

Your ref:
My ref: 4030460

Mr Paul Waller
By email: request-540964-4da986ba@whatdotheyknow.com

25 March 2019

Dear Mr Waller

**FREEDOM OF INFORMATION ACT 2000 ("FOIA") – INTERNAL REVIEW – REF:
4030460**

I refer to your request for an internal review dated 28 December 2018.

Your request for an internal review has now been considered and I am able to provide you with the outcome. In undertaking this review, I have considered your request for information afresh and in doing so I have considered the following items of correspondence relevant to your request for review:

1. Your request for information received on 27 December 2018
2. The Council's request for clarification dated 28 December 2018
3. Your request for an internal review received on 28 December 2018
4. The Council's request for a refined request dated 3 January 2019
5. The Council's email refusing your information request and acknowledging your request for internal review dated 27 February 2019

I have set out below a brief chronology and then shall deal with the points relevant to my review of this matter.

Chronology

On 27 December 2018 you made the following request:

*Please list all emails received and transmitted - between W.C.C. and
"admin@dunchurchpc.org"*

To include: date, subject, sender, recipient.

On 28 December 2018, the Council requested clarification of your request, stating:

*at this stage your request is too vague and would be expected to exceed the 18
hours of officer time we are allowed to apply as a limit when considering a request
made under the Freedom of Information Act 2000. Therefore we need further details
from you in order to identify and locate the correct information.*

Jan Cumming
Solicitor

Tel: 01926 736304
Fax: 01926 413704
Email: jancumming@warwickshire.gov.uk
www.warwickshire.gov.uk/wls

To help us consider your request I would be grateful if you would advise the area(s) of Warwickshire County Council business that your request refers to. We also need you to specify a time period over which you want us to search for these communications.

Your request for an internal review was received on 28 December 2018. It stated as follows:

I am writing to request an internal review of Warwickshire County Council's handling of my FOI request 'Email communication to and from admin@dunchurchpc.org'.

Email management systems allow for easy filtering to find information.

Please reconsider your response.

If you cannot change your position, please detail the email handling and storage system in use when justifying your answer.

On 3 January 2019, the Council again requested clarification of your request, stating:

Please be advised that our e-mail to you of 28 December was not a decision or refusal notice, but was us providing you with an opportunity to refine your request in order for us to try and find any particular information that you are seeking.

This is because, as it stands, your request is too wide ranging and would be subject to refusal on time/cost grounds.

I have now received advice from our IT section concerning our e-mail search capabilities. They have confirmed that they would not be able to conduct a reliable central search for e-mail correspondence as requested.

The main issue that we have is that, with the e-mail suite that is typically used by the council, the logs that we would use to conduct a central search across all council e-mail addresses are held for a maximum of 30 days only. Therefore we would not be able to identify communication from the council to/from "admin@dunchurchpc.org" prior to the beginning of December 2018 using this suite.

While some staff are on a different suite these only account for 15% of Warwickshire County Council (WCC) staff, and a search would not necessarily provide a reliable and useable report.

The only reliable method of identifying communication from the council to/from "admin@dunchurchpc.org" would be to undertake a search of individual staff e-mail accounts, of which the council has over 6000 - hence our need to seek a refinement of your request.

Therefore I would ask you again to provide some more details on the particular information that you are looking for in order for us to consider your request. If you can provide us with a time frame, the relevant council service area, any specific issue that you are looking for information on - or communication from/to a specific WCC staff member - we will consider your request further.

If we have not received this clarification from you by 23 February 2019 we will formally refuse your request, and will then forward the request for an Internal Review as asked for in your e-mail.

On 27 February 2019, not having received any refined request, the Council refused your request on the grounds that it would exceed the appropriate costs limit under Section 12 of the FOIA and referred it for internal review in accordance with your request of 28 December 2018.

Application of section 12 of the FOIA – appropriate costs limit

Section 12 of the FOIA provides 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.

Section 12 provides (relevantly):

(1) 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.

...

(3) In subsections (1) and (2) "the appropriate limit" means such amount as may be prescribed, and different amounts may be prescribed in relation to different cases.

The appropriate limit is £450: Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulation 2004 ("**Fees Regulation**"). The cost of complying with your request is the cost of staff time which is calculated at £25 per hour in accordance with the Fees Regulation. This means that the appropriate limit will be exceeded if it would require more than 18 hours' work.

I have investigated whether it is possible for the Council's ICT team to search a central log of emails sent to the Council by a particular email account or sent by the Council to a particular email account, in this case admin@dunchurchpc.org (the "**email address**").

The Council has over 6,000 members of staff and uses Google as its email provider. The central log for GSuite Basic accounts can only be searched for the last 30 days. Some Council staff hold GSuite Business accounts which can be searched for a longer period as they are stored in Google Vault. Until 31 December 2018, around 15% of users were users of GSuite Business accounts. Since 1 January 2019, this has been reduced to around 5.6% (the contract having changed to fewer GSuite Business licences).

This means that the Council can search centrally the accounts of only 5.6 - 15% of users for emails sent to or from the email address for the period December 2013 until the present. The Council can search all of the Council's emails for only the last 30 days.

The only way that the Council can search beyond the last 30 days for all Council staff is to ask each member of staff to search their own inboxes and sent items for emails sent or received. I have timed a colleague reading an email requesting that he search for emails to and from the email address, searching his email inbox and sent items for emails to and from the email address, and drafting an email back to me stating that he had none. This took around two and a half minutes. Assuming it would take two - three minutes for each of the 6,000 staff members to search their inbox and confirm whether or not they had any emails, it would take 200 - 300 hours just to commence the process before forwarding the results on and reviewing the results for scope and possible exemptions. As this would require more than 18 hours' work, the appropriate limit would be exceeded and the Council may refuse to deal with your request.

There may be ways that you could refine your request to see if it can be dealt with under the appropriate limit. For example, if your interest related to a particular area of the Council

(such as traffic safety, parking, street lighting or planning for example) you could make a request for emails sent or received by that particular area to narrow the list of potential senders or recipients.

However, there is a risk that your refined or narrowed request might also be refused on the same basis. I am conscious that the Information Commissioner's Office (ICO) states that authorities should "*not advise the requester on the wording of a narrower request but then refuse that request on the same basis*". Depending on the number of emails found in your particular area of interest, the appropriate limit might still be exceeded.

Further, there is also a risk that some or all of your refined request might be refused on other grounds, in particular to protect other people's personal data under section 40(2) of the FOIA. You have requested the names of the recipients/senders of the emails, the dates, time and the subjects. Disclosing the names of the senders or recipients might be unfair to those individuals and therefore breach data protection principles and be exempt under section 40(2) of the FOIA. Depending on the numbers of individuals who use the email address concerned, a record of emails sent and received by the email address including times, subjects and senders/recipients might itself breach data protection principles and be exempt under section 40(2) of the FOIA.

Because of the risk that any narrowed request might still be refused, I have decided to uphold the decision under internal review and refuse your request for information rather than invite you to refine or narrow the scope of your request.

However, you may submit a refined request to the Council as a new request at any time. If you wish to refine your request, please submit it in the usual way and the Council will be happy to consider it.

Conclusion

I have found that the Council is not obliged to comply with your request for information because the cost of complying with your request would exceed the appropriate limit in accordance with section 12 of the FOIA.

Next Steps

I do hope that this internal review addresses the issues you have raised.

If you are not satisfied with the outcome of the review you may appeal to the Information Commissioner's Office at the following address:

Compliance Team (Complaints)
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Yours sincerely

Jan Cumming

