

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 May 2019

Public Authority: Derby City Council
Address: The Council House
Corporation Street
Derby
DE1 2FS

Decision (including any steps ordered)

1. The complainant has requested any correspondence held by the council relating to child sexual exploitation and grooming gangs over the last three years between the council, the local social services department, the Home Office, the police and local public schools. The council refused to confirm or deny whether it holds any relevant information on the basis that the exemptions in section 31 (law enforcement), and section 23 (information provided by security bodies) applied. On review it upheld its position. However, during the Commissioner's investigation the council confirmed to the complainant that it holds relevant information but applied section 12 to refuse the request (appropriate limit).
2. The Commissioner's decision is that the council was correct to apply section 12 to withhold the information.
3. The Commissioner does not require the council to take any steps.

Request and response

4. The Commissioner's decision notice in case FS50770168¹ refers to a similar request for information to the request under consideration in this case. This referred to a request for information dated 1 May 2018 for:

"The information request (emails, faxes, letters etc) that I am making referencing to will be anything about the CSE and grooming gangs over the last 10 years in Derby between Derby Council and the Home Office, Derby Council and the local social services, Derby Council and local public schools, Derby Council and Barnado's (charity) also the NSPCC, finally – Derby Council and [name redacted] MP, Dame [name redacted], [name redacted], [name redacted], [name redacted], [name redacted] plus members of parliament before 2015."

5. In response to the request the council provided some information relating to operations carried out in 2016, but refused to provide further information on the basis that section 12 of the Act applied (appropriate limit). The Commissioner subsequently upheld that decision.

6. On 24 July 2018, the complainant wrote to the council and requested information in the following terms:

"The information request (emails, faxes, letters etc) that I am making referencing to will be anything about the CSE/'Grooming Gangs' (this involves grooming young girls, giving them alcohol/drugs in some cases, then sexually assaulting them or even rape, also results in passing girls over to another individual or group which results in sexual assault and/or rape) in the last 3 years in Derby between Derby Council and the Home Office, Derby Council and Derby's local social services, Derby Council and Derbyshire Police as well as Derby Council and local public schools,

NB. This request does not request information referring to open/pending cases of CSE, just communications of staff between the parties stated above. Despite this [sic] understand if those communications I am requesting are subject to redactions".

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2019/2614499/fs50770168.pdf>

7. The council responded on 31 August 2018. It refused to confirm or deny whether any information is held falling within the scope of the request on the basis that the exemptions in sections 23 and 31 applied.
8. Following an internal review the council wrote to the complainant on 15 November 2018. It upheld its decision.

Scope of the case

9. The complainant contacted the Commissioner on 15 November 2018 to complain about the way his request for information had been handled. He argued that the council was not correct to apply the relevant exemptions to refuse to confirm or deny whether any information is held falling within the scope of his request.
10. The Commissioner wrote to the council on 20 March 2019 and asked the council to reconsider its response to the request. The council did so, and it subsequently wrote to the complainant on 15 April 2019 confirming that it holds relevant information. However it applied section 12 of the Act in order to refuse the request as it estimated that providing a response would exceed the appropriate limit.
11. The Commissioner therefore telephoned the council on 24 April 2019 and asked it to confirm that it was no longer relying upon the neither confirm nor deny provisions of section 31(3) and 23(5) as it had now informed the complainant that it holds information. The council confirmed that it wished to withdraw its reliance upon these exemptions.
12. The Commissioner therefore considers that the complaint is that the council was not correct to apply section 12 to refuse the request for information.

Reasons for decision

Section 12 – cost exceeds appropriate limit

13. Section 12 of the FOIA states that a public authority does not have to comply with a request for information if it estimates that the cost of complying with the request would exceed the appropriate limit.
14. The Freedom of Information and Data Protection (Appropriate Limit and Fees) regulations 2004 (“the Fees Regulations”) sets the appropriate limit at £450 for the council.

15. A public authority can estimate the cost of complying with a request using a figure of £25 per hour of staff time for work undertaken to comply with a request in accordance with the appropriate limit set out above. This equates to 18 hours of officer time. If a public authority estimates that complying with a request may cost more than the cost limit, it can consider time taken in:
 - (a) determining whether it holds the information,
 - (b) locating a document containing the information,
 - (c) retrieving a document containing the information, and
 - (d) extracting the information from a document containing it.
16. Tribunal decisions have made it clear that an estimate for the purposes of section 12 has to be 'reasonable' which means that it is not sufficient for a public authority to simply assert that the appropriate limit has been met; rather the estimate should be realistic, sensible and supported by cogent evidence.
17. In evidence as to whether it has correctly applied section 12 of the FOIA in this case, the council provided a detailed estimate of the time/cost it would take for it to provide the information.
18. The council provided a description of the work it has estimated it would require to respond to the request to the Commissioner.
19. It considered that the records of 6 senior officers at the council would need to be searched in order to locate relevant information.
 - Director of Children's Integrated Services
 - Strategic Director for People Services
 - Head of Children's Quality Assurance
 - Acting Head of Communications
 - Head of Social Care Fieldwork
 - Head of Specialist Services
20. It confirmed that in addition to these senior officers other officer's records would also need to be searched.
21. It said that it initially carried out checks on the time it would take to search the records of one officer, the Head of Children's Quality Assurance.

22. As the estimate for this individual alone exceeded the appropriate limit, it had not therefore found it necessary to carry out checks of the other individuals it identified as potentially holding relevant information.
23. The sampling exercise for the Head of Children's Quality Assurance had provided the following information:
 - The files are held in electronic format.
 - It confirmed that it had carried out searches of Email inboxes, mail outboxes and shared network files.
 - It identified the key words it had used to carry out searches of the electronic files for relevant information.
 - It said that the searches had identified at least 370 records as potentially relevant to the request for information. 270 were held by the Head of Children's Quality Assurance and 100 are held by another individual.
 - The Head of Children's Quality Assurance carried out a sampling exercise by looking at 10% of the records which she held and determined that it took approximately 3 minutes to open and review each record.
 - It calculated therefore that 370 multiplied by 3 minutes would equal 1110 minutes, which equals a total of 18.5 hours. 18.5 hours at £25 per hour would equal £462.50.
 - However it considered that the same searches, and the same issues would also apply for 6 other senior managers and numerous staff in their teams, pushing the time and cost to respond to the request well over the appropriate limit.
24. It said that it estimated that 6 senior managers and numerous staff in their team would need to be diverted from their daily work priorities in order to deal with the request.
25. It clarified that even limiting its searches to the officers stated it was clear that responding to the request would exceed the appropriate limit. It argued that if it took into consideration information across the whole of the service areas it would clearly be the case that responding to the request would exceed the appropriate limit.
26. From the estimate provided above the Commissioner accepts that it would take the council over the appropriate limit of 18 hours to respond to the request for information.

27. Even if the council were able to review each record within an average time of 2 minutes this would still take approximately 9 hours to complete the work for the 270 files held by the Head of Children's Quality Assurance. Extrapolating this across the other 6 senior officers it has indicated would hold relevant records, responding would significantly exceed the appropriate limit.
28. On consideration of the above, the Commissioner is satisfied that responding to the request would exceed the appropriate limit of 18 hours of officer time. She has therefore decided that the council was correct to apply section 12 of the FOIA in order to refuse the request.

Section 16 – Advice and Assistance

29. Section 16 of the FOIA imposes an obligation on public authorities to provide advice and assistance to a person making a request, so far as it is reasonable to do so. Section 16(2) states that a public authority is to be taken to have complied with its section 16 duty in any particular case if it has conformed to the provisions in section 45 of the Code of Practice² in relation to the provision of advice and assistance.
30. Paragraph 14 of Section 45 of the Code of Practice states that where a public authority is not obliged to comply with a request because it would exceed the appropriate limit to do so, then it:

"...should consider providing an indication of what, if any, information could be provided within the cost ceiling. The authority should also consider advising the applicant that by reforming or refocusing their request, information may be able to be supplied for a lower, or no, fee."

31. The council has explained to the Commissioner that it is unable to provide advice and assistance to the complainant as to how the request could be refined. It said that regardless of any changes which might be made to the scope of the request it would still require the council to search through the records it has identified above.
32. The council explained to the Commissioner that this is because the records within the investigation files cross over different years. Even if the request was reduced to one of the years, it would still need to

2

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/235286/0033.pdf

review all of the records in order to try to identify the time periods for each of them. It said that this is because the records are not saved by the year they were created, but saved collectively in their investigation files. The council also confirmed that records are not saved/classified as open/pending or closed.

33. In her decision notice on case, FS50770168 the council provided similar arguments which are considered further within the notice. The files falling within the scope of this request include files dating back to 2015 and so the same arguments would apply in the case of this request.
34. The council is not therefore able to reduce the time which would be required to respond to the request by reducing the number of years which the request covers.
35. The Commissioner is therefore satisfied that the council is unable to provide advice and assistance to the complainant for him to be able to refine his request.
36. The Commissioner has therefore decided that the council's failure to advise the complainant as to how to narrow the scope of the request to within the appropriate limit is not a breach of section 16 in this instance.

Section 10 – Time for compliance with request

37. Section 1(1)(a) requires authorities to inform requestors in writing whether they hold information of the description specified in the request.
38. Section 10(1) of the Act requires that public authorities must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt (other than in limited circumstances which do not apply here).
39. The request for information was made on 24 July 2018. Due to its initial reliance upon the exemptions in section 23 and 31 to neither confirm nor deny whether information was held, the council did not confirm to the complainant whether it held information until it notified him of its application of section 12 on 15 April 2019.
40. The Commissioner has therefore decided that the council failed to comply with the requirements of section 1(1)(a) within 20 working days as required by section 10(1).

Right of appeal

41. 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

42. 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.
43. 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

Andrew White
Group Manager
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Water Lane
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SK9 5AF