

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 February 2024

Public Authority: Oxfordshire County Council
Address: County Hall
New Road
Oxford
OX1 1ND

Decision (including any steps ordered)

1. The complainant requested various information from Oxford County Council ('the Council') in respect of siblings subject to an LAC status (Looked After Children) who had been separated. The Council provided some information but confirmed that it did not record the remaining detail the complainant had requested and cited section 12 (cost of compliance) FOIA to refuse the request. The Commissioner's decision is that the Council was not entitled to rely on section 12 FOIA in respect of this request for information. The Commissioner has also recorded a breach of section 17(5) due to the Council's failure to provide its response within the statutory timeframe.
2. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response which does not rely on section 12 FOIA.
3. 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

4. On 2 May 2023, the complainant wrote to the Council and requested the following information:
 - “1. In the last 5 years, can you outline what number of siblings subject to an LAC status were separated from living together after the LAC status started (I.E placed together and then separated at a later stage).
 2. Of the siblings being separated, what was the main concern / reason. If it’s easier to characterise the reasons, can you please use the 4 main categories used in Child Protection (physical abuse, emotional abuse, sexual abuse and neglect).
 3. Of the above, what number of cases were overseen by [named individual] Team Manager, Children We Care For ...”
5. The public authority responded on 20 June 2023. It provided information to answer item one of the request. In respect of items two and three, the Council informed the complainant that it does not record data that would provide the level of detail that they had requested.
6. Following an internal review the Council wrote to the complainant on 18 September 2023. It further explained its position in respect of items two and three of the request, and confirmed that it should have cited section 12 FOIA in its original response.

Scope of the case

7. The complainant contacted the Commissioner on 22 August 2023 to complain about the way their request for information had been handled.
8. The complainant was not satisfied with the Council’s decision to refuse the request on the basis of section 12 FOIA or with the delay at both the original response and internal review stages.
9. The scope of the Commissioner’s investigation is to consider whether the Council was entitled to rely on section 12 FOIA to refuse to comply with the request, and its procedural handling of the request itself.

Reasons for decision

Section 12 – cost of compliance exceeds the appropriate limit

10. Section 12 of the FOIA states that:

“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.”

11. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the ‘Regulations’) sets the appropriate limit at £450 for the public authority in question. Under these Regulations, a public authority can charge a maximum of £25 per hour for work undertaken to comply with a request. This equates to 18 hours work in accordance with the appropriate limit set out above.

12. A public authority is only required to provide a reasonable estimate or breakdown of costs and in putting together its estimate it can take the following processes into consideration:

- (a) determining whether it holds the information,
- (b) locating the information, or a document which may contain the information,
- (c) retrieving the information, or a document which may contain the information, and
- (d) extracting the information from a document containing it.

13. The Council confirmed to the complainant that children change placements for a range of reasons and on many occasions, completely unrelated to the four headings they had identified. It further stated that in order to extract this information, it would be necessary to view nearly every child’s record. It added that as there were 46 children identified in response to item one of their request, this would necessitate reviewing a minimum of 92 records.

14. The Council further stated that without a clearly identified data source, each record would need to be opened and reviewed to source the detail and pointed out that this may not be the same for all children in a sibling group.

15. It estimated that this would take approximately 15 to 20 minutes per child record which would equate to a minimum of between 23 and 31 hours in total.

16. The Council informed the Commissioner that its estimate was based on 'previous experience' of carrying out such a task and confirmed that it did not conduct a sample exercise.
17. The Council further informed the Commissioner that most moves would not specifically relate to the four safeguarding categories identified in the request and added that in order to understand the actual reason a sibling was moved from a placement it would need to refer to the narrative in the child's record. It confirmed that historically, it has not followed this process with the same level of detail as it does now.
18. In response to the Commissioner's queries regarding the size and type of the typical record, the Council confirmed that every child will have an electronic record, with each record varying in size, but typically containing a vast amount of detail and recordings relating to their history.
19. The Council further informed the Commissioner that each electronic record is held on the Council's case management system. It added that there are hundreds, and in some cases thousands of pages of information that would need to be reviewed in order to extract the information for one child. It further stated that the case management system does not lend itself to easily extract and send information to third parties via email.
20. The Council informed the Commissioner that the way it uses and holds this detail has improved significantly and confirmed that records dating back to the beginning of the year (2023) would lend themselves to this audit and scrutiny. It further informed the Commissioner that if the complainant was to reduce their request to cover this year alone it would be easier to extract.

The Commissioner's conclusion

21. The Commissioner accepts that the Council would need to view individual child records to extract the information the complainant has asked for in items two and three of their request. The Commissioner also accepts that based on the figure of 46 sibling groups, that its estimated minimum number of 92 records is reasonable. However, the Commissioner notes that the Council's estimate of 15 to 20 minutes per record is not based on a sample exercise but on unspecified 'previous experience'. He would also point out that the Council failed to undertake the requested sample exercise.
22. The Commissioner wishes to highlight that whilst 15 to 20 minutes per record may indeed be a reasonable estimate, he has no way of knowing whether it is. He does not know what an individual child record looks

like, how it is structured and where within the record the required information would be found. The Commissioner cannot accept an estimate on face value, he needs to be satisfied that it is reasonable. He therefore has no option but to conclude that the Council has failed to demonstrate that compliance would exceed the appropriate limit as specified in paragraph 11 of this notice and accordingly, that the Council was not entitled to rely on section 12 FOIA to refuse to comply with items two and three of the request.

23. The Commissioner would also point out that had he concluded that section 12 was engaged, he would have recorded a breach of section 16 (duty to provide advice and assistance) FOIA for its failure to notify the complainant that it could have provided the requested information for 2023.

Procedural matters

Section 17 – refusal of the request

24. Section 17 of the FOIA concerns the refusal of the request and section 17(5) states that:

“A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.”

25. The Commissioner notes that the request was received on 2 May 2023 yet the Council did not issue its full response until 21 June 2023. This is outside of the required 20 working days specified under section 10(1) FOIA. The Commissioner has therefore recorded a breach of section 17(5) FOIA.

Other matters

Internal review

26. The Commissioner acknowledges that it is not a formal requirement for a public authority to conduct an internal review under the FOIA. However, the Section 45 Code of Practice recommends that public authorities do undertake an internal review and that it should be done promptly. The Commissioner has also produced guidance in relation to this matter which recommends that it takes no longer than 20 working

days in most cases, and in exceptional circumstances, no longer than 40 working days.

27. The Commissioner notes that the complainant requested an internal review on 26 June 2023. However, the Council did not send the complainant details of its internal review until 18 September 2023.
28. The Commissioner expects the Council to deal with requests for an internal review within the recommended timescales in future.

Right of appeal

29. 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

30. 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.

31. 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

Catherine Dickenson
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF