

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 March 2018

Public Authority: West Sussex County Council
Address: County Hall
West Street
Chichester
West Sussex
PO19 1RQ

Decision (including any steps ordered)

1. The complainant has asked West Sussex County Council for information relating to instances where the Care Quality Commission has informed care homes of announced and unannounced inspections since April 2015. He has also asked for information relating to the care homes involved, the dates when contact was made, the names of officers making contact and how the contact made.
2. The Commissioner's decision is that West Sussex County Council has properly applied section 12(2) to the complainant's request on the grounds that to confirm whether it holds the requested information would exceed the appropriate costs limit.
3. The Commissioner requires the public authority to take no further action in this matter.

Request and response

4. On 17 August 2017, the complainant wrote to West Sussex County Council and asked to be advised of:

"...the number of occasions on which WSCC staff have informed care homes of impending CQC¹ inspections since April 2015" and to "list the care homes involved, the contact dates and the names of the officers that made contact".

5. The Council asked the complainant to clarify his request and the complainant provided this later the same day. The complainant's clarified request was:

"I wish to know the total number of occasions, split by 'announced' and 'unannounced' since April 2015, that WSCC staff have informed the care home of the date of a future CQC inspection.

I also wish to know the care homes involved, dates of contact and names of officers making contact and how contact made."

6. On 29 August, the Council responded to the complainant which informed him that:

"West Sussex County Council are rarely informed by CQC of future inspection visits, announced or unannounced, and WSCC would not share any such knowledge with providers."

7. On 3 September, the complainant asked the Council to conduct an internal review on the grounds that he was unhappy with the way his request had been handled.
8. The Council wrote to the complainant on 8 September to advise him of its internal review decision. Having made further enquiries, the Council provided the complainant with a more detailed response to his request:

1. *"How many occasions have CQC informed WSCC of future inspections?"*

WSCC do not collate this information centrally and have a number of teams across county who could have been in receipt of this information. The only way of determining this would be for all Team Managers, Contracts Managers and Commissioning Teams to locate relevant files, retrieve and inspect those files in order to extract the information. The time taken to investigate and collate this information would be outside the FOI requirements. It is estimated that the cost of complying with your request would exceed the appropriate limit. The appropriate limit has been specified in regulations and for local

¹ Care Quality Commission

authorities it is set at £450. This represents the estimated cost of one person spending 2 1/2 working days in determining whether the Department holds the information, and locating, retrieving and extracting the information. Under section 12 of the Freedom of Information Act the Authority is not obliged to comply with part of your request and we will not be processing this part of your request further.

- 2. Please advise of those occasions when CQC have informed WSCC, how many occasions have WSCC staff informed the care homes of impending CQC inspections?*

We have no evidence that this has taken place.

- 3. Please list the care homes involved, the contact dates and the names of the officers involved.*

Given the response above, this part of your request is not applicable."

Scope of the case

9. The complainant contacted the Commissioner 11 September 2017 to complain about the way his request for information had been handled.
10. The complainant drew the Commissioner's particular attention to the Council's internal review. He pointed out that the Council's original response was that it does not keep the information he had asked for and that the occasions where it is informed about future unannounced inspections by the CQC was rare. The complainant stated that he understood this response was given following discussions with Council officers in adult social care.
11. The complainant argues that, in view of the Council's internal review response, it is not possible for the Council to confirm definitively if these inspection dates are known by the Council or not known and therefore the complainant asserts that the Council's approach to its dealing with his request is questionable and not within the spirit of the legislation.
12. For the purpose of section 50 of the FOIA, the Commissioner limited the focus of her investigation to the Council's position following its internal review. This is because the internal review procedure affords an opportunity for a public authority to put right anything it might have got wrong in respect of its initial position. This notice is therefore concerned with the Commissioner's determination of whether the Council is entitled to rely on section 12 of the FOIA to refuse to confirm whether it holds the information the complainant asked for.

13. The Commissioner has noted the different positions taken by the Council in making its initial response and its internal response and she has asked the Council to explain the activities it undertook to allow it to make those responses.

Reasons for decision

14. Section 1 of the FOIA states that

“(1) Any person making a request for information to a public authority is entitled—

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.

15. The Council’s response to the complainant’s request does not conform whether or not it holds the information he had requested and as such, its response does not satisfy the provision of section 1(1)(a). The council accepts that its response is vague.

Section 12(1) – where the cost of compliance exceeds the appropriate limit

16. Under section 12(2) of FOIA a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with section 1(a) would exceed the appropriate limit. In other words; a public authority is not obliged to confirm whether it holds the information requested by an applicant where to provide such confirmation would itself exceed the appropriate cost limit.
17. The appropriate cost limit is set out in section 3(2) of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (“the Fees Regulations”) and this is currently set at £450.
18. The £450 limit must be calculated at the rate of £25 per hour. This effectively provides a time limit of 18 working hours. Additionally, regulation 4(3) of the Fees Regulations only allows for four activities which can be considered in relation to complying with the requests. These activities are:
 - Determining whether the public authority holds the information requested;

- Locating the information or documents containing the information;
 - Retrieving such information or documents; and
 - Extracting the information from a document or other information source.
19. To support its reliance on section 12(2) of the FOIA, the Council has explained to the Commissioner how it manages its obligations under the FOIA.
 20. The Council explained that it has a central FOI request inbox from where requests are forwarded to Information Liaison Officers (“ILO”) in the relevant service area, in order to locate the information and respond to the request.
 21. In this case, when the Council received the complainant’s initial request, it was forwarded to an ILO who apparently made only limited enquires with the Contract and Commissioning Team, rather than the wider Authority. This resulted in the response made to the complainant on 29 August.
 22. Following the complainant’s request for an internal review, the reviewer made wider enquiries, particularly with the Head of Safeguarding and Adult Social Care, and it was through these enquiries that the Council determined that it should refuse to comply with the complainant’s request in reliance on section 12(2).
 23. The Council’s internal review response confirmed that the Authority does not centrally collate the information requested by the complainant. Effectively, the authority might hold relevant information in any of its teams across the county who could have received information relevant to the complainant’s request.

The Council’s representations

24. The Council asserts that the only way to determine whether the information is held, and to locate, extract and retrieve it would engage the section 12 (costs) exemption. The Council says, “It is impossible to say what information is held without making those enquiries across the teams”.
25. The Council makes the point that it is not common practice for the CQC to put the Authority on notice of their intended inspections. Nevertheless, if such notifications were made, the Council has no protocol which would allow it to identify where such communications should be made to. Consequently, if the Council has received notification

of an intended inspection it could have been sent to any number of individuals within the Authority.

26. In order to determine whether the requested information is held, and then locate, retrieve and extract that information, the Council says it would need to make enquiries of Team Managers, Senior Social Work Practitioners and Contract/Commissioning Managers across 6 localities within West Sussex, totalling 73 officers.
27. The Council asserts that it is reasonable to assume that each officer would spend a minimum of 30 minutes checking what information is held, where it is held and retrieving the information, including the searching of archives records in order to cover the 2 year period of the request.
28. The time taken to complete these activities equates to 36.5 hours of officer's time and this would clearly trigger the section 12 cost exemption.
29. Each of the 73 officers, referred to above, would be required to undertake a search of their individual email records, including archived emails over a 2 year period, although the Authority's IT systems automatically delete items once they are 15 months old. This would require the officers to search against an identified search parameter such as "CQC inspection" in order to identify any relevant material.
30. Each item identified would then have to be interrogated by the officer in order to determine if it contained any information falling within the description of the request.
31. Alternatively, the Council's IT department could carry out a search on behalf of the 73 officers. However, once any material is identified, each officer would then be required to interrogate the material in order to determine if it contained any information falling within the description of the request and then to extract that information.
32. Additionally, an officer would need to search against individual case records held on the Authority's MOSIAC data base. In the period covered by the request it is estimated that this would amount to in excess of 9,000 individual records of people who have been placed in care homes by West Sussex County Council (2015-2016 = 4727 customers; 2016-2017 = 4494 customers). Again the search would be against an identified search parameter such as "CQC inspection" in order to identify any relevant material. Each item identified by that search would then have to be interrogated by the officer in order to determine if it contained any information falling within the description of the request.

33. An officer would also have to search the MOSIAC data base for any relevant Safeguarding Minutes. These would not necessarily be recorded against an individual's record as there may have been an organisational safeguarding enquiry. Again the search would be against an identified search parameter such as "CQC inspection" in order to identify any relevant material.
34. The number of safeguarding enquires completed in the relevant period is in excess of 1000. Each item identified by that search would then have to be interrogated by the officer in order to determine if it contained any information falling within the description of the request.
35. The Council believes it is reasonable to assume that the actions required by each member of staff, as identified above, would take a minimum 30 minutes and it asserts that this is a reasonable approach to estimating the time/costs of undertaking the tasks required in order to identify any relevant material falling within the description of the request.
36. The Council informed the Commissioner that it would need to carry out the searches detailed above in order to determine if information is held relevant to the second part of the Complainant's request.
37. In addition to providing the Commissioner with the foregoing representations, the Council also confirmed that it did not carry out a sampling exercise to locate and retrieve any information falling within the scope of the complainant's request. Instead it emphasises that its estimate is reasonable, based on the number of officers and teams involved.
38. The Commissioner asked the Council whether it had given the complainant any advice and assistance in respect of his information requirements.
39. The Council referred the Commissioner to a letter dated 23 January 2018 which details the involvement of the complainant with the Council together with the Council's application of the section 14 exemption to subsequent requests received from him.
40. The Council has determined that the complainant is "persistently unreasonable" in his dealings with the Authority. In view of this, the Council has taken the view that no amount of advice and assistance would satisfy him.

The Commissioner's decision

41. The Commissioner has considered the representations made by the Council in support of its application of section 12(2). She considers these representations to have been made in good faith and to be

persuasive in respect of the time required to confirm to the complainant whether the requested information is held and whether it can be located and retrieved within the appropriate costs limit.

42. The Commissioner accepts that section 12(2) is engaged primarily due to the need to scrutinise individual records which might be identified by any search the authority conducts. It is the Commissioner's opinion that scrutiny is likely to exceed the 18 hours required by the Fees Regulations.
43. The Commissioner's decision is that the Council is entitled to refuse the complainant's request in reliance on section 12(2) of the FOIA.
44. Ordinarily the Commissioner would go on to consider whether the Council is obliged to provide the complainant with appropriate advice and assistance under section 16 of the FOIA, which would allow him to bring his request within the appropriate limit. In this case, she recognises the difficulties presented by the complainant's frequent and persistent contact with the Council and she has therefore decided that it would be no value for the Council to provide advice and assistance in this request.

Right of appeal

45. 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

46. 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.
47. 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
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