

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

### **Decision notice**

**Date:** 21 July 2023

**Public Authority:** London Borough of Enfield  
**Address:** Civic Centre  
Silver Street  
Enfield  
EN1 3XF

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

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1. The complainant requested information regarding the anonymised workings out for a recent Gender Pay Gap report. London Borough of Enfield ("the Council") disclosed some information but refused the request for anonymised data citing section 12(1) (cost of compliance) of FOIA.
2. The Commissioner's decision is that the Council was entitled to rely on section 12(1) of FOIA, in response to the whole of the request. It has also complied with its duty to provide advice and assistance in line with the requirements of section 16 of FOIA.
3. The Commissioner does not require the Council to take any steps.

## Request and response

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4. On 20 May 2023, the complainant made a request for information in the following terms:

“Your most recent Gender Pay Gap report showed zero difference in "median hourly pay".

Please release your anonymised workings to show how this figure was calculated.”
5. On 26 May 2023, the Council responded by providing the workings out behind the median pay gap headline figure and included a link to the government guidance for what data is used in calculating the Gender Pay Gap.
6. The complainant requested an internal review on the same day, setting out their grounds for dissatisfaction with the Council’s response.
7. The Council provided its internal review response citing reliance on the cost limit exemption under section 12(1) of FOIA. As part of its section 16 responsibilities the Council stated it was unable to provide meaningful advice and assistance as to how the request could be refined that may enable further information to be disclosed.

## Scope of the case

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8. The complainant contacted the Commissioner on 25 June 2023 to complain about the way their request for information had been handled. They included a link to the What Do They Know (WDTK) website and argued that:

“Enfield Council also claim that it would be unreasonably onerous to extract the anonymised workings. This isn't credible when most other organisations providing this information without delay. It is also hard to understand how Enfield Council staff could have calculated the headline figures for senior accountants to review, without pulling all the information into a single file.

Enfield Council's outlier status in refusing to provide their anonymised workings is unreasonable - please insist that they provide the information that so many other organisations have done.”
9. The Commissioner considers the scope of this case is to determine if the public authority is entitled to rely on section 12(1) of FOIA. He has also

considered whether the Council complied with its duty to provide advice and assistance under section 16 of FOIA.

## **Reasons for decision**

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### **Section 12 – cost of compliance exceeds the appropriate limit**

10. Section 12 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.
11. 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 public authorities such as the Council.
12. 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 of FOIA effectively imposes a time limit of 18 hours for the Council to deal with this request.
13. 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.
14. 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 EA/20017/0004*, the Commissioner considers that any estimate must be "sensible, realistic and supported by cogent evidence". The task for the Commissioner in a section 12 matter is to determine whether the public authority made a reasonable estimate of the cost of complying with the request.
15. Section 12 of FOIA is an absolute exemption and 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.

16. Where a public authority claims that section 12 of FOIA is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit, in line with section 16 of FOIA.

**Would the cost of compliance exceed the appropriate limit?**

17. When dealing with a complaint to him under FOIA, it is not the Commissioner's role to make a ruling on how a public authority deploys its resources or how it chooses to hold its information.
18. Therefore, as set out in the Fees Regulations, the Commissioner has considered whether the estimated cost of responding to the request would exceed the appropriate limit of 18 hours.
19. As is the practice in a case where a public authority has cited the cost limit under section 12, the Commissioner asked the Council to provide a more detailed explanation of its cost estimate.
20. The Council explained to the Commissioner that it uses an external company to carry out some of the work due to its complexities and to relieve pressures on Council resources. The software used is able to extract data from various file types and datasets that are much bigger than those that can be handled by Excel. Complex formulas are set up within the application to produce the aggregated calculations required, such as the median hourly pay rates for all female and male staff. This information is available via the scorecard generated by the application. This task is completed by a specialist developer. Due to the size of the file, the dataset cannot be exported to Excel for it to be interrogated.
21. The Council also gave a breakdown of the number of records required explaining that out of 11 files numerous records for members of staff are included for the calculations. An example was given as: 'Salary' file contains 581,046 lines and 'Absence' file contains 142,086 lines. It was stated that: "The information is linked to individual staff. The information cannot simply be extracted and shared. This would require going through each line in all documents and anonymising the data to ensure data compliance. Once the data is anonymised, the calculations will not be able to be carried out by the requestor as the records could not be linked."
22. It further explained that: "The calculations for pay gap include salaries, other additional payments (for example, overtime and market factor

supplements), reductions for salary sacrifice, working hours and leave (including sickness absence and maternity leave). This involves drawing data from a variety of reports. Due to the complexity and the vast quantity of data involved, the Council engages the services of a technical partner organisation to prepare the data and then a specialist developer in Digital Services at the Council inputs the various files into software to produce the gender pay gap data.”

23. Section 1 FOIA provides a general right of access to information requested. However, a public authority has a duty to consider whether any information located and retrieved is relevant to the request. For these reasons it is not a case of merely providing the information without reviewing it to determine if the information held could be in scope.
24. In light of this, the Council explained that not all information would necessarily fall within scope of the request. Therefore, each item returned would have to be examined individually to identify, and then extract and save the in-scope material.
25. Therefore, to determine if information is held and provide the same, the Council demonstrated this would be well in excess of the 18 hours permitted.
26. Even if it were possible to reduce the amount of time taken (which would seem unreasonable given the above) to check the files, this would still be over the threshold limit at 18 hours.
27. Having considered the information provided, the Commissioner’s overall conclusion is that the Council has estimated reasonably and cogently that to comply with the complainant’s request would exceed the cost limit of 18 hours. The Council was therefore entitled to apply section 12(1) of FOIA to the complainant’s request.

## **Section 16 – advice and assistance**

28. Section 16(1) of FOIA provides that a public authority is required to provide advice and assistance to any individual making an information request where it would be reasonable to do so. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45 code of practice in providing advice and assistance, it will have complied with section 16(1).

29. In general, where section 12 is cited, in order to comply with this duty a public authority should advise the requester how their request could be refined or reduced to potentially bring it within the cost limit.
30. The Commissioner notes that the Council stated that it was unable to provide meaningful advice and assistance as to how the requester could refine their request to enable further information to be disclosed.
31. The Commissioner considers this was an appropriate response in the circumstances given the nature of the original request. He is therefore satisfied that the Council met its obligation under section 16 of FOIA and does not require it to take any steps.

## Right of appeal

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32. 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: 0203 936 8963  
Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.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)

33. 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.
34. 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 .....**

**Susan Duffy**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**