
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