

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 June 2016

Public Authority: Hertfordshire County Council

Address: County Hall
Pegs Lane
Hertford
Hertfordshire
SG13 8DQ

Decision (including any steps ordered)

1. The complainant has requested information relating to referrals to Hertfordshire Children's Services by Health Visitors. The Commissioner's decision is that Hertfordshire County Council has correctly applied the exemption at section 12 of the FOIA where the cost of compliance exceeds the appropriate limit.

Request and response

2. On 8 December 2015, the complainant wrote to Hertfordshire County Council ('the council') and requested information in the following terms:
 - "1. For the calendar year 2014-2015, how many referrals were made to Hertfordshire Children's Services by Health Visitors (Hertfordshire Community NHS) using the RED referral form?
 2. For the calendar year 2014-2015, how many referrals were made to Hertfordshire Children's Services by Health Visitors (Hertfordshire Community NHS) using the GREEN referral form?
 3. For the calendar year 2015-2016 (to date), how many referrals were made to Hertfordshire Children's Services by Health Visitors (Hertfordshire Community NHS) using the RED referral form?

4. For the calendar year 2015-2016 (to date), how many referrals were made to Hertfordshire Children's Services by Health Visitors (Hertfordshire Community NHS) using the GREEN referral form?"
3. The council responded on 7 January 2016 (quoting reference number FOI/CSF/12/15/10224) and confirmed holding the requested information but refused to provide it citing section 12 of the FOIA.
4. On 14 March 2016, the complainant requested an internal review.
5. The council provided an internal review on 15 April 2016 in which it maintained its original position.

Scope of the case

6. The complainant contacted the Commissioner on 9 March 2016 to complain about the way the above request for information had been handled.
7. The Commissioner has considered the council's application of the exemption where the cost of compliance exceeds the appropriate limit at section 12 of the FOIA.
8. The complainant also made a complaint about the way 2 related requests were handled. In those cases, the council aggregated the requests and refused to provide the information citing section 12 of the FOIA. The complaint about those requests is dealt with in the decision notice for case reference FS50620151.

Reasons for decision

Section 12 – Exemption where cost of compliance exceeds appropriate limit

9. 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 which, in this case, is £450 as laid out in section 3(2) of the fees regulations.
10. Regulation 4(3) of the Fees Regulations states that an authority, when estimating whether complying with a request would exceed the appropriate limit, can only take into account the costs it reasonably expects to incur in:

- determining whether it holds the information;
 - locating the information, or documents containing it;
 - retrieving the information, or documents containing it; and
 - extracting the information from any documents containing it.
11. As the costs are calculated at £25 per person per hour for all authorities regardless of the actual cost or rate of pay, in this case the limit will be exceeded if the above activities exceed 18 hours.
 12. 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 and what amounts to a reasonable estimate has to be considered on a case by case basis. The Information Tribunal in the case of *Randall v Information Commissioner and Medicines and Healthcare Products Regulatory Agency*¹ said that a reasonable estimate is one that is "...sensible, realistic and supported by cogent evidence".
 13. In his guidance on this subject², the Commissioner states that a sensible and realistic estimate is one which is based on the specific circumstances of the case and should not be based on general assumptions.
 14. In the aforementioned guidance, the Commissioner also states that;

"A public authority is not obliged to search for, or compile some of the requested information before refusing a request that it estimates will exceed the appropriate limit. Instead, it can rely on having cogent arguments and/or evidence in support of the reasonableness of its estimate. It is good practice to give these arguments or evidence to the requestor at the outset to help them understand why the request has been refused. This reasoning is also likely to be required if a complaint is made to the Information Commissioner.

However, it is likely that a public authority will sometimes carry out some initial searches before deciding to claim section 12. This is because it may only become apparent that section 12 is engaged once

¹ Appeal number EA/2006/0004, 30 October 2007

² https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

some work in attempting to comply with the request has been undertaken.”

15. In its initial response, the council provided the complainant with the following explanation:

“While we hold this information it is not recorded on our database. In order to retrieve the information it would be necessary to manually check each individual client record to ascertain which type of referral form was used. There were 310 referrals in the requested period. Allowing 10 minutes to check each record this would take approximately 52 hours. We estimate that the cost of carrying out this work would exceed the appropriate limit of £450, which has been specified under the Freedom of Information Act 2000 and associated regulations. This represents the estimated cost of one person spending 2½ working days in determining whether Hertfordshire County Council holds the information, and locating, retrieving and extracting the information. Under Section 12 of the Freedom of Information Act 2000 we are not obliged to comply with requests for information which exceed this appropriate limit, and will not be undertaking this additional work. If you would like to consider reducing your request in the light of this response please contact us to discuss what level of information would be available within the appropriate limit.”

16. The Commissioner sought further information from the council in relation to the costs estimate undertaken, in order to assess whether its estimate was reasonable and based on cogent evidence. He specifically asked for clarification as to whether a sampling exercise had been undertaken to determine the estimate provided, to explain why it would take 10 minutes to check each file to determine whether a red or green form has been used, and whether the estimate had been based upon the quickest method of gathering the requested information. In addition, the Commissioner informed the council that the complainant stated that red files are used where it is viewed that children could be ‘at risk of significant harm’ and that green forms are used where it is considered that children are ‘in need’ and asked if such information is recorded in a format other than the coloured forms and if so, whether a search could be conducted to extract such information.
17. The council explained that its Children’s Services department has a computerised database system (LCS) upon which all contacts that are received in relation to a child within Hertfordshire are recorded. It explained that the contact can be for any reason, from a parent seen shouting at a child to a serious child protection issue, and within the system there are set contact reasons. It said that once the reason for contact has been recorded, there is a free text section in which the actual details for the contact can be listed and at this point any hard

copy/attachments that have been provided as part of the contact and a pdf of the contact are electronically scanned on to an electronic storage system. The council explained that there is no way to report information from this electronic storage system. It said that the type of the source or reporting person is recorded via a drop down menu that consists of an option of Health Visitor and that any further details of the reporting person are recorded in the reason for referral/contact, which is a free text section of the LCS system. It said that at no point is the colour of the contact form noted on the system.

18. In relation to whether a sampling exercise had been carried out, the council said that as part of its investigation into this complaint, a sampling exercise of 5 referrals was undertaken to determine the actual time required to establish what colour the referral form was. It explained that as it does not have the capability to report information from its electronic storage system, it first needed to identify which referrals within the LCS system were made by Health Visitors. It said that LCS does have a very basic reporting function which is generic. From that, it can produce a report that details referrals/contacts from a Health Visitor but this does not give details of what colour form was used. The council explained that once extracted, the next stage of the process was to log on to LCS, search for the relevant child or young person, and identify the relevant referral/contact form. Once verified, a connection to the electronic storage system is established and the relevant folder for the document is located and the form downloaded. It said that this took 6 minutes per child for the sample test. It said that in the time frame sought by the requestor, its Children's Services department had received 310 referrals/contacts from Health Visitors and that based on the sampling exercise, to search each of those 310 referrals/contacts, it would take 31 hours.
19. The council confirmed that the above search method is the quickest and only way of being in a position to ascertain what information is held in relation to the request.
20. In relation to whether information relating to whether a child is 'at risk of significant harm' or 'in need' is recorded in a format other than the coloured forms, the council said that the colour of the referral form is not noted in the referral or assessment document. It explained that the person that assesses the importance of the referral/contact uses the free text that explains in detail the reasoning for this contact and as a consequence it is not possible to run a report or extract information from LCS that would provide the required information, therefore it would have to manually search and extract the 310 referrals made to the council for the years in question. It further explained that there is no requirement for the council to be in a position to report on the specific information requested as it is the text of the referral/contact that

provides the details and importance of the notification and is used in consideration of appropriate action to take.

21. The Commissioner accepts the council's arguments as to why its electronic storage system would need to be manually checked to identify if a referral made by a Health Visitor was made on a green or red form, that being that such information isn't recorded in that specific format, or in another format, on its LCS system, there is no requirement to do so, and that there is no way to report information from the electronic storage system. The Commissioner considers that 5 referrals isn't particularly a large sample, however, even if a larger sample took the time to check each referral down to 4 mins, the time taken to comply with the request would exceed 20 hours.
22. The Commissioner therefore finds that the council correctly refused the complainant's request on the grounds of cost for compliance under section 12(1) of FOIA, as complying with the request would exceed the appropriate limit.

Right of appeal

23. 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

24. 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.
25. 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

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