

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

### **Decision notice**

**Date:** 13 December 2022

**Public Authority:** Sefton Metropolitan Borough Council  
**Address:** Bootle Town Hall  
Oriol Road  
Bootle  
Liverpool  
L20 7AE

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

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1. The complainant submitted an information request to Sefton Metropolitan Borough Council ("the Council") for correspondence relating to the Friends of Victoria Park and Waterloo Community Forest Garden.
2. The Commissioner's decision is that the Council has correctly applied section 12(1) of FOIA to the complainant's request, however it did not, initially, comply with its obligations under section 16(1) of FOIA to provide adequate advice and assistance to the complainant. Furthermore, in failing to respond to the request within the statutory timescale, the Commissioner has determined that the Council breached section 10(1) of FOIA.
3. As the complainant has now been provided with advice and assistance, the Commissioner does not require the Council to take any further steps.

## Request and response

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4. On 22 June 2021, the complainant wrote to the Council and requested information in the following terms:

"Under the Freedom of Information legislation, I herewith request copies of all correspondence between [redacted] and all Officers of Sefton Council in relation to the Friends of Victoria Park and the Waterloo Community Forest Garden (also sometimes described as "Land at Sommerville Road" or the Forest Garden).

I am particularly interested in correspondence from August 2020 to date.

I have provided the two email addresses which I am aware for [redacted] and the four Green Sefton Officers names and email addresses whom I am aware have had contact with [redacted] in relation to the Friends of Victoria Park and the Waterloo Community Forest Garden. Other Sefton Council Officers may have been involved and this request extends to all officers involved.

[redacted]

My request includes all forms of correspondence, email, text and other and may not be restricted to the email addresses provided above."

5. On 26 July 2021, the Council refused to provide the requested information citing section 12 (cost limit) of FOIA as its basis for doing so.
6. On 3 September 2021 the complainant sought an internal review of the Council's decision. The Council provided the complainant with its internal review response on 1 October 2021 in which it upheld its response.

## Scope of the case

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7. The complainant contacted the Commissioner on 29 December 2021 to complain about the way their request for information had been handled.
8. In line with his usual practice, the Commissioner wrote to the Council to ask for an explanation on its application of section 12(1).
9. The Council provided its submissions and stated that it is "prepared to give further consideration to what further information could be provided within compliance costs."

10. The Council proposed to conduct the following searches:

“We will now run a search based on ‘Friends of Victoria Park’ as this is likely to limit the search.

We propose reviewing just the content of one Officer’s mailbox. This will be the Team Manager as the main recipient of information and to whom the team copy emails when corresponding on such matters.”

11. On 24 October 2022, the Council provided the complainant with the email correspondence within scope of this refined request. The Council withheld some information, applying section 40(2).
12. On 9 November 2022, the Commissioner contacted the Council to clarify whether section 12(1) is being relied on to all forms of correspondence not disclosed. The Council confirmed that this was correct.
13. The Commissioner has considered the Council’s handling of the complainant’s request, in particular its application of section 12(1) of FOIA. He has also considered whether the Council breached section 10(1) of FOIA by failing to respond to the request within the statutory time for compliance and whether it complied with its obligations under section 16(1) of FOIA. The Commissioner will also go on to consider the other exemption relied upon, should section 12(1) not apply.

## **Reasons for decision**

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### **Section 12 – cost of compliance**

14. 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 cost limit.
15. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (‘the Fees Regulations’) at £450 for local government public authorities such as the Council.
16. 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.

17. 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.
18. 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. In accordance with the First-Tier Tribunal decision in the case of *Randall v IC & Medicines and Healthcare Products Regulatory Agency*<sup>1</sup>, the Commissioner considers that any estimate must be "sensible, realistic and supported by cogent evidence."
19. 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.
20. Where a public authority claims that section 12 of FOIA is engaged it should, where reasonable, provide advice and assistance to help the complainant.

### **The Complainant's position**

21. The complainant has expressed disappointment with the Council's overall handling of their request, and said that in the Council confirming it has 1,588 pieces of correspondence it is "deliberately misinterpreting" their request.
22. Furthermore, the complainant has stated that the Council has not provided any minutes of the meetings, nor telephone calls.

### **The Council's position**

23. The Council explained that to search the five Council owned mobile phones, within the scope of the request, would take 2 hours per phone, resulting in a search time of 10 hours.

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<sup>1</sup> EA/20017/00041

24. The Council determined that there are 1,588 pieces of correspondence, exchanged in the time period within the request, and that these are located in 60 separate mailboxes.
25. Once a search is conducted, the Council explained, several folders are generated and that is it not possible to calculate how many of these sub folders need to be searched without opening every one.
26. The Council further explained that the 3 minutes per email, suggested to the complainant, to locate an email, read the email to determine whether information is held within the scope of the request, retrieve and/or extract the information was a "conservative estimate on reflection" for whilst many emails may be copies to multiple recipients, this cannot be determined without opening each email within each folder.
27. As a sampling exercise, the Council explained that where an email does fall within the scope, it has to be saved as a PDF file in a separate folder, ready to be combined with all documents to create one file for disclosure. It explained that where emails also contain information which is not in scope of the request, then the requested information needs to be extracted, converted to PDF and saved in the separate folder. The Council explained "The time taken to do these 2 steps differed. In the case of an email which could simply be saved, it takes 3 minutes 19 seconds to do. In the case of longer emails which took more time to read and perform the copying and pasting of relevant request information, this took longer and varied depending upon the length of the email, for example 4 – 5 minutes".

### **The Commissioner's conclusion**

28. The Commissioner considers the Council's estimate of around 79 hours to locate, retrieve and extract the requested information to be reasonable. The Commissioner understands why the complainant feels like the Council has "misinterpreted" their request as they only referred to selected Council Officers. However, as other Council employees have been included in the email chain of correspondence, it has resulted in the emails residing in 60 separate mailboxes.
29. The Commissioner notes the complainant's comments about not being provided with meeting minutes, however, this would not be caught under the complainant's request of 'all correspondence.'
30. The Commissioner's decision is that Council estimated reasonably that the cost of complying with the request would exceed the appropriate limit. Therefore, the Council was correct to apply section 12(1) of FOIA to the request.

31. As the Commissioner considers that section 12(1) applies to all the requested information, he has not gone on to consider the Council's application of section 40(2).

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

32. Where a public authority refuses a request under section 12(1) of FOIA, section 16(1) creates an obligation to provide advice and assistance on how the scope of the request could be refined or reduced to avoid exceeding the appropriate limit.
33. In its initial response and submissions to the Commissioner, the Council explained that it provided the complainant with a range of documents that it could provide within the cost limit, but did not, initially, provide guidance on how the complainant could refine their request.
34. Following intervention by the Commissioner, the Council stated that it was "prepared to give further consideration" as to what can be provided within cost limits, and provided the complainant with emails, based on a refined request.
35. The Commissioner considers that the advice and assistance the Council offered the complainant, initially, was not adequate. He is therefore not satisfied that the Council has met its obligations under section 16(1) of FOIA. However, as the Council has now provided the complainant with copies of emails, based on a refined request, the Commissioner considers that no further steps are required.

### **Section 10 – time for response**

36. Section 10(1) of FOIA states that a public authority must respond to a request promptly and in any event not later than the twentieth working day following the date of receipt.
37. The request for information was made on 22 June 2021 and the Council responded with a refusal notice on 26 July 2021.
38. As this was more than 20 working days after the request was made, the Commissioner finds that the Council breached section 10(1) of FOIA.

## Right of appeal

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39. 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@justice.gov.uk](mailto:grc@justice.gov.uk)

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

40. 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.
41. 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 .....**

**Phillip Angell**  
**Head of Freedom of Information Casework**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**