

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 March 2024

Public Authority: The Royal Parks
Address: The Old Police House
Hyde Park
London
W2 2UH

Decision (including any steps ordered)

1. The complainant has requested copies of communication between any member of The Royal Parks ("TRP") and the managing agent of the properties let out to third parties over a 24 month time period. TRP relied on section 12 of FOIA (cost of compliance) to refuse the request.
2. The Commissioner's decision is that the public authority was entitled to rely on section 12(1) of FOIA to refuse the request. The Commissioner also finds that the public authority complied with its section 16 obligation to offer advice and assistance.
3. The Commissioner does not require further steps to be taken.

Request and response

4. On 30 July 2023, the complainant wrote to the public authority and requested information in the following terms:

"Now that there is better clarity on TRP process, please may you hand over all communication between any member of TRP and the managing agent of the properties let out to third parties.

I would like this to ensure that your outlined process has actually been followed by employees of TRP.

Please do this for the last 24 months. This should include all communication over email, text, whatsapp, and iMessage, on TRP devices as well as personal devices.

Please redact any personal information as necessary.

You may treat this as a separate FOI request if you wish."

5. On 25 August 2023, TRP responded. It relied on section 12(1) of FOIA to refuse the request.
6. When requesting an internal review on 11 September 2023, the requester submitted the following refined request:

"I would be happy to slim it down to communication with the managing agent (any representative of the managing agent) about any lodge within Hyde Park, Kensington Gardens and Regents Park over the last 24 months."
7. On 6 October 2023, TRP upheld its position following an internal review and also refused the refined request – relying on section 12(1) of FOIA to do so.

Reasons for decision

Section 12 – cost of compliance

8. The following analysis covers whether complying with the refined request dated 11 September 2023 would have exceeded the appropriate limit.
9. Section 12(1) of the 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 limit" as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations")
10. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 at £600 for central government, legislative bodies and the armed forces and at £450 for all other public authorities. The appropriate limit for TRP is £450.
11. 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 public authority.

12. 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.
13. 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. 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.
14. 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.
15. 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.

TRP's position

16. TRP explained to the Commissioner that it could not meet the original request without entailing disproportionate cost based on the number of staff involved, the volume of the relevant correspondence and the time that it would require to locate, retrieve and extract the relevant information. TRP has confirmed that whilst information is held in electronic form, it spans an extensive time period, with it concerning multiple subjects, locations, teams and individuals as well as requiring manual intervention to retrieve and assess.
17. TRP has confirmed that in any given month, the following communications would be likely to take place:
 - the central TRP Estates team and the dedicated property manager of the letting agent;

- the central TRP Estates team and the letting agent's marketing, letting and licence renewal teams;
 - the central TRP Estates and Finance teams and the letting agent's accounts section;
 - the letting agent and, on average, four members of staff in each of the six parks in question, including the park administrative and operational management teams, the park wildlife officers, and the gardening and reactive works teams.
18. TRP also explained that over the 24 month time period there would be additional exchanges between the managing agent's dedicated property manager and the TRP Events team, Projects team and Works team.
19. Based on the above, a total of 30 TRP staff would be required to locate, retrieve and extract any relevant information. Even if each of these members of staff required one hour to identify, locate, retrieve and extract the relevant information, the costs and time limit would be exceeded.
20. TRP has calculated that the Central Estates team exchanges an average of 80 emails per week with the letting agent and it would take 40 hours to locate all that information over the two years covered by the request. There is a total of six parks and each one would require an average of four hours to locate its own relevant information. Additionally, the Finance, Events and Projects team would require two hours each. This totals approximately 70 hours.
21. TRP has confirmed that it conducted a sampling exercise on one of the 30 lodges in scope of the request. TRP recorded that it took one member of staff five hours to identify approximately 750 emails, and that did not include extracting any relevant information each one might have contained. If each member of staff spent five hours identifying relevant emails, this would total 150 hours.
22. In complying with the refined request, which was limited to just three parks from six but still over a 24 month time period, there would be a total of 17 lodges in scope of the request. TRP has explained that the estimated time taken to handle such a request would not produce a directly proportionate reduction in the work.

The Commissioner's view

23. The Commissioner is satisfied that complying with the refined request would exceed the appropriate limit.

24. Whilst TRP did not produce a detailed breakdown of the second request, the Commissioner notes that slightly more than half of TRP's 30 lodges fall within the scope of the refined request. Given that TRP has already estimated that it would take 40 hours just to search through the emails of its estates team for all 30 lodges, even if halving the number of parks halved the number of emails, the request would still take 20 hours – and that is before any of TRP's other teams considers relevant information.
25. Therefore, given the wide time parameters and the additional work identified in paragraphs 21 and 22, even the refined request would still exceed the appropriate limit comfortably.
26. The Commissioner is satisfied that TRP has set out a reasonable estimate and supported it with appropriate evidence. As the work involved in complying with the request would be extensive, the Commissioner considers that the cost of complying with the request would far exceed the appropriate limit by a clear margin.
27. Therefore, the Commissioner's decision is that TRP was entitled to rely on section 12(1) of FOIA to refuse the request.

Procedural matters

28. Section 16 of FOIA requires public authorities to provide reasonable advice and assistance to those making, or wishing to make, information requests.
29. When a public authority refuses a request because the cost of compliance exceeds the appropriate limit, it should explain, to the requester, how they could refine their request such that it would fall within that limit. In rare cases, it will be appropriate for the public authority to explain to the requester why their request cannot be meaningfully refined.
30. In this case, TRP informed the requester that they could submit a modified request by narrowing their terms, for example by park, geography, numbers and timeframe. Whilst requesting an internal review, the requester did submit a refined request – albeit that even the refined request still exceeded the appropriate limit.
31. The Commissioner is therefore satisfied that the public authority did comply with section 16 of FOIA when dealing with this request.

Right of appeal

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

Website: 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.

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