

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 December 2018

Public Authority: City of York Council

Address: West Offices,
Station Rise,
York,
YO1 6GA

Decision (including any steps ordered)

1. The complainant has requested a list of council strategies. The council applied section 14(2) on the basis that it had previously received and responded to very similar requests from the complainant encompassing the same information.
2. The Commissioner's decision is that the council was not correct to apply section 14(2) to the information. It had previously agreed to provide information to the complainant in response to her earlier request but had failed to do so.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - To disclose the information offered to the complainant by the council on 30 May 2017.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 23 August 2017 the complainant wrote to the council and requested information in the following terms:

"A number of months ago I submitted a request for a list of strategies leading the work of the Council. Many months later after being offered a solution which was then apparently withdrawn and going round in circles, I have received nothing and rather than once again go to the ICO I will reissue the request..."

...Please city of York provide a list of Strategies used to guide the work of each department. All I need is the name of the strategies and a link to them. Since you say you were going to publish a list, I expect that the 18 hour ceiling will not be reached. But if it is please, as you are required by law, propose a plan (and implement it) of how many of the Council's strategies can be found in 18 hours.

I raise this as I am surprised that the Exec, Scrutiny committees and A&G committee are not regularly informed of the strategies, progress against them and a programme of updates, cross relationships and reviews. Nor can those trying to understand the work of the Council navigate what cannot be found in the public domain. I hope this will resolve the miscommunication."

6. The council responded on the same date. It applied section 14(2) to refuse the request. It said that this was because the request was substantially similar to a previous request submitted by the complainant, which the council had responded to at that time, and it had also carried out a review of its response in that case.
7. The complainant requested a review of the decision on 5 September 2017, however the council did not carry out a review in this case for this request.

Scope of the case

8. The complainant contacted the Commissioner on 29 May 2018 to complain about the way her request for information had been handled.
9. She considers that the council is wrong to refuse her request under the exemption in section 14(2).

Reasons for decision

10. Section 14(2) of FOIA provides that:

"Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with a previous request and the making of the current request."

The council's arguments

11. The council outlined its arguments for applying the exemption to the Commissioner. It said that on 2 January 2017 the complainant originally made a request for information for the following information:

"1. Can you provide a list of all the strategies produced by city of york [sic] council, with their dates and responsible chief officer, together with which committee they went to and when approved.

2. From FY 2015/16 can you advise how many (and which) strategies have been

- a) updated*
- b) abandoned*
- c) initiated*

3. Which of the strategies are required by law to be produced and which are optional? "

12. The council provided a response to his on 31 January 2017. It refused the request on the basis that it had estimated that responding to it would exceed the appropriate limit set by section 12 of the Act. It said:

"The council has produced many strategies since its formation in 1996, ranging from service-based case strategies through to corporate strategies. Some will have required and been given approval by Elected Members, and are therefore available on our website, whilst others would be agreed at a service level. The information is not held in a format which lists them all, requiring all council documents to be searched to identify them. Having searched for "strategy" and "strategies" across our systems, the number of documents containing these terms is extremely large, in the tens of thousands. The work to locate, retrieve and extract this information would be in excess of 18 hours work, so we are refusing this request under Section 12 of the Freedom of Information Act."

13. For local government bodies, the appropriate limit is set at £450 or 18 hours work (based upon £25 per hour).

14. It provided advice and assistance to the complainant as to how to narrow the scope of the request in order to be able to provide information within the appropriate limit. It advised that

"In addition to this the council may be able to provide information within the 18 hour limit should you wish to submit another request defining, for example, any specific service areas on which you require information".

15. It said that the complainant then replied to one of the council's unmonitored email addresses. She stated:

"Thank you, it does seem disturbing that the council cannot at least produce a list of the names of the strategies you have, how else can they be performance managed.

If I was to simply ask for the names of the strategies in each department with the responsible officer and dates of strategy could you do that in 18 hours?

Start with Director [redacted] and the Chief Executive's department then [name redacted] please."

16. The council argues that the email which the complainant sent narrowing the scope of her request was sent to a no-reply email address and was not therefore received by the council. The request was responded to automatically by the council's servers. The response informed the complainant that:

"Please note the email address you sent your email to, is used only for sending purposes and not monitored. This means all emails sent to this address will not be seen by any council officers and will also be deleted".

Please resend your email to [City of York Council request email]."

17. The council said that the complainant did not resend the email to a valid email address and did not contact the council again about the request until 6 May 2017. It said that she then requested a review of the original response on 19 March 2017, but stated that it was a new request. Her new request was for:

"I am writing to request an internal review of City of York Council's handling of my FOI request 'Strategies'. My request was date specific only the last financial year, not since 1996. Expecting me to go through every council agenda is unreasonable as I believe you have been told by the ICO."

18. The council responded on 30 May 2017 and said:

"In point 1 of your initial request you specified that you wanted a list of all strategies. You did not specify a date range. You only specified a date range for point 2 of your enquiry. It was therefore taken that you wanted a list of all strategies and also a status update only on 2015/2016 strategies."

As part of the work to complete the requested review, the council considered the information on the website page, as well as in the council's records. This included the request sent on the 19th March 2017, which was for:

- *The names of the strategies in each department*
- *The responsible officer*
- *Dates of strategy. "*

19. The council argues that the above request still did not ask for information defining any specific service areas as it had suggested in response to the previous request as a means of narrowing the scope to the point where it was able to respond within the appropriate limit.

20. In its response of 30 May 2017, the council also provided further explanation as to why it could not respond to the request as stated, but it also explained that it could provide some information in response to the request. It said:

"The definition and use of the term "strategy" is different across service areas and is used for different purposes. For example, Children's Services refer to strategies relating to cases within social care and safeguarding. Therefore, a search of Council systems under the term 'strategies', even for one year across the Council, would result in a large amount of information that would take longer than the cost limit to locate and retrieve the type of strategy information you are seeking,"

However, the Council would be able to provide a list of those strategies signed off by an Executive or Member decision in existence in 2015/16 across the council, and provide details of which were initiated, amended or ended. It you wish to re-submit a request along these

lines, we will disclose the information held, subject to a review of any exemptions that may be engaged.

As explained previously, the Council are working on a list of corporate level strategies to be published on the Council website, so much of the information you are seeking will be published in the near future and be reasonably accessible to you."

21. On 22 August 2017 the complainant emailed the council stating:

"Ok so I had hoped that since all strategies would contribute to council policies and all would need monitoring that all strategies would be available at the touch of a button.

I have delayed responding so you will have time to publish, perhaps you can provide whatever you can scrape together and we can move on from there. Clearly I would have expected every Director to have a list and Monitoring profile for their directorate, if they have not how can policies be monitored?

Provide what you can find please."

22. The council said to the Commissioner that at this point it had now responded to the request and also provided a review of its response. It said that the complainant had not submitted a new request defining the request in the way it had suggested in its advice and assistance. It said that it therefore responded on the same date stating:

"The internal review is the council's final response to Freedom of Information requests, therefore if you remain unhappy you are now able to contact the Information Commissioners Office (ICO).

Officers will not acknowledge or respond to further correspondence about this request, however we will of course cooperate with any investigation the ICO considers appropriate."

23. The complainant responded on 23 August 2017 stating:

"It [sic] you proposed a plan [redacted], I accepted it. Please proceed as you suggested.

Please send what strategies you can find."

24. The council said that it did not respond to this request. It argues that at no point had it received a new request defined as it had suggested.

25. It said that on the same date, the complainant sent a further request to the council on a different email address. The request was for:

"A list of Strategies used to guide the work of each department, the name of the strategies and a link to them."

26. It argues that this request has also not been narrowed in the way it had suggested and that it makes *"no attempt to define which service areas were of interest, or for the strategies signed off by an executive or in a member decision for a particular year of interest"*.

27. It argues that this request is substantially similar to the previous request made by the complainant which it had already responded to.

28. The council told the complainant that it had already reviewed this request and that it had provided its final response to this request previously. However, it said that it also considered that this was a new, albeit repeated request for information sought previously and that it therefore needed to provide a response.

29. The council therefore applied section 14(2) to the request as it considered it to be a substantially similar to the previous request which it had already dealt with. It considered that adequate and reasonable advice and assistance had been provided under section 16 of the Act which the complainant had not followed.

30. It said that the response also advised:

"As explained, we will not respond further to correspondence from you regarding this topic, where it is identical or substantially similar in scope, and if you remain dissatisfied with our responses and the internal review, please contact the Information Commissioner's Office, details provided below:"

31. The council argues that it has previously addressed the requests made by the complainant by refusing them as being above the appropriate limit. It says that it has provided reasonable and appropriate assistance advising the complainant of the information which would be available, however, the complainant had submitted repeated or substantially similar requests again, without seeking to narrow the scope of the request as it has suggested previously.

32. It argues that, regardless of the specific wording used by the complainant, the request cannot be responded to within the appropriate limit, and it has provided its reasons for this to the complainant.

33. It argues therefore that it has applied the exemption in section 14(2) as applying section 12 to her previous requests has not resulted in the complainant reducing the scope of her requests, even though she is aware that the council cannot provide the relevant information within the appropriate limit.

The complainant's arguments

34. The complainant argues that her request is a simple request. In order to account for and justify actions and expenditure councils rely on policies and strategies. These are the basis on which spending decisions are normally made. She said that she was therefore surprised that the strategies were neither online, nor apparently on hand for the council to provide them to her.
35. She said that her second request was to make it easier for the council to provide what they could within the 18 hour limit. She argues that, in the unlikely event that the directors do not know themselves the strategies they were responsible for (and by which she assumes they performance manage their senior staff), then a round robin email to Heads of Section should have elicited the strategies which the sections work to, which she had requested.
36. She argues that the request has a serious purpose, for both citizens who want to understand what the council is doing, as well as councillors who also need to understand these guiding documents as they inform into council spending and action.

The Commissioner's findings

37. It is important to note that the council has not found that the request is vexatious in this instance. It is simply arguing that the request, as it stands, has been made and responded to previously and so section 14(2) applies.
38. It considers that it has responded to the complainant previously and explained why it is not able to carry out a search for the word 'strategies' to provide the information which she has requested; doing so would locate actual casework from some of its departments. It therefore argues that carrying out such a search and sifting through the corresponding results would exceed the appropriate limit.
39. It considers that although it has explained this to the complainant previously she has now repeated the same request numerous times, albeit worded slightly differently. The council argues that she has not narrowed the scope of her request, and so it is not willing to consider the request again for a third time.

40. The Commissioner accepts that the request encompasses the same information, and she acknowledges the council's argument that responding to it would require it to go through the same process of responding and reviewing the request, which would be likely to result in it providing the same response it has provided to the complainant previously.
41. However as regards its response to previous requests, the Commissioner notes that it made an offer to the complainant to provide information to the complainant but did not then provide this when the complainant accepted that offer.
42. In its response of 30 May 2017 the council had clarified that it would be able to provide: *"a list of those strategies signed off by an Executive or Member decision in existence in 2015/16 across the council, and provide details of which were initiated, amended or ended"*. The complainant's response on 22 August 2017 was to state: *"Provide what you can find please."* This was tantamount to accepting the council's offer. The council however considered that this did not provide it with the leeway to respond to the request by providing this information. However, it did not then seek to clarify with the complainant whether a response along the lines it had suggested would be suitable to her.
43. In her subsequent email to the council of 23 August 2017 the complainant made absolutely clear that she had accepted the council's proposed way forward. Had the council then acted on this acceptance the complainant may not have pursued the further request for information, which was likely to have been issued as a result of the council's earlier refusal to provide information which it had already offered to provide to her.
44. The council's failure to provide information in response to a proposal it had made under section 16 of the Act is unfortunate and is likely to have led directly to the current situation. Even if the council considered her response of 22 August 2017 to be unclear, it should have reverted to the complainant and asked her to clarify whether her response was intended to accept the offer. Instead it decided that she had not narrowed the scope of her request and refused to respond further.
45. The complainant's confirmation that she had accepted the council's plan on 23 August 2017 should also have been acted upon by the council. At that point it became unambiguous that the offer it had made previously had been accepted. The information which had been agreed should have been disclosed to the complainant at that point.

46. The Commissioner also considers that the council could have contacted the complainant on 23 August 2017 when it received her confirmation and asked her if responding to her acceptance of the previous proposal would also resolve the new request of the same date.
47. The Commissioner considers that the council is not in a position to claim that the request is a repeated request and the previous request had been dealt with when it had not in fact completed the earlier request by disclosing the information which it had offered to the complainant.
48. The Council's failure to provide the information which it had offered, and the complainant had accepted, led the complainant into remaking the request for information in the wider terms in which she had couched the initial request. However the basis of this was the council's refusal to provide information it had already said could be disclosed to her. Her new requests began with the words:

"A number of months ago I submitted a request for a list of strategies leading the work of the Council. Many months later after being offered a solution which was then apparently withdrawn and going round in circles, I have received nothing and rather than once again go to the ICO I will reissue the request."
49. It seems clear to the Commissioner that this is a case where further communication between the parties may have resolved the request fairly simply, thereby avoiding the need for a complaint to the Commissioner. The council had offered information which it had subsequently not provided, leaving the complainant with no real option but to make a new request for information.
50. Additionally the council had said in its response of 30 May 2017 that it was in the process of collating information in order to publish this, but it had not done so at the time that she remade the request on 23 August 2017. This potentially explains why the wider request was remade; it would catch any information already collated by the council in preparation for publishing the information.

The Commissioner's decision

51. The Commissioner's decision is that the council was not correct to apply action 14(2) to the information.
52. She also considers that the council is under a duty to provide the information which it offered to the complainant on 30 May 2017, as accepted by the complainant on 22 and 23 August 2017.

Right of appeal

53. 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

54. 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.
55. 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

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