

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 February 2023

Public Authority: Royal Borough of Kingston upon Thames

Address: Guildhall
Kingston upon Thames
Surrey
KT1 1EU

Decision (including any steps ordered)

1. The complainant requested from Royal Borough of Kingston upon Thames ("the Council") information regarding the number of times the Council used a specific response "Local Government Act 1972" (LGA) to FOIA requests. The Council refused to comply with the request and cited section 12(1) (cost of compliance) of FOIA.
2. The Commissioner's decision is the Council was entitled to refuse to comply with the request in accordance with section 12(1) of FOIA. However, the Council failed to provide adequate advice and assistance in accordance with section 16(1) of FOIA.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Provide advice and assistance to the complainant to assist in submitting a request falling within the appropriate limit.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of FOIA and may be dealt with as a contempt of court.

Request and response

5. On 10 March 2022, the complainant made a request for information in the following terms:

"Please can FOIK-1475 be re-submitted to provide a relevant answer to the question's.

a) How many times have the FOIA office used the Local Government Act 1972 as an exemption to providing information in response to a FOI request?

b) How many times have the Information Governance Team (IGT) office used the Local Government Act 1972 as an exemption to providing information in response to a FOI review?

c) How many times have the IGT validated/verified/confirmed the FOIA office's use of the Local Government Act 1972 as an exemption to providing information in response to a FOI request?

d) How many times have Kingston Building Control in communications with members of the public failed to provide or refused to provide information when requested because they are "exempt" from providing the information.

As I stated in my original request "I appreciate the size of the potential task that would need to be undertaken, so would accept data for the last 3 years broken down to individual years as a starting point."

6. The Council responded on 7 April 2022 and stated, "The Local Government Act 1972 is not an Exemption under the Freedom of Information Act (FOIA), and we only rely upon Exemptions within the FOIA and Environmental Information Regulations therefore we have no information to disclose." And for question d) "Information not held as we don't record this information. "
7. On 24 June 2022 at internal review, the Council stated that the information was not recorded in a specific report and reviewing all the Building Control FOI and EIR responses over the past 3 years would exceed the 'appropriate limit' as set out in Section 12 of the Freedom of Information Act 2000.

Reasons for decision

8. The following analysis focuses on whether the Council was entitled to comply with the request in accordance with section 12(1) of FOIA. It will also consider whether the Council met its obligation to offer advice and assistance under section 16(1) of FOIA.

Section 12 – cost of compliance

9. 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”).
10. The Regulations state the appropriate cost limit is £600 for central government, legislative bodies, and the armed forces, and £450 for all other public authorities. The appropriate limit for the Council in this case is £450.
11. The Fees Regulations also specify the cost of complying with a request must be calculated at the rate of £25 per hour, meaning section 12(1) effectively imposes a time limit of 18 hours for the Council.
12. 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.

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.

13. In accordance with the First-tier Tribunal in the case of *Randall v Information Commissioner & Medicines and Healthcare Products*

Regulatory Agency EA/2007/0004¹, the Commissioner considers any estimate must be "sensible, realistic and supported by cogent evidence". The task for the Commissioner in a section 12(1) matter is to determine whether the public authority made a reasonable estimate of the cost of complying with the request.

The Council's position

14. The Council stated to the complainant that it receives over 1100 FOI and EIR requests a year. It explained to review all responses in order to comply with this request, would exceed the appropriate limit set out in section 12 of FOIA.
15. The Council quoted the paragraph of our section 12 guidance within its response and said, "this represents the estimated cost of one person spending 18 hours at £25 per hour locating all responses sent out by all services, reviewing each response and recording any reference to the phrase you have requested." The Council concluded its internal review by offering an apology to the complainant that a clearer response was not provided to them.

The Complainant's position

16. The complainant is dissatisfied with the Council's response to this request which was "we do not hold this information as we don't record the data requested." He considers this response to be incorrect and said that all FOIA requests and responses are retained for at least two years. The complainant is concerned with the Council's apologies for originally stating "we don't record the data requested" and subsequently it applied section 12 of FOIA to the request. Therefore, the complainant has lost trust in the responses provided by the Council, and simply requires the Council to provide him with the information requested.

The Commissioner's view

17. The Commissioner considers the Council estimated reasonably the cost of complying with the request which would exceed the appropriate limit. He accepts the Council's reasonable explanation on reviewing each response and recording any reference to the phrase in question.

¹ <https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i136/Randall.pdf>

However, although the Council's estimates seem reasonable given the number of requests over a 3-year period, he would expect to see a more detailed breakdown of this calculation, for example the number of requests in total and the time each would take to review, rather than the broad costs statement given.

18. The Commissioner notes that this complaint has arisen due to an unsatisfactory response from the Council to the complainant's previous requests for information. The Commissioner is aware of the complainant's other cases which are being dealt with separately, and they will be handled on a case-by-case basis.
19. In conclusion, the Commissioner is satisfied that compliance with this request would exceed 18 hours/£450. The Council was therefore entitled to rely on section 12(1) of FOIA to refuse the complainant's request.

Section 16 – advice and assistance

20. Section 16(1) of FOIA provides that a public authority is required to provide advice and assistance to any individual making an information request. In general, where section 12(1) is cited, in order to comply with this duty, a public authority should advise the requester as to how their request could be refined to bring it within the cost limit, albeit that the Commissioner does recognise that where a request is far in excess of the limit, it may not be practical to provide any useful advice.
21. The Council said it recognises its duty to provide advice and assistance to a requester under section 16 of FOIA. However, the Council said it was unable to offer further advice and assistance on this matter and stated, "as I believe the matter has been 'reasonably' addressed and clarified in previous responses and again in this response."
22. The Commissioner is of the view that the Council could have provided the complainant with advice and assistance as to how their request could be refined to bring it within the cost limit. For example, reducing the timeframe/number of years. If no meaningful advice and assistance can be offered, the Council must explain this to the complainant.
23. In conclusion, the Commissioner requires the Council to contact the complainant and provide adequate advice and assistance.

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: 0300 1234504

Fax: 0116 249 4253

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

Joanna Marshall
Group Manager
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