

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 February 2015

Public Authority: Wirral Metropolitan Borough Council
Address: Municipal Building
Cleveland Street
Birkenhead
CH41 6BU

Decision (including any steps ordered)

1. The complainant made a request for information to Wirral Metropolitan Borough Council ("the Council") for details of payments made to a company called Wirralbiz+ under a number of specific headings. The Council initially said that the requested information was not held but later changed its position and applied section 12(1) of FOIA on the grounds that it had estimated that the cost of complying with the request would exceed the appropriate limit.
2. The Commissioner's decision is that section 12(1) was correctly applied and he requires no steps to be taken.

Request and response

3. On 8 April 2014 the complainant made a freedom of information request to the Council which read as follows:

"Wirralbiz plus or +

In collaboration with the Service Provider above you ran a special assistance program named as above. The money appeared to be drawn from Working Neighbourhoods rather like the BIG fund.

It has become clear that in the period 1 April 2008 to 30 September 2009 a large number of invoices termed as "promoting the services of wirralbiz plus" were rendered to WBC by the Service Provider. The latter could amount to £200,000.

In the public interest I ask for a breakdown of the money disbursed on wirralbiz plus under headings such as

*Disbursements per pro clients
Accountancy services
Marketing support
General advice"*

4. The council responded on 8 May 2014 stating it did not hold this information.
5. On 5 June 2014 the complainant contacted the Council to ask that it carry out an internal review of its handling of his request but at the time of submitting his complaint to the ICO had not received a response.

Scope of the case

6. On 28 July 2014 the complainant contacted the Commissioner to complain about the Council's handling of his request.
7. The Council initially failed to respond to the Commissioner's queries and it proved necessary to issue the Council with an Information Notice to obtain its response to the complaint. At this point the Council changed its position and said that it was now applying section 12(1) on the grounds that it estimated that the cost of complying with the request would exceed the appropriate limit. At this point it issued the complainant with an amended response informing him that it was refusing to comply with his request under section 12(1).
8. The Commissioner considers the scope of his investigation to be to consider whether the Council was correct to rely on section 12(1) to refuse to comply with the request.

Reasons for decision

Section 12 – cost of compliance exceeds appropriate limit

9. The information requested by the complainant relates to a Business Start Programme, where funds were made available by the Council to tackle worklessness and low skills and enterprise. The Council entered into contractual arrangements with a company (which the Commissioner

understands is called Enterprise Solutions) to provide these services and the service was branded Wirralbiz+.

10. Section 12(1) of FOIA provides that a public authority may refuse a request if it estimates that the cost of complying with the request would exceed the appropriate limit. Section 12(2) of FOIA provides that a public authority must still comply with the duty to confirm or deny if requested information is held unless the estimated cost of complying with this alone would exceed the appropriate limit.
11. The appropriate limit for the Council and other public authorities outside of central government is set at £450. In estimating the costs it expects to incur a public authority is allowed to charge the following activities at a flat rate of £25 per hour of staff time:
 - determining whether the information is held;
 - locating the information, or a document which may contain the information;
 - retrieving the information, or a document which may contain the information; and
 - extracting the information from a document containing it.
12. The Council had originally said that the requested information was not held. However, it explained that having revisited the request it had carried out electronic searches within its accounting system having regard to how the invoices would be coded. It found that all invoices related to this programme used a single code for what the expenditure relates to. It said that the search had produced a large volume of spreadsheets detailing payments to the relevant company and other companies under this particular code. To locate any further information regarding monies disbursed in respect of the Wirralbiz+ programme it would, it said, have to retrieve and search through the individual invoices, using the spreadsheets as a starting point.
13. The Council went on to say that invoices are stored against a batch name and held in folders in archive boxes in the Town Hall's basement. The finance system can be used to check what invoices from the relevant company are included in a particular batch name.
14. After retrieving any relevant invoices it would then need to go through each invoice individually to extract any relevant information. The Council explained that for this project expenditure was not separated into the headings used by the complainant because it was not part of the reporting requirements of the grant funding. Therefore, it would need to review each invoice to see if it were possible to complete the manual allocation of costs into the headings requested by the complainant.

15. The Commissioner had asked the Council to provide him with estimates of the costs it expected to incur in dealing with the request and to explain how it had arrived at the figures. In response the Council said that for the period from the start of the financial year 2007 up to April 2011 there were approximately 610 invoices which relate to a company called Enterprise Solutions which the Commissioner understands is the company responsible for providing the services carried out by Wirralbiz+. As such the Council would also need to inspect the invoices to see which are actually Wirralbiz+ invoices because the cost centre code is the same for all grant funded services. It estimated that to locate the invoices in the Council basement would take approximately 2 minutes to review each invoice which would equal 20.33 hours ($610 * 2 / 60$) or £508.33.
16. As regards the time taken to extract the information from any relevant invoice, the Council said that it estimated it would take a minimum of 5 minutes to see if it includes any of the headings requested by the complainant. Therefore, the maximum time would be 50.83 hours ($610 * 5 / 60$) or £1270.75. Of course, this is a maximum figure as it may not be necessary to search all of the invoices depending on how many are found to fall within the scope of the request. It suggested that an estimate of 32 hours would be reasonable but a more specific figure could only be achieved by completing the exercise described above. However, this would defeat the purpose of applying section 12 of FOIA as the Council would have to incur costs above the appropriate limit in order to produce an estimate. Clearly this is not desirable.
17. Whatever the exact number, the Commissioner considers that it is likely to be considerable. Indeed the Commissioner notes that in his request the complainant himself refers to "a large number of invoices" which he said "could amount to £200,000". In any event, the Council estimates that the time taken to locate any invoices would take 20.33 hours and therefore exceed the appropriate limit without taking into account any costs involved in extracting the information.
18. The Commissioner has considered the Council's explanation of the costs it expects to incur in complying with the request and is satisfied that the request would exceed the appropriate limit. It is clear that a significant number of invoices would need to be searched and that the information is not held in a readily accessible form. It is not possible to search for the information using the terms used by the complainant in his request and the only way to do this would be to read through each invoice individually, retrieving and extracting any relevant information. The estimates given by the Council are realistic, sensible and only relevant costs have been included. Therefore the Commissioner is satisfied that

the Council's estimate that the cost of complying with the request would exceed the appropriate limit was a reasonable one and that therefore section 12(1) is engaged.

19. Since the cost of determining whether it held the requested information would itself exceed the appropriate limit the Council was not obliged to confirm or deny if it held the requested information. This was the correct response and the Council should have informed the complainant of this in the first instance rather than saying the information was not held.

Section 16 – Advice and Assistance

20. Section 16 of FOIA provides that it shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.

21. Under section 16(2) a public authority is considered to have met that duty if it follows the section 45 code of practice. The section 45 code of practice is guidance, produced by the Secretary of State, on how public authorities should deal with information requests. It includes what is expected from a public authority in terms of advice and assistance when a request is refused under section 12.

22. Paragraph 14 of the section 45 Code of Practice states that where a public authority is not obliged to comply with a request because it would exceed the appropriate limit to do so, then it:

"...should consider providing an indication of what, if any, information could be provided within the cost ceiling. The authority should also consider advising the applicant that by reforming or re-focussing their request, information may be able to be supplied for a lower, or no, fee."

23. On this point the Council explained that because it could not determine whether or not the requested information was held, it was not in a position to advise the complainant how his request could be refined so as to be answered within the appropriate limit.
24. In the circumstances of this case the Commissioner is satisfied that it was not reasonable for the Council to have provided any further advice and assistance because to provide an indication of what information could be provided within the cost ceiling would require it to go through all the invoices it held which would itself exceed the appropriate limit. Similarly, the Council could not have suggested that the complainant refine his request as it could not be sure it held any of the information of the description specified by the complainant. The Commissioner also

notes that the Council had explained to the complainant how it held information regarding money disbursed on Wirralbiz+ and he has already asked for specific invoices relating to Wirralbiz+ expenditure.

Right of appeal

25. 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@hmcts.gsi.gov.uk

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

26. 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.
27. 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

**Pamela Clements
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