

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 September 2021

Public Authority: Manchester City Council

Address: Town Hall
Manchester
Lancashire
M60 2LA

Decision (including any steps ordered)

1. The complainant has requested information from Manchester City Council ("the Council") about appeals relating to Penalty Charge Notices ("PCNs"). The original request ('Request 1'), and the clarification to some parts of it ('Request 2') was considered by the Commissioner in decision notice FS50834972. In that decision notice the Commissioner ordered the Council to provide advice and assistance in respect of Request 1 [element 4], and to issue a substantive response to Request 2. The Council subsequently provided advice and assistance in response to Request 1 [element 4] – but confirmed that section 12 would otherwise apply to it, and issued a substantive response to Request 2. The complainant subsequently complained to the Commissioner about the Council's position in respect of specific elements of Request 1 and Request 2.
2. The Commissioner's decision is as follows:
 - In respect of Request 1 [element 4] the Council is entitled to apply section 12.
 - In respect of Request 1 [elements 3 and 5], that no recorded information is held.

- In respect of Request 2 [element 4], that no further recorded information is held.
3. The Commissioner does not require the Council to take any steps.

Request and response

Request 1

4. On 1 September 2018, the complainant wrote to the Council and requested information in the following terms:

"I am now therefore making a Freedom of Information Request from Manchester City Council on the following:

- [1] How many wrongful charge certificates has the Manchester City Council Parking services issued in the past few years;*
 - [2] What action has ever been taken against the Council by anyone wrongly issued with a charge certificate;*
 - [3] What laws cover unlawful conduct by the Council and what redress is open to the aggrieved person;*
 - [4] Has Manchester City Council dealt with any cases involving reference to the Miah vs Westminster case as described above;*
 - [5] Has Manchester City Council any knowledge of the law which governs the unlawful or wrongful issuance of a Charge Certificate in respect of its effect on an ongoing penalty charge case;*
 - [6] How many PCN cases on their 'bus gates' has Manchester City Council lost or cancelled out of what totals and on what grounds?"*
5. The Council responded on 21 September 2018. It provided information in respect of element [5] and refused element [3] because it stated that the requested information was already reasonably accessible – therefore relying on the exemption at section 21 of the FOIA. In respect of element [4], it refused to provide the requested information because "to do so would exceed the 18 hour limit." In relation to elements [1], [2] and [6], the Council stated that it required clarification before it could process those elements of the request.

Request 2

6. The complainant contacted the Council again on 15 October 2018. He expressed dissatisfaction at the way the Council had responded to elements [3] and [5] of Request 1. He also chose to refine the remaining elements of his request as follows:

[1] What is the total number of charge certificates issued by Manchester City Council Parking Services over the past two to three years, and out of the total number of charge certificates issued, how many of those were subsequently ruled by a Tribunal or other legal source to have been unlawful because the Council had no power to send them under regulation 32 of the Bus Lane Contraventions, Penalty Charges, Adjudication and Enforcement (England) 2005).

[2] What action has ever been taken against the Council by anyone issued with a charge certificate which the Council through a tribunal or other legal source, was ruled to have had no power to send under regulation 32 of the Bus Lane Contraventions ,Penalty Charges, Adjudication and Enforcement (England) 2005).

[3] [referring to element [4] of Request 1] how many cases can you look through in 18 hours?

[4] How many bus gate PCNs have been issued by Manchester City Council over the past two to three years for each of its bus gates, (I understand there are 6?) and how many of those bus gate PCNs have subsequently been cancelled by Manchester City Council due to a ruling against the Council by a tribunal or other legal source.

7. The Council did not issue a response.
8. The Commissioner subsequently issued a decision notice¹ in which she ordered the Council to take the following steps:
- a) Provide advice and assistance (under section 16 of the FOIA) in respect of Request 1 [element 4]; and,

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2019/2616163/fs50834972.pdf>

- b) Provide a substantive response to Request 2.
9. The Council issued a response on 28 November 2019. In this it took the following steps:
- a) It provided advice and assistance (under section 16 of the FOIA) in respect of Request 1 [element 4], and advised that to otherwise comply with the request would exceed the costs limit provided by section 12 of the FOIA; and,
 - b) It provided a substantive response to Request 2, in which it either disclosed held information, or else denied that it was held.
10. On 21 January 2020, the complainant sought an internal review.
11. Following an internal review, the Council wrote to the complainant on 17 February 2020. It maintained that its original response was correct.

Scope of the case

12. The complainant contacted the Commissioner on 11 May 2020 to complain about the way his request for information had been handled, and specifically that the Council had not complied with the FOIA in respect of Request 1 [element 4], Request 1 [elements 3 and 5], and Request 2 [element 4].
13. The scope of this case and of the following analysis is the following:
- In respect of Request 1 [element 4], whether the Council is entitled to apply section 12 of the FOIA
 - In respect of Request 1 [elements 3 and 5], whether the Council holds the requested information for the purposes of section 1 of the FOIA.
 - In respect of Request 2 [element 4], whether the Council has disclosed all held information for the purposes of section 1 of the FOIA.

Reasons for decision

Request 1 [element 4]

Section 12 – Exemption where cost of compliance exceeds appropriate limit

14. Section 12(1) of the FOIA states that:

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.

15. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004² (“the Regulations”) sets the appropriate limit at £450 for the public authority in question. Under the Regulations, a public authority should make its estimate based on £25 per hour for work undertaken to comply with a request. This equates to 18 hours work in accordance with the appropriate limit.

16. A public authority is only required to provide a reasonable estimate, rather than a precise calculation, of the cost of complying with the request, and in putting together its estimate it can take the following processes into consideration:

- determining whether the information is held;
- 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.

Is section 12 engaged?

What information is sought?

17. Request 1 [element 4] seeks the following information:

² <http://www.legislation.gov.uk/uksi/2004/3244/contents/made>

"Has Manchester City Council dealt with any cases involving reference to the Miah vs Westminster case as described above."

18. In response, the Council refused to comply with the request under section 12.

The Council's position

19. The Council has informed the Commissioner that all PCN cases are recorded as files in a database.
20. The files that are most likely to contain the free-text "*Miah vs Westminster*" are those in which the Council has issued Charge Certificates. This is because the cited legal case concerned a local authority that had issued a Charge Certificate even though an appeal was pending.
21. The Council has identified that there are a total of 152711 such files identified (representing a span of time between 1 January 2016 to 31 September 2019). This total is made of 37045 files from 2016, 41731 files from 2017, 63986 files from 2018, and 9949 files from 2019.
22. The Council is not able to electronically search for the free-text "*Miah vs Westminster*", so it has undertaken a random sampling exercise by selecting six files from each of the calendar years for manual review. In this exercise the Council found that the review of each file took approximately four minutes, which suggests that to review all of the identified files would require 10184 hours.
23. The Council has asked the Commissioner to note that this time estimate is lower than that originally provided to the complainant on 28 November 2019. This is because that previous estimate did not restrict the scope of the search to only those cases involving Charge Certificates. However, and notwithstanding this, the Council considers that compliance with the request would still significantly exceed the appropriate limit for section 12(1).

The Commissioner's view

24. The Commissioner has considered the Council's submissions, and recognises that the request seeks information that is held within a significant volume of records, and that these records would need to be manually reviewed.
25. A sampling exercise has indicated that this would take approximately four minutes for each identified file, and that the total required time would be in excess of 10000 hours.

26. On this basis, the Commissioner is satisfied that the Council has estimated reasonably that compliance with the request would exceed the appropriate limit, and that section 12(1) therefore applies. The Council was not, therefore, obliged to comply with the complainant's request.

Request 1 [elements 3 and 5]

Request 2 [element 4]

Section 1 – General right of access to information

27. Section 1(1) of the FOIA states that:

Any person making a request for information to a public authority is entitled—

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*
 - (b) if that is the case, to have that information communicated to him.*
28. Section 1(1) requires that any person making a request for information to a public authority must be informed in writing by the public authority whether it holds information relevant to the request, and if so, to have that information communicated to them. This is subject to any exclusions or exemptions that may apply.
29. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
30. In other words, in order to determine such complaints, the Commissioner must decide whether on the balance of probabilities a public authority holds any - or additional - information which falls within the scope of the request (or was held at the time of the request).

Request 1 [elements 3 and 5]

What information is sought?

31. Request 1 [element 3] seeks the following information:

"What laws cover unlawful conduct by the Council and what redress is open to the aggrieved person."

32. Request 1 [element 5] seeks the following information:

"Has Manchester City Council any knowledge of the law which governs the unlawful or wrongful issuance of a Charge Certificate in respect of its effect on an ongoing penalty charge case."

33. In response, the Council denied that information is held.

The Council's position

34. In respect of both requests, the Commissioner has asked the Council whether it holds any documents (such as guidance documents) that either would allow the information to be collated, or which already specifically lists the laws covering the subjects given in each request.
35. The Council has confirmed to the Commissioner that electronic searches have been undertaken across the Council's internal intranet and within the Parking Service's records, and that it has also consulted with its Legal Services Department. However, neither action has revealed any held documents that satisfy the requests.
36. The Council has informed the Commissioner that the full details of the statutory duties placed upon local authorities – including all legislation – are published by the Government, and that it has referred the complainant to this.

The Commissioner's conclusion

37. The Commissioner has considered the Council's position, in conjunction with the requests.
38. Whilst it is recognised by the Commissioner that the complainant wishes to understand what legislation the Council acts under, it is noted that such legislation will be published by the Government, and will therefore already be in the public domain for reference by all parties.
39. The Council has confirmed to the Commissioner that it does not hold an internal list of the legislation that it acts under in respect of PCNs, and that there is no business reason for the Council to hold such a document.
40. There is no contradictory evidence available to the Commissioner that indicates the Council's position is wrong, and the Commissioner notes that the Council is not required to create such a document in order to respond to the request, as doing so would represent the creation of new information.
41. On this basis the Commissioner has concluded that, on the balance of probabilities, the requested information is not held.

Request 2 [element 4]

What information is sought?

42. Request 1 [element 6] seeks the following information:

"How many PCN cases on their 'bus gates' has Manchester City Council lost or cancelled out of what totals and on what grounds?"

43. Following the Council asking the complainant to clarify this request, the complainant provided the following clarification in Request 2 [element 4]:

"How many bus gate PCNs have been issued by Manchester City Council over the past two to three years for each of its bus gates, (I understand there are 6?) and how many of those bus gate PCNs have subsequently been cancelled by Manchester City Council due to a ruling against the Council by a tribunal or other legal source."

44. In response, the Council disclosed information.

The complainant's position

45. The complainant has informed the Commissioner that he disputes that the Council has provided all information that it is able to in respect of the grounds on which PCNs are lost or cancelled.

46. The complainant argues that:

"I would expect that the reason for any cancellation must appear on the records. There wouldn't be a cancellation without a record of why. It is likely that there are a range of categories in which the details of any cancellation would be placed by the Council, and that such information would be familiar to them."

The Council's position

47. In respect of this request, the Commissioner has asked the Council whether it holds any information about the grounds on which PCNs issued at a bus gate locations are subsequently overturned at Tribunal or cancelled.

48. The Council has informed the Commissioner that all PCN cases are recorded as files in a database. Those that are issued at a bus gate location – but subsequently overturned at Tribunal or cancelled – are ascribed with the identifier of 'Code 34', and the reason for it being overturned or cancelled is recorded on the file.

49. At the time of the Council's response to the request on 28 November 2019, it did not have the means to provide this information due to it being unable to formulate the required database query to retrieve it.
50. However, following a recent upgrade to the database, the Council has been able to formulate a query to retrieve the information for the required period of three years. The Council has therefore provided a copy of this to the complainant, and to the Commissioner.

The Commissioner's conclusion

51. The Commissioner has considered the Council's position, in conjunction with the requests.
52. The Council has confirmed to the Commissioner that, whilst some of the requested information could not be retrieved for inclusion in its response of 28 November 2019, it has now applied an upgrade to the relevant database that has allowed it to execute a query and retrieve the information.
53. Having considered that the information is held electronically, and has now been retrieved through the execution of a query, it is reasonable for the Commissioner to conclude that all relevant held information will now have been provided.
54. On this basis the Commissioner has concluded that, on the balance of probabilities, all relevant information has now been disclosed.

Right of appeal

55. 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@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

56. 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.
57. 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

Daniel Perry
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF