

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 29 June 2016

**Public Authority:** Cornwall Council  
**Address:** County Hall  
Treyew Road  
Truro  
Cornwall  
TR1 3AY

#### Decision (including any steps ordered)

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1. The complainant made a number of requests for information relating to complaints made about care providers working with the council. The council responded to the majority of requests however it refused a number and applied section 12 (exceeds appropriate limit).
2. The Commissioner's decision is that the council has correctly applied section 12 to the requests.
3. The Commissioner does not require the council to take any steps.

#### Request and response

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4. On 1 July 2015, the complainant wrote to council and requested information in the following terms; (only the relevant sections of the request have been included):

*Cornwall Council Policy and Procedures*

*"7. How many times have Council employees been arrested in the last 6 years:*

*8. How many times has the council adopted its own policy in referring itself to the CQC; censuring itself and/or balancing its obligations for confidentiality as opposed to the need to protect any service user; As per correspondence, "obligations for confidentiality as opposed to the need to protect any service users" has been clarified as meaning*

*what Cornwall Council's obligations to protect confidential information (regardless of whether a service user or any other person.*

*Spectrum*

- 1. How many complaints have been made against Spectrum by Cornwall Council, third parties and whistle-blowers, on a year on year basis over the last 10 years (2005-present);*
  - 2. From these, how many have been upheld;*
  - 3. From these how long has each complaint taken from being made to concluded;*
  - 5. From these how many have been upheld*
  - 6. From these how long has each taken from being made to being concluded;*
  - 7. From these what sanctions were imposed whilst the complaints were investigated? "*
5. The council responded on 27 August 2015. It provided some information and asked the complainant to clarify other parts of his request. However it did not respond to the above on the basis that section 12 was applicable.
  6. Following an internal review the council wrote to the complainant on 14 January 2016. It maintained its position that providing the above information would exceed the appropriate limit.

**Scope of the case**

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7. The complainant contacted the Commissioner on 25 January 2015 to complain about the way his request for information had been handled.
8. The Commissioner considers that the complaint is that the council was wrong to apply section 12 to the information.

**Reasons for decision**

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9. Section 12(1) provides 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."*

Section 12(2) provides that –

*“Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.”*

Section 12(3) provides that –

*“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.”*

10. The appropriate limit in this case is £450, as laid out in section 3(2) of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the fees regulations). This must be calculated at the rate of £25 per hour, providing an effective time limit of 18 hours' work.
11. When estimating whether confirming or denying if it holds the requested information would exceed the appropriate limit, a public authority may take into account the costs it reasonably expects to incur in determining whether it holds the information. The estimate must be reasonable in the circumstances of the case. It is not necessary however to provide a precise calculation.
12. When estimating whether responding to a request will exceed the appropriate limit, Regulation 4(3) states that an authority can only take into account the costs it reasonably expects to incur 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.
13. The four activities are sequential, covering the retrieval process of the information by the public authority.
14. The council does not need to consider each part of the request separately in cases where the requests relate to the same, or a similar matter. The overall costs of the response can then be aggregated in order to reach an estimate of the time it would take to respond as a whole. Having considered the nature of the requests in this instance the Commissioner is satisfied that the requests are from the same person

and relate to similar/the same matters. He therefore considers the overall time to respond to the requests can be aggregated for the purposes of section 12.

15. Where a public authority finds that some parts of the request could clearly be provided within the appropriate limit then it is under a duty to consider providing this, and to clarify with complainants which sections they would like disclosed (if one of a number might be disclosed within the appropriate limit). This falls under the help and assistance requirements of section 16 of the Act. This is considered further below.
16. In this case however the council responded to the requests where it was able to, and only applied section 12 to the parts of the request outlined above.
17. The council confirmed that it holds the information requested by the complainant. It was therefore able to determine and confirm that it holds relevant information in line with the requirements of section 1(1)(a) of the Act without exceeding the appropriate limit.
18. The council said that its problem is that it is not able to locate, retrieve and extract the information within the appropriate limit for the remaining information.

#### Questions about Cornwall Council

Question 7 - The council said that responding to this part of the request would require it to individually review the employee files of 9750 employees, which it considers would take 5 minutes for each file. This would require a total of 812.5 hours in total to review the files.

The Commissioner notes that even with a more conservative estimate of 1 minute per file the overall time to respond to this part of the request would be 162.5 hours.

Question 8 – The council clarified that the information is held on the Council's Information Security Incident Reporting Mechanism but there is no specific code held on the system which would allow it to identify and extract the information requested from all of the information other held on the system. It said that it would therefore need to interrogate the system and estimates that the cost of complying with this would exceed £450 or 18 hours on its own. It said that it would be impossible to give a narrower estimate because only some of its internal services are regulated by the Care Quality Commission (the CQC). It would therefore have to review all of its records of its internal services to

identify any referrals that were made to the CQC. It did however clarify that the information may be available from the Care Quality Commission should the complainant wish to make a request to this body.

#### Questions about Spectrum

19. Question 1-3 – The council clarified that complaints made in relation to a provider are filed on the service user record, and therefore dependent on who made the complaint and not what provider organisation the complaint is about. There is no central database that holds the information requested and therefore a manual trawl would be required. The council argued therefore that it would take in excess of 8 weeks to obtain the information from its archives and to know the residents names over the last 10 years. For example at any one time; there could be 1,800 service users receiving adult care funded residential care services from Cornwall Council. This does not include other authorities and health care professions that place individuals with a provider. It would not necessarily know the people placed by other commissioning authorities.
20. Questions 4 -7 - The council outlined that there were 834 complaints in the financial years between 1 April 2005- 31 March 2014. It said that it would need to search each file individually to obtain the relevant information, which it estimated would take at least 10 minutes per file. It estimated that this would take 139 hours to respond.
21. Again, on the basis of it taking a more conservative estimate of 1 minute per file (based upon nothing more than the smallest likely amount of time to likely retrieve, review and extract relevant information from a file), this would take would take 13.9 hours to complete. Whilst this falls within the appropriate limit this 'guesstimate' is significantly lower than the 10 minutes submitted by the council and does not take into account the varied information requested in parts 4 - 7 of the request. The Commissioner accepts that it would be extremely likely to require more than 1 minute to extract and record the information for the purposes of responding to each request. At 1 minute 30 seconds per file the time to complete the work would exceed 18 hours.
22. Taking this into account the Commissioner considers the councils estimate that completing these requests would exceed the appropriate limit.

### The Commissioner's view

23. The Commissioner has considered the above estimates. He notes that the council has already provided a significant amount of information to the complainant in response to his overall requests, and that it has only refused individual requests where it argues that it has not been able to respond without exceeding the appropriate limit.
24. The Commissioner notes that the requests involve a significant amount of files which the council argues would need to be reviewed manually, or in the case of question 8 (regarding the council), would require a significant degree of interrogation of its database in order to identify and separate the relevant files from other files for the purposes of responding to the request.
25. The Commissioner is satisfied that the council has provided a cogent explanation for why compliance with the requests would exceed the appropriate cost limit. He is satisfied by its explanation that it would be only be able to gather the requested information using the methods it has said it would need to undertake. Given the number of files this would entail the Commissioner considers that it is evident that to do so would be a time consuming process.
26. For these reasons, the conclusion of the Commissioner is that the cost estimate made by the council was reasonable. The council was therefore correct to apply Section 12(1) was not obliged to disclose the requested information in response to the request.

### Section 16

27. Section 16(1) of the FOIA provides that all public authorities are under a duty to provide advice and assistance to any person who has made or who intends to make an information request to it. The Commissioner's published guidance on section 12 sets out the following minimum advice and assistance that a public authority should provide to a requester when refusing a request on cost grounds:
  - either indicate if it is not able to provide any information at all within the appropriate limit; or
  - provide an indication of what information could be provided within the appropriate limit; and
  - provide advice and assistance to enable the requester to make a refined request.

28. The council clarified that in light of the estimates it was not able to suggest a narrowed request for it to provide further information to the complainant. In effect it provided the information it was able to under the Act, and has only refused the remaining parts of the request where responding to any one part further would itself exceed the appropriate limit.
29. In view of this, the Commissioner's finding is that the council complied with its duty to provide advice and assistance.

## Right of appeal

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30. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

31. 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.
32. 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**  
**Information Commissioner's Office**  
**Wycliffe House**  
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**SK9 5AF**