

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 June 2013

Public Authority: Nottinghamshire County Council
Address: West Bridgford
Nottingham
NG2 7QP

Decision (including any steps ordered)

1. The complainant has requested information about redundancies and re-employment of those made redundant by Nottinghamshire County Council (the "council"). The council provided some of the requested information but refused one element of the request on the basis that the estimated cost of providing the information would exceed the appropriate limit under section 12(1) of FOIA.
2. The Commissioner's decision is that the council correctly relied on section 12(1) in refusing to provide the requested information and that it provided advice and assistance in accordance with section 16(1). He does not require the council to take any further steps.

Request and response

3. On 17 September 2012, the complainant wrote to the council and requested information in the following terms:

"Since April 2009 what is the number of members of staff that have been made:

- (a) Voluntary redundancy; and*
- (b) Compulsory redundant.*

Of these, how many have been re-employed by the county council in the same department they were made redundant from, either directly by the council or indirectly through employment agencies? These figures

should be broken down by whether they were made voluntary or compulsory redundant."

4. The council responded on 5 October 2012. It provided a response to the request, except for the part which asked for information on the indirect re-employment of redundant employees by employment agencies. In relation to this element of the request, the council stated that this information would be kept by the agency, not the council.
5. Following an internal review the council wrote to the complainant on 16 November 2012. It stated that, in order to comply with the outstanding element of the request it would need to manually check a significant number of records. It estimated that it would take an officer more than 2.5 days to conduct this exercise and that the request was, therefore, being refused under section 12 of the FOIA.

Scope of the case

6. On 6 December 2012 the Commissioner received correspondence from the complainant which confirmed they wished to complain about the way their request for information had been handled.
7. On 7 May 2012 the Commissioner wrote to the complainant and confirmed that his investigation would consider whether the council had correctly applied section 12 in refusing part of their request.

Reasons for decision

Section 12 – Exceeding the appropriate cost limit

8. The council has applied section 12(1) to the following element of the request (paraphrased):

Since April 2009 how many members of staff have been re-employed by the county council (indirectly through employment agencies) in the same department they were made redundant from?

9. Section 12(1) of FOIA states:

"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."

10. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the "Fees Regulations") provide that the

appropriate limit for non-central government public authorities is £450. This must be calculated at the rate of £25 per hour, providing an effective time limit of 18 hours. If a public authority estimates that the time spent on complying with a request would exceed 18 hours, or £450, section 12(1) provides that the request may be refused.

11. A public authority can only take certain activities into account when assessing whether compliance with a request would exceed the cost limit. These activities are:
 - determining whether it holds the information;
 - locating a document containing the information;
 - retrieving a document containing the information; and
 - extracting the information from a document containing it.
12. The Commissioner asked the council to provide a detailed reasonable estimate of the time taken and costs that would be incurred by providing the information falling within the scope of the request. He also asked it to provide a detailed explanation as to how it had investigated, assessed and calculated those costs.
13. It stated that, in many cases the invoices from employment agencies do not name individual workers. However, it confirmed that it had considered whether it would be possible to review all the invoices received from agencies to check whether any individuals are identified or whether the manager who commissioned the agency work could be traced and contacted to supply the identities of agency workers. The council confirmed that this would require an extensive search of many hard copy invoices. It stated that it was not possible to give an exact figure for numbers of invoices as this information is not held.
14. However, the council has clarified that, across a 6 month period, the value of purchase orders placed in relation to agency workers runs into several million pounds. The council argued that, when this is extended across a period starting in 2009 (as specified in the request), which was also a time of considerable reorganisation and staff turnover at the council, it would be impossible for such a search to be conducted within the appropriate limit.
15. In response to the complainant's suggestion that the council extracts the information by checking the records of employees who have been made redundant against records of requests for access to the council's computer systems, the council confirmed that it looked at this possibility.
16. The council explained that it does not record old access requests by name so it would not be possible from the information held to conduct

such a cross-checking exercise. It clarified that its system is not set up to run reports on the name field and it would require development work to make the field reportable. The council explained that it receives around 13, 000 requests for access to systems a year and, even if it was to create a list of names of all new requests for access it would take one officer well in excess of 2.5 days to cross check the information against a list of employees who have been made redundant.

17. The council has further explained that it does not have a business need for the requested to be held, at least in the readily available form which it would need to be held in order to comply with the request within the cost limit.
18. The complainant submitted to the Commissioner that he disputed the council's explanation of the steps it would need to take to provide the information. They stated that they had some knowledge of the council's systems and that, in their view, the information should be readily accessible.
19. The Commissioner raised the complainant's concerns with the council and, whilst it confirmed that the complainant did have some knowledge of its systems, they did not have direct knowledge of the retention arrangements of the department relevant to the request. It refuted the complainant's suggestion that the information could be produced within the appropriate limit, stating that as a result of the information being embedded in substantial paper invoices which were held in a diversity of different areas, any initial searching and subsequent cross-referencing with information held about previous employees would take an officer well in excess of the 2.5 days set by the appropriate limit.

Conclusion

20. The code of practice issued under section 46 of the FOIA (the "section 46 code") provides guidance to public authorities as to the practice which it would, in the opinion of the Lord Chancellor, be desirable for them to follow in connection with the keeping, management and destruction of their records¹.

¹ <http://www.justice.gov.uk/downloads/information-access-rights/foi/foi-section-46-code-of-practice.pdf>

21. The section 46 code recommends that authorities should ensure they keep the records they will need for business, regulatory, legal and accountability purposes. Where an authority has decided that a record needs to be kept for any of these purposes, the section 46 code advises that a further decision needs to be made about medium in which the information is retained and its accessibility, relative to its operational function.
22. The Commissioner endorses the recommendations of the section 46 code and accepts that it is for authorities to decide what records should be kept and how they should be retained. He acknowledges that, in this case, the council has confirmed that it has no operational need to retain the requested information in a readily accessible format and he has no reason to doubt that this is indeed the case.
23. On the basis of the above, the Commissioner is satisfied that the council has correctly applied section 12(1), as compliance with the request would exceed the appropriate cost limit. The council was therefore correct to apply the exclusion in section 12(1) of FOIA to this part of the complainant's request.

Section 16 – advice and assistance

24. 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 (the "code")² in providing advice and assistance, it will have complied with section 16(1).
25. The code advises that, where an authority is not obliged to comply with a request for information because, under section 12(1) and regulations made under section 12, the cost of complying would exceed the appropriate limit, it should provide the requester with reasonable advice and assistance.
26. The Commissioner's guidance states that the minimum a public authority should do in order to satisfy section 16 is indicate if it is not able to provide any information at all within the appropriate limit. Communicating this to a complainant may avoid further and futile attempts to refine the request to bring it under the appropriate limit.

² <http://www.justice.gov.uk/downloads/information-access-rights/foi/foi-section45-code-of-practice.pdf>

Also, if the requestor understands the way in which the estimate has been calculated to exceed the appropriate limit, it should help them decide what to do next³.

27. In this instance, the council's internal review explained what steps it would need to take in order to locate, retrieve and extract the requested information, and confirmed that the information could not be provided within the appropriate limit. On the basis of the council's response the Commissioner is satisfied that it would have been clear to the complainant that the request could not have been refined or revised to bring it within the terms of the appropriate limit.
28. The Commissioner has, therefore, concluded that, in handling the request, the council provided such advice and assistance as was reasonable and that it complied with section 16(1).

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http://www.ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/costs_of_compliance_exceeds_appropriate_limit.ashx

Right of appeal

29. 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: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

30. 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.
31. 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
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