

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 September 2019

Public Authority: Wrexham County Borough Council

Address: Guildhall
Wrexham
LL11 1AY

Decision (including any steps ordered)

1. The complainant has requested information relating to looked-after children. Some information was provided but the remainder of the request was refused under section 12(1) of the FOIA because responding to it would have exceeded the cost limit.
2. The Commissioner's decision is that Wrexham County Borough Council (the "Council") was entitled to rely on section 12(1) of the FOIA to refuse the request. However, she also finds that the Council failed to discharge its section 16 duty to provide adequate advice and assistance.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Provide the complainant with advice and assistance to determine what, if any, information of interest within scope may be provided within the cost limit.
4. The Council 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

5. On 3 December 2018, the complainant wrote to the Council and requested information in the following terms:

"Under the Freedom of Information Act, please can you provide me with information about looked-after children placed in care in the local authority area by other councils during the past five financial years (2013/14, 2014/15, 2015/16, 2016/17, and 2017/18). For each year, please can you provide a list of councils that have placed children in care in the area and the number of children.

"Please can you also provide me with information about looked-after children from the local authority area who have been placed in care in other local authority areas during the past five financial years (2013/14, 2014/15, 2015/16, 2016/17, and 2017/18). For each year, please can you provide a list of councils where the children have been placed and the number of children."

6. The Council responded on 4 January 2019. It stated that it did not hold this information in a format to enable it to be readily retrieved but provided some information within the scope of the request. However it refused to provide the information in the form specified in the request. The Council relied on section 12 of the FOIA (cost of compliance exceeds appropriate limit) as its basis for refusing to provide further information.
7. The complainant requested an internal review on 15 February 2019. Following an internal review the Council wrote to the complainant on 14 March 2019. It upheld its original decision but acknowledged no advice and assistance was provided in accordance with section 16 of the FOIA. The Council recommended the complainant to resubmit her original request and it would then assist her with refining the request.

Scope of the case

8. The complainant contacted the Commissioner on 26 April 2019 to complain about the way her request for information had been handled. She stated no meaningful advice and assistance was provided to bring the request within the cost limit under section 16 of the FOIA. She also added that the Council had not provided any explanation how the cost limit was exceeded given it had complied with a similar request the complainant had made previously.

9. The scope of this complaint has been to determine whether the Council estimated reasonably that responding to the request would have breached the cost limit and, if it did, whether the Council discharged its duty to provide adequate advice and assistance.

Reasons for decision

Section 12 - cost of compliance

10. Section 1(1) of FOIA states that:

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.

11. Section 12 of the FOIA states that:

(1) 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.

(2) 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.

12. The “appropriate limit” is defined in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (“the Regulations”) and is set at £450 for a public authority such as Wrexham County Borough Council. The Regulations also state that staff time should be charged at a flat rate of £25 per hour, giving an effective time limit of 18 hours.

13. When estimating the cost of complying with a request, a public authority is entitled to take account of time or cost spent in:

(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.
14. 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 IC & Medicines and Healthcare Products Regulatory Agency EA/2007/0004*, the Commissioner considers that any estimate must be "sensible, realistic and supported by cogent evidence"¹. The task for the 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.
15. The complainant stated she made a similar request in 2012 and believed that the Council could comply with the new request within the cost limits because it had provided the same information previously in the 2012 request. However, there is no evidence to suggest the records were held in the same format as held in 2012. The Commissioner notes that the Council stated a response to a previous request was provided in 2012 but no evidence of this was provided to her and the Council no longer holds this due to its 2 year records retention policy. The Complainant also complained that the Council had failed to provide advice on "*what parts are possible*".
16. The complainant commented:
- "It accepts that the council breached Section 16 but does nothing to address that either, for example by offering advice or assistance. It would seem reasonable that if the council had twice considered how to answer this request and investigated what information it would need to access and how long that would take that it might be able to provide some kind of advice on what would or would not be possible within the cost limit. That it hasn't suggests the council still has little real idea how long answering this request will take and no idea that it will take longer than the cost limit.*
- "I suspect, given the council has previously answered such a request, that it is entirely possible for it to answer this request."*
17. The Council explained it:
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¹ <http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i136/Randall.pdf>

"does not hold this information in a format to enable it to be readily retrieved. The information is held on a case by case basis on individual case records. There are 473 cases and the department has estimated that it will take 15 minutes to locate and extract the information required from each record. This will total over 118 hours, thus exceeding the statutory limit."

18. On 31 July 2019, the Commissioner wrote to the Council and asked it to provide a detailed calculation of the work required to provide the information falling within the scope of this request.
19. On 22 August 2019, the Council wrote to the Commissioner and explained in the response it sent to the complainant that there were 473 records that would need to be checked in order provide the detail requested by the applicant. In checking one record, the Council estimated that it would take approximately 15 minutes to locate the information, to retrieve the information and extract the detail required to respond. However, the Council did not initially appear to undertake a sampling exercise to determine its estimate.
20. On 22 August 2019, the Commissioner wrote to the Council and asked it to provide further detail as to how locating and gathering the information would take 15 minutes per record, such as providing screenshots of the process required to extract the data. The Commissioner also queried some of the figures provided by the Council as they did not sum correctly.
21. On 27 August 2019, the Council responded and explained the discrepancy in the figures provided in its earlier submission to the Commissioner. The Council also asked for more time to respond to the Commissioner's request for more detail in its estimate of cost in complying with the request for information.
22. On 12 September 2019, the Council responded and provided screenshots of the process it believed showed that "to locate, extract the information requested would exceed the statutory limit".
23. The Commissioner was provided with screenshots of the system where the data is stored by the Council. The Council explained it needed to check a number of spreadsheets to extract the data required to respond to the request for information. The process also involved looking at case notes and historical addresses for each child. The Council asserts that this would mean searching through different spreadsheets for each child to extract the data.

24. The Council explained that the process required would allow data describing the various movements of a child to placements over time to be extracted from monthly spreadsheets. The request was for data for the past five years and as the data was held in monthly spreadsheets, this would mean searching through 60 spreadsheets. The Council believed it would take an average of 15 minutes per record to collate the data required.
25. Turning to the Commissioner's view on this estimate, as noted above the Council supplied samples of the spreadsheets it would be necessary for it to search in order to comply with the request. The Commissioner notes from these samples that it is not clear why it would take 15 minutes to extract the requested information, or why it would be necessary to also view other sources of information in order to comply with the request. She does not, therefore, accept the estimate of 15 minutes per record.
26. However, she does note that the information is held in such a way that it would be necessary to search the records for each month within the five year period specified in the request. This means that, even if the estimated time per record was reduced significantly to five minutes (as an example), the number of records it would be necessary to search means that compliance with the request would still exceed the limit.
27. For this reason, whilst not accepting the 15 minutes per record estimate, overall the Commissioner accepts that the Council are entitled to claim that compliance with the whole request would exceed the cost limit. Therefore the Council was entitled to rely on section 12 to refuse the request.

Section 16 – advice and assistance

28. Section 16 of the FOIA requires a public authority to provide "reasonable advice and assistance" to those making or wishing to make a request.
29. In cases where a public authority considers that a request could not be answered within the cost limit, the Commissioner would normally expect advice and assistance to be provided to help the requestor bring their request within the cost limit.
30. At the outset of her investigation, the Commissioner noted to the Council that no advice and assistance appeared to have been provided with either its original response and, whilst it referred to section 16 in the internal review response, that response gave no advice as to how the request could be refined to bring it within the cost limit.
31. The Commissioner therefore does not consider the Council to have discharged its duty to provide advice and assistance and so finds that it

breached section 16(1) of the FOIA. As at paragraph 3 above the Council is now required to respond to the complainant with advice on how her request could be refined to bring it within the cost limit.

Right of appeal

32. 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

33. 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.
34. 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
Water Lane
Wilmslow
Cheshire
SK9 5AF