

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 January 2023

Public Authority: London Borough of Sutton
Address: Civic Offices
St. Nicholas Way
Sutton
Surrey
SM1 1EA

Decision (including any steps ordered)

1. The complainant requested copies of communications with the organisers of MIPIM¹ and SDEN Ltd about the attendance at the MIPIM 2017 event by senior officers at the London Borough of Sutton ("the Council") including the former chief executive and former interim chief executive, and the managing director of SDEN.² The Council refused to comply with the request citing section 12 (cost limit) of FOIA.
2. The Commissioner's decision is that the Council was entitled to refuse to comply with the request in accordance with section 12(1) of FOIA. The Commissioner also finds that the Council complied with its obligations under section 16 to offer advice and assistance.
3. The Commissioner does not require the Council to take any steps.

¹ <https://www.mipim.com/>

² <https://sden.org.uk/>

Request and response

4. On 5 January 2022, the complainant made the following request for information to the Council:

“Dear Sutton Borough Council,

FREEDOM OF INFORMATION REQUEST

1. I would like, by email and a readily-readable format, the communications with the organisers of MIPIM (communications both to and from) regarding the 2017 attendance of any or all of the following people:

Mr Niall Bolger

Ms Mary Morrissey

Ms Amanda Cherrington

Such communications, if any, are likely to have taken place between 2015 and 2017 inclusive so the search for the information can be restricted to that period of time if necessary – but please say what time period has been searched. The information should include any communications relating to fees, pricing, cost, payment and/or sponsorship of attending the event.

2. Please provide all emails sent to/from the Council and Sutton Decentralised Energy Network Ltd concerning the funding/sponsorship for Mr Niall Bolger, Ms Mary Morrissey and Ms Amanda Cherrington’s attendance at the MIPIM event in Cannes in 2017. Relevant emails are likely to have been sent between 2015 and 2017 inclusive so the search can be limited to this period.

If the Council considers obtaining the information in 1 and 2 above would be considered exempt under FOI Regulations because it would be too time-consuming to produce, please limit the search for such information to the individual email accounts most likely to contain the requested information (such as the email accounts/addresses of the individuals themselves, any support staff who may have acted for them with regard to attendance at the MIPIM event, and relevant budget holders). Please say what email accounts/addresses have been searched, or, if that is considered personal information, please state the individual’s role at that time of the email accounts/addresses.

If the Council still considers that the request, even with the above limited searches, would be so time-consuming to be exempt under the regulations, I request an online meeting so that the Council can provide assistance and advice, in accordance with regulation 16(1), to help me rephrase my request in a way that would be acceptable.

Please send the information to me by email with PDF format attachments.

Yours faithfully,

[name redacted]"

5. The Council responded on 1 February 2022. It stated that it held information within the scope of the request, but that the cost of complying with the request would exceed the cost threshold of £450 for local authorities. In accordance with this finding, the Council issued a section 12 refusal notice in reply to the complainant's request for information.
6. The Council explained that in order to comply with part 1 of the request it would need to restore archived email accounts for officers who have left the Council and search each account using the terms specified in the request. The Council stated that the search terms were broad and would bring up all correspondence rather than just the correspondence within scope of the request. The Council stated that the time required for an officer to review and discard information outside of the scope of the request would be significant. The Council stated that, when combined with the time taken to comply with part 2 of the request, the time for compliance with the request in totality would exceed 18 hours.
7. In line with their duties at section 16 to provide advice and assistance, the Council suggested that the complainant narrow their request by "providing a more specific search term and timescales or requesting a specific document."
8. On 8 February 2022 the complainant requested an internal review. The complainant asked that the Council provide them with a breakdown of the time required to perform each step involved in complying with the request.
9. The Council upheld its initial application of section 12 of FOIA via internal review on 3 March 2022.

Scope of the case

10. The complainant contacted the Commissioner on 17 March 2022 to complain about the way their request for information had been handled. The complainant stated that they were concerned that the Council may have overinflated the length of time it would require to comply with the request, or had been storing the information in a manner that made it difficult to access.
10. The Commissioner considers the scope of this case to be to determine if the Council has correctly cited section 12(1) of FOIA in response to the request. The Commissioner has also considered whether the Council met its obligation to offer advice and assistance, under section 16 of FOIA.

Reasons for decision

Section 12 – cost of compliance

11. Section 12(1) 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 limit” as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (“the Fees Regulations”).
12. Section 12(2) of FOIA states that subsection (1) does not exempt the public authority from the obligation to comply with paragraph (a) of section 1(1) (the duty to inform an applicant whether it holds information of the description specified in the request) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit. The Council relied on section 12(1) in this case.
13. The appropriate limit is set in the Fees Regulations at £600 for central government, legislative bodies and the armed forces and at £450 for all other public authorities. The appropriate limit for the Council is £450.
14. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 18 hours for the Council.
15. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the cost it reasonably expects to incur in carrying out the following permitted activities in complying with the request:

- 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.
16. 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. In accordance with the First-Tier Tribunal in the case of *Randall v Information Commissioner & Medicines and Healthcare Products Regulatory Agency EA/2007/0004*, the Commissioner considers that any estimate must be “sensible, realistic and supported by cogent evidence”. The task for the Commissioner in a section 12 matter is to determine whether the public authority made a reasonable estimate of the cost of complying with the request.
17. Section 12 is not subject to a public interest test; if complying with the request would exceed the cost limit then there is no requirement under FOIA to consider whether there is a public interest in the disclosure of the information.
18. Where a public authority claims that section 12 of FOIA is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit, in line with section 16 of FOIA.

Would the cost of compliance exceed the appropriate limit?

19. As is the practice in a case in which the public authority has informed the complainant that it holds the information, the Commissioner asked the Council to provide a detailed estimate of the time/cost taken to provide the information falling within the scope of this request.
20. In its submission to the Commissioner the Council provided the results of a brief sampling exercise. It stated that it had examined the email accounts of officers still working at the Council and the archived email accounts of officers who had left, using the names of Council officers quoted in the request and “MIPIM” as search terms, and setting the date parameters to the range specified by the complainant. The Council stated that it had identified 181 emails within 37 email accounts of current Council officers that potentially held information within scope.
21. The Council estimated that it would take 25 minutes for their Digital and IT team to export the emails from each account, and that the total amount of time taken to export emails from all 37 accounts would be 15

hours and 42 minutes. It estimated that to then review all 181 emails identified within the 37 accounts that were potentially within scope of the request would take 4 hours and 56 minutes at 1.5 minutes per email. The Council confirmed that the estimate of 1.5 minutes per email did not include the time required to review any email attachments.

22. The Council estimated that searching of the archived email accounts of ex Council staff members, specifically Niall Bolger and Mary Morrissey, would require restoring each account from an encrypted state. It stated that the mailboxes were of a considerable size due to the length of each officer's time in post, and that the restoration, search and review of emails within scope of the request held in Niall Bolger and Mary Morrissey's account would take four days (96 hours). Niall Bolger's email account alone is stated to be 27gb in size.
23. The Council estimated that the total time required to respond to the entire request, not including redaction time, would be 116 hours and 38 minutes. In relation to the complainant's request that the Council limit searches to the Council officers most likely to hold the information, it stated that as the request related to matters dating back seven years at the time of the request was made it was not possible to clearly identify specific officers who may hold the requested information, therefore the quickest method to retrieving the information was to search all accounts as described above.
24. The Commissioner has given consideration to the complainant's claim that the Council may be overinflating the amount of time required to comply with the request and that the information has been stored in a format that is difficult to access. On review of the sampling exercise provided, the Commissioner's position is that time estimates given are proportionate and that the archived information has been stored in an appropriate manner.
25. The Commissioner considers that the Council estimated reasonably that it would take more than 18 hours to respond to the request. The Council was therefore correct to apply section 12(1) of FOIA to the complainant's request.

Section 16(1) – The duty to provide advice and assistance

26. Section 16(1) of 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 practice³ in providing advice and assistance, it will have complied with section 16(1).

27. The Commissioner notes that the Council advised the complainant that they narrow the scope of their request by "providing a more specific search term and timescales or requesting a specific document". The Council did not need to arrange an online meeting with the complainant, as suggested in their request. The Commissioner is therefore satisfied that the Council met its obligations under section 16 of FOIA.

³ <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

Right of appeal

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: 0870 739 5836
Email: grc@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

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

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