

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 13 December 2016

**Public Authority:** Kirklees Metropolitan Council

**Address:** Civic Centre  
High Street  
Huddersfield  
West Yorkshire  
HD1 2TG

#### **Decision (including any steps ordered)**

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1. The complainant has requested information from Kirklees Metropolitan Council ("the Council") about the number of staff subject to disciplinary action over six years. The Council refused to comply with the request under section 12(1) of the Freedom of Information Act ("the FOIA"). The complainant subsequently contested the Council's refusal.
2. The Commissioner's decision is that the Council has correctly applied the exclusion provided by section 12(1), and has also complied with the requirement of section 16(1) to provide advice and assistance.
3. The Commissioner does not require any steps to be taken.

#### **Request and response**

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4. On 6 April 2016 the complainant requested:  
*How many council employees in the last 6 years have been disciplined or dismissed for lying.*
5. On 11 April 2016 the Council responded. It stated that no recorded information was held.
6. On 11 April 2016 the complainant requested an internal review.

7. On 10 May 2016 the Council invited the complainant to narrow the request:

*Please can you let me know whether you are able to narrow the request? For example, in relation to dismissed employees, do you want to know whether employees have lied to customers of the Council or whether they have lied to employees of the Council in the course of carrying out their duties?*

*I am happy to discuss this with you further but I do not have a telephone number for you.*

*If you would like to discuss this, then please contact me on the number below. Alternatively, you can always respond by email if you prefer.*

8. On 10 May 2016 the complainant responded by email, but did not narrow the request.
9. On 19 May 2016 the Council sent the outcome of its internal review. It revised its position and provided some related held information (namely the number of employees dismissed for lying), but refused the request as worded under section 12(1).

### **Scope of the case**

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10. The complainant contacted the Commissioner on 19 May 2016 to complain about the Council's refusal.
11. The Commissioner considers the scope of this case to be the determination of whether the Council has correctly applied section 12(1), and complied with the requirement of section 16(1).

### **Reasons for decision**

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#### **Section 12(1) – The cost of compliance**

12. Section 12(1) provides that:

*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.*

13. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004<sup>1</sup> ("the Regulations") sets the appropriate limit at £450 for the public authority in question. Under the Regulations, a public authority may charge a maximum of £25 per hour for work undertaken to comply with a request. This equates to 18 hours work in accordance with the appropriate limit set out above.
14. A public authority is only required to provide a reasonable estimate or breakdown of costs and in putting together its estimate it can take the following processes into consideration:
  - determining whether it holds the information;
  - 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.

Is the exclusion engaged?

15. The Council has informed the Commissioner that its original response advised that it did not hold the information. However it subsequently revised this position because relevant information was found to be held within employee disciplinary cases. The Council was therefore able to provide the complainant with the number of employees who have been dismissed for lying (in any way) in the previous 6 years. However the Council refused the request as worded on that basis that it would exceed the appropriate limit.
16. There were 609 employee disciplinary cases initiated from April 2011 until the date of the request. The file for each case is held electronically on the Council's network, but a short report of each case is also held for reference. There were 411 disciplinary cases initiated between April 2011 and March 2013, and the short reports are held on a database titled 'ERICA'. A further 198 disciplinary cases were initiated from April 2013 to April 2016, and the short reports for these are held on the Council's SAP software. The Council has provided an example of each type of short report for the Commissioner's reference.
17. The Council has explained that the total amount of cases in which employees have been found to have lied in any situation cannot be

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<sup>1</sup> <http://www.legislation.gov.uk/ukxi/2004/3244/contents/made>

directly inferred from the short reports held on either ERICA or SAP. Each short report contain a summary of the allegation/issue in each case, and whilst in some types of case it may be possible to infer directly that an employee has been found to have lied (e.g. fraud cases), in other cases this will not be immediately known and the Council would need to access the original case files in order to identify this.

18. The Council has found that manually reading each of the 411 short reports generated by ERICA would take 3 hours 25 minutes (30 seconds per short report). For relevant cases that cannot be identified from the short report alone, the Council has undertaken a sampling exercise by accessing and reviewing 3 case files, which were found to take an average of 6 minutes each to review. Assuming that 300 of the 411 case files would need to be accessed, this would take 30 hours. Collating the total results would then take 15 minutes. These actions would take a total of 33 hours 40 minutes.
19. Of the 198 short reports generated by SAP, 26 of these can be quickly filtered as 'Fraud', which would take 6 minutes. The remaining short reports do not provide the level of detail required and would require each of the 172 case files to be accessed; this would take 17 hours based on an average of 6 minutes per case file. Checking for duplicate cases against ERICA would take 20 minutes, and collating the results would take 15 minutes. These actions would take a total of 17 hours 41 minutes.
20. The Commissioner has noted that part of the Council's calculations (that 300 of the 411 short reports held on ERICA would require the original case files to be reviewed) is based on an assumption with no supporting evidence provided for it. However it is recognised that searching for relevant information on SAP alone would take 17 hours 41 minutes, and it is reasonable for the Commissioner to consider that even accessing a small proportion of the cases recorded on ERICA would place the request over the appropriate limit. On this basis the Commissioner is satisfied that the Council has correctly applied section 12(1) to the request.

### **Section 16(1) - The duty to provide advice and assistance**

21. 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<sup>2</sup> ("the Code") issued by the Secretary of State, it will have complied with section 16(1).

22. The Code advises that, where an authority is not obliged to comply with a request for information because, under section 12(1) and the Regulations made for that section, the cost of complying would exceed The Commissioner's guidance states that the minimum a public authority should do in order to satisfy section 16(1) is indicate if it is 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. 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 next.
  
23. In this case, it is evident that the Council attempted to provide advice and assistance to the complainant on 10 May 2016. However the complainant declined to narrow the request or otherwise engage with the Council. Notwithstanding this, the Council provided the information that it was able to within the appropriate limit (namely the number of employees dismissed for lying across the six year period). On this basis the Commissioner is satisfied that the Council has complied with section 16(1).

## Right of appeal

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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: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://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 .....**

**Andrew White**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**