

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 August 2020

Public Authority: City of Bradford Metropolitan District Council

Address: First Floor
Britannia House
Bradford
BS1 1HX

Decision (including any steps ordered)

1. The complainant has requested information from Bradford Metropolitan Council ("the Council") in relation to investigations into school placements over two academic years.
2. The Commissioner's decision is that the Council is entitled to rely on section 12(1) of the FOIA (cost of compliance) as its basis for refusing to comply with the request. It has also complied with its duty to provide advice and assistance in line with the requirements of section 16 of the FOIA.
3. The Commissioner does not require the Council to take any steps as a result of this decision notice.

Request and response

4. On 3 January 2019, the complainant wrote to the Council and requested information in the following terms:

"The request is for how many investigations the specific council department have carried out in relation to school placements. I would like to know how many have occurred across the past two years in each academic year."

5. The council responded on 21 February 2019 and denied holding the requested information.
6. The complainant requested an internal review on 21 February 2019. The Council provided this on 26 April 2019, following communication with the Commissioner, and maintained its original position.
7. Following an investigation by the Commissioner, a decision notice was issued on 2 October 2019. The decision notice¹ required the council to issue a fresh response to the request, which did not rely on the information not being held, and required it to explain its address check procedure in more detail, to establish if a more refined request could be submitted.
8. The Council provided two further responses to the complainant, following the decision notice being issued. These were issued on 23 October 2019 and 25 October 2019.
9. In its responses, the Council indicated that some address checks would have been carried out and that the requested information was, therefore, held. However, it was unable to retrieve the information because it does not keep a separate list of the number of address checks that have been made and the information could only be retrieved by accessing the individual file of every pupil in the authority.

Scope of the case

10. The complainant contacted the Commissioner on 25 October 2019, to advise that they were unhappy with the Council's response following the decision notice. The Commissioner wrote to the Council to obtain its detailed reasoning for its position.
 11. Following some delays to the investigation, which occurred for a variety of reasons, the Council provided a detailed response to the Commissioner on 24 July 2020. It confirmed that it was relying on section 12(1) of the FOIA – cost of compliance exceeds the appropriate limit – to refuse the request.
 12. The Commissioner considers that the scope of the investigation is to determine whether a reasonable estimate of the cost of complying with
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¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2019/2615946/fs50832372.pdf>

the request would exceed the appropriate limit, as defined in this notice. She has also considered whether the council complied with its duty to provide advice and assistance under section 16 of the FOIA.

Reasons for decision

Section 12 – Cost of compliance exceeds the appropriate limit

13. Section 12(1) 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.
14. 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 university.
15. 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.
16. 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.
17. 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 in the case of *Randall v Information Commissioner & Medicines and Healthcare Products Regulatory Agency* EA/2007/0004, the Commissioner considers that any estimate must be "*sensible, realistic and supported by cogent evidence*".² The task for the

² <http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i136/Randall.pdf>

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.

The complainant's position

18. The complainant explained that they considered that the Council would hold information relating to the amount of investigations that it has completed regarding school placements over a two year period. Specifically, their request related to the number of checks which were carried out into the possible use of fraudulent addresses when a child applied for a school place.
19. The complainant argued that they found the information in the fresh responses from the Council, following the decision notice being issued, to be inadequate as it did not provide anything of use in relation to the request.

The Council's position

20. The Council explained that, following the decision notice being issued, it provided two responses to the complainant, explaining its address check procedure in more detail.
21. It advised that it explained to the complainant, in more detail, about its application and address check processes, that there is no facility to search records for information that may be connected to address checks, that the Council does not have a formal list of address checks and that there is no requirement upon the Council to retain the requested information in the form of a specific list or number.
22. The Council also explained additional information regarding its search process on its system. It indicated that information about an address check, or investigation, would be recorded in a "free text" box on any individual record. However, it is not possible to carry out a search for information that has been added to the free text boxes.
23. Following contact with the Commissioner, the Council provided a sampling exercise to demonstrate how long it would take to retrieve the requested information.
24. The Council carried out a search of a random selection of 10 records to check for information contained in the free text boxes. It provided the Commissioner with a breakdown of the sampling exercise, which shows that it took 16 minutes and 30 seconds to complete.

25. It explained that the total number of pupils within the two year period is 8065. The Commissioner therefore understands that its position is that it would take in excess of 220 hours to search every record in order to be able to obtain the total number of address checks carried out in the relevant period.

The Commissioner's position

26. When dealing with a complaint to her under the 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.
27. 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.
28. The Commissioner has taken into account that the requested information may potentially relate to any number of children from a cohort of 8065. It is evidently only by checking every record that the Council could retrieve the number of checks that had been carried out, such as has been requested by the complainant.
29. From the evidence that she has seen during her investigation, the Commissioner is satisfied that the sampling exercise demonstrates that it would take more than the permitted time to locate the requested information.
30. The Commissioner concludes that the Council's estimates are reasonable and are supported by cogent evidence.
31. The Commissioner is therefore satisfied that the Council correctly refused to comply with the request under section 12(1) of the FOIA.

Section 16 - advice and assistance

32. Section 16 of the FOIA states:

"(1) It shall be the duty of a public authority to provide advice and assistance, so far as would be reasonable to expect the authority to do so, to persons to propose to make, or have made, requests for information to it.

(2) Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case."

33. The Commissioner's normal approach is that, where a public authority refuses a request under section 12(2) of the FOIA, section 16(1) creates an obligation to provide advice and assistance on how the scope of the request could be refined or reduced to avoid exceeding the appropriate limit.
34. In this case, the Commissioner is satisfied that, while the Council was unable to provide the complainant with the exact number that she has asked for, it provided her with explanations regarding its school application and address check processes, and has explained that the information is not held in discrete form.
35. She is satisfied that it would not have been practicable to recommend that the complainant could narrow the scope of her request, since it would not have altered the requirement for the Council to search through a large number of individual records.
36. The Commissioner is satisfied that the Council has met its obligations under section 16, and does not require it to take any steps.

Right of appeal

37. 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@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

38. 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.
39. 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

Phillip Angell
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