

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 January 2023

Public Authority: Salford City Council
Address: Salford Civic Centre
Swinton
Manchester
M27 5AW

Decision (including any steps ordered)

1. The complainant requested compliance records and road inspection reports for "the roads in Salford" over the past six years. Salford City Council (the 'Council') refused to comply with the request citing section 12 (cost of compliance exceeds appropriate 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 has complied with its obligations under section 16 of FOIA to offer advice and assistance. However, whilst noting the Council's explanation, he finds that the request was not responded to within the statutory 20 working days' time limit which is a breach of section 10(1) of FOIA.
3. No steps are required as a result of this notice.

Request and response

4. On 25 May 2022, the complainant wrote to the Council and requested information in the following terms:

"...So, I need now under the Freedom of Information Act ...need a copy of your Compliance Documents for the Roads in Salford and all the "Road Inspection Reports" for at least the last 6 years..."

Scope of the case

5. The complainant initially contacted the Commissioner on 22 June 2022 to complain that the Council had not responded to his request.

6. Following the Commissioner's intervention, the Council responded on 7 July 2022. It refused to provide the requested information on cost grounds citing section 12(1) of FOIA (the cost of compliance). The Council explained that:

"Salford maintains roughly 10,000-12,000 roads. Obtaining these records would be a significant task, taking in excess of 300 hours. This is based on a conservative estimate of 2 minutes to locate, extract and collate a compliance report and road inspection report over the requested 6 year period for each road. As such this request is exempt from disclosure."

7. The complainant was dissatisfied with the response and was advised by the Commissioner to request an internal review, which he did on 7 July 2022.

8. The Council provided the outcome of its internal review on 27 July 2022, stating the following:

"The duration of completing the request continues to exceed 18 hours of work. This work would be time consuming, take in excess of 300 hundred work hours and could not be completed and still allow the service to conduct its statutory obligations. If you can specify a road and period, the Council would be able to provide a report as requested; as this request stands, it is too broad to complete and remains exempt under Section 12(1) of the FOIA 2000.

The Council has carried out a review of the information above and the Council's original response still stands. The Council considers this case closed and will not be conducting any further reviews for the originally requested information."

10. The Commissioner has considered whether the Council was entitled to rely on section 12(1) of FOIA to refuse this 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. The appropriate limit for the Council as a local government body is £450.
13. 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.
14. 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.
15. 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 which is “sensible, realistic and supported by cogent evidence”. The task for the Commissioner in a section 12 matter is to determine whether the Council made a reasonable estimate of the cost of complying with the request.
16. 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.

Would the cost of compliance exceed the appropriate limit?

17. Based on the estimates provided in the Council’s response to the request and subsequent internal review outcome, the Commissioner is satisfied that a decision could be reached without seeking further detailed submissions from the Council.

18. The Commissioner considers that the Council estimated reasonably that it would take more than the 18 hours / £450 limit 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

19. Section 16(1) places an obligation on a public authority relying on section 12 to consider whether it is possible to advise and assist the applicant to refine their request so that the authority can comply with it within the cost limit.
20. The Commissioner notes that the Council advised the complainant to specify which roads and reduce the time period of his request at the internal review stage. The Commissioner is therefore satisfied that the Council met its obligations under section 16 of FOIA.

Section 10 – Time for compliance

21. Section 10(1) of FOIA requires the public authority to respond to the request within 20 working days following the date of receipt.
22. In this case, the complainant made his request on 25 May 2022 and did not receive the Council's response until 7 July 2022, following the Commissioner's intervention.
23. The Council has explained that the request was part of a wider complaint from the complainant which resulted in a delay of it being passed to the correct department. By failing to respond to the request within the statutory time period, the Council has breached section 10(1) of FOIA. The Commissioner has made a record of this delay.

Right of appeal

24. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

25. 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.
26. 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

Laura Tomkinson
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF