

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 June 2022

Public Authority: Commission for Local Administration in England (Local Government & Social Care Ombudsman)

Address: 53-55 Butts Road
Coventry
CV1 3BH

Decision (including any steps ordered)

1. The complainant has requested information relating to the investigating of complaints. The Commission for Local Administration in England (“the LGSCO”)¹ initially stated that it did not hold some of the information and that the remainder was exempt under section 21 of FOIA because the information was reasonably accessible to the complainant. During the Commissioner’s investigation it instead relied on section 12 of FOIA (costs) to refuse the parts of the request it considered to be valid.
2. The Commissioner’s decision is that only parts [14], [15], [16], [17] and [24] of the request correspondence met the requirements of section 8 of FOIA and thus constituted valid requests for information. The LGSCO was entitled to rely on section 12 of FOIA to refuse these parts. As the LGSCO failed to rely on section 12 of FOIA within 20 working days, it breached section 17(5) of FOIA.
3. The Commissioner does not require further steps.

¹ The legal name of this organisation is the Commission for Local Administration in England and this is the name of the organisation that is designated as a public authority in Schedule 1 of FOIA. However, the organisation carries out its day to day activities under the names “the Local Government Ombudsman” or “Local Government & Social Care Ombudsman”

Request and response

4. The complainant contacted the LGSCO on 12 July 2021 and requested information in the following terms:
 1. "Please define the Equality Act 2010 to include direct discrimination and indirect discrimination.
 2. Please define Harassment pursuant to the Law.
 3. Please define Victimization pursuant to the Law.
 4. Please define disability discrimination pursuant to the Law.
 5. Please define Human Rights Act Article 3
 6. Please define Human Rights Act article 8
 7. Please define Human Rights Act article 13
 8. Please define Human Rights Act article 14
 9. Please define the assessors role and all steps taken by the local Government assessors to assess a case of neglect to include investigations.
 10. Please define the Mission Statement as appears on the Local Government Ombudsmen web page.
 11. Please define the Moral Duties of the Councils to comply with the law
 12. Please define Local Government Ombudsmen service role and statutory Powers.
 13. Please define all powers given the Local Government Ombudsmen service pursuant to the law and enforcement of Human Rights and the law as appears on web page of the Local Government Ombudsmen service.
 14. Please confirm how many cases the Local Government Ombudsmen service has acted upon and ensured that the relevant parties have complied with the law.in respect of neglect and disability.
 15. Please confirm how many cases the Local Government Ombudsmen service as acted upon in respect of disability Discrimination and results.
 16. Please confirm how many cases the Local Government Ombudsmen service as acted upon in respect of Human Rights /disability Discrimination and results.
 17. Please confirm how many cases the Local Government Ombudsmen service as acted upon in respect of housing / disability Discrimination and results pursuant to the Human Rights Act.
 18. Please define accountability for disability discrimination.
 19. Please define accountability for human Rights discrimination.
 20. Please define Accountability.
 21. Please define Care ACTs.
 22. Please define the Code of Conduct for anti bullying.

23. Please define the Nolan Principles
 24. Please confirm if the Local Government Ombudsmen service has enforced the Nolan Principles.
 25. Please define the Housing ACTS
 26. Please define the Habitable Homes Act
 27. Please define Hate Crime and the Statutory Duties of the Council to assist.
 28. Please define Statutory Duties of the Council in disability care cases.
 29. Please define the law in respect of the care Acts, Habitable Homes act, Human Rights Act. Housing Acts, Equality Act in view of attached photographs.”
5. The LGSCO responded on 27 July 2021. In respect of elements [9], [12], [13] and [24], it relied on section 21 of FOIA as the information was already reasonably accessible – however it also provided copies of this information in a format that was more easily readable. For the remaining elements, the LGSCO stated that it did not hold the requested information. It upheld this position at internal review.

Scope of the case

6. The complainant contacted the Commissioner on 11 August 2021 to complain about the way her request for information had been handled.
7. At the outset of his investigation, the Commissioner wrote to the complainant on 11 May 2022. He explained that, in his view, the majority of the “request” did not constitute a valid request for recorded information – and to the extent that it might, the information was already reasonably accessible. He also explained that, for those parts of the request which were valid, the LGSCO was unlikely to be able to provide further relevant information.
8. The complainant did not accept that any parts of her request were invalid nor that the LGSCO held no further information within the scope of her request.
9. The Commissioner wrote to the LGSCO on 17 May 2022 to ask it provide a submission. He noted that, in his view, only elements [14]-[17] and element [24] of the request appeared to be valid. However, he noted that the LGSCO appeared to have adopted a relatively narrow interpretation of these elements and seemed likely to hold further information within its investigation files.

10. On 17 June 2022, the LGSO issued a fresh response to the complainant. It now relied on section 12 of FOIA to refuse the remaining element of the request.
11. The Commissioner considers that the scope of his investigation is to determine:
 - a) Which parts of the request were valid; and, if any are
 - b) Whether the LGSCO was entitled to rely on section 12 to refuse those elements; and
 - c) Whether the LGSCO's handling of the request met the procedural requirements of FOIA.

Reasons for decision

a) Which parts of the request were valid?

12. Section 8(1) of FOIA defines a valid request as one which:
 - (a) is in writing,
 - (b) states the name of the applicant and an address for correspondence, and
 - (c) describes the information requested.
13. Clearly the complainant's correspondence of 12 July 2021 was in writing. An (email) address for correspondence was provided and there is no dispute that the complainant has provided her name in order to make the request. Therefore the requirements of section 8(1)(a) and 8(1)(b) of FOIA were met.
14. The Commissioner's guidance on recognising a request for information states that the bar for determining whether a request "describes the information requested" should be a low one.² Most requestors cannot reasonably be expected to know exactly what information a public authority holds or how that information is held. The Commissioner's guidance on interpreting and clarifying requests also makes clear that public authorities should avoid using an overly-narrow interpretation of

² <https://ico.org.uk/media/for-organisations/documents/1164/recognising-a-request-made-under-the-foia.pdf>

a request and excluding material simply because the requestor has not asked for the information using the “correct” terminology.³

15. However, in order to meet the definition under section 8(1)(c) of FOIA, a request must meet two criteria: firstly, it must seek recorded information (not opinions or some other information that the public authority would not hold); secondly the “description” of the information must be sufficient for the public authority to attempt to distinguish between the particular information (or type of information) the requestor is seeking and all the other recorded information it holds.
16. With the exception of parts [14]-[17] and [24], all the parts of the request ask the LGSCO to “define” various words, phrases or pieces of legislation. These are not valid requests.
17. All of the words or pieces of legislation identified in the request are defined either in law or in codes of conduct which are reasonably accessible to the requestor. Asking the LGSCO to further “define” these words is tantamount to asking the LGSCO to provide its opinion on what these phrases mean or ought to mean. That would require the LGSCO to create new information in order to answer the request.
18. As such, with these parts, the requestor is not seeking recorded information that the LGSCO holds (and, even if the Commissioner were to accept that she was, the information is already reasonably accessible) she is seeking the LGSCO to take a particular action (ie. offer its opinion). These are not valid requests within the meaning of section 8 of FOIA and, as such, the LGSCO was not obliged to deal with them under FOIA.
19. Elements [14], [15], [16], [17] and [24] do meet the criteria for a valid request because they seek recorded information held by the LGSCO (namely information about complaints that it has investigated) and the LGSCO can (at least in theory) differentiate between the investigations that the complaint wants information on (those relating to disability discrimination) and all the other investigations it may have carried out.

b) Was the LGSCO entitled to rely on section 12 to refuse the parts of the request which were valid?

³ <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/interpreting-and-clarifying-requests/#terminology>

20. When it initially responded to the request, the LGSCO noted that it had only begun tracking complaints related to human rights since 2020 and that, since that date, it had not recorded any such complaints.
21. In his correspondence of 17 May 2022, the Commissioner pointed out to the LGSCO that, just because the LGSCO did not keep a separate record of such complaints did not mean that it held no recorded information that would answer the query. In theory, if the LGSCO were able to review all its complaint files, it would be able to find whether or not any of those files related to the types of issues that the complainant had referenced in her request.
22. Having reconsidered the matter, the LGSCO accepted that it might hold some further information, but it would need to review each of its complaint files manually in order to extract the relevant information. It therefore relied on section 12 of FOIA as this task could not be accomplished without exceeding the appropriate limit.
23. Section 1(1) of the 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.
24. 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.
25. 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 £600 for government departments and £450 for all other public authorities. The Regulations also state that staff time should be notionally charged at a flat rate of £25 per hour, giving an effective time limit of 18 hours for an organisation such as the LGSCO.

26. 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.

27. 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 Information Commissioner & Medicines and Healthcare Products Regulatory Agency EA/2007/0004*, the Commissioner considers that any estimate must be "sensible, realistic and supported by cogent evidence".⁴ 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.

28. In its revised response, the LGSCO informed the complainant that:

"To establish if an organisation complained about has complied with the law in respect of neglect and disability we would need to read the details of the complaints registered with us together with our decisions.

"From March 2018 we have recorded complaints and enquiries on our case management system, which we refer to as ECHO, but this initially was only used by our Advice Team. The platform was rolled out to the rest of our casework areas in 2011. [sic]

"As at 08 June 2022 we have 199,617 complaints and enquiries registered on our case management system. However, we only retain details of a complaint for 5 years. The number of complaints and enquiries registered between 01 April 2017 and 12 July 2021 is 73,027.

⁴ <http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i136/Randall.pdf>

"To read the complaint summary and decision of 73,027 complaints and enquiries would take in excess of 10,950 hours. This includes the time taken to check what information we hold, extract the information and create a report.

"To bring me to this figure I selected 15 complaints and checked whether the complaint details had been anonymised. Of the 15 complaints selected one was voided and three have been anonymised. For the remaining 11 complaints I read the complaint summary presented by the complainant to check if the complaint related to neglect and or disability matters, Human Rights issues and/or allegations of Disability Discrimination. I also read final decision statement where there was one and carried out a search using the words neglect, disability, discrimination and housing."

29. The Commissioner accepts that determining whether information was or was not within scope would require some form of manual review.
30. The fact that records may be digitised does not necessarily mean that they are easily searchable. Even where computer searches are able to narrow the amount of information that must be searched, even the most powerful of Artificial Intelligence algorithms cannot determine definitively, in every case, whether specific information does or does not fall within scope.
31. The LGSCO has noted that it would require 10,950 hours to review all 73,027 cases to determine which ones did or did not fall within the scope of the request. The Commissioner notes that, in order to review all these records without exceeding the appropriate limit, the LGSCO would need to spend less than a second per record on its review. Even if computerised searches were able to narrow this down, the Commissioner does not consider that this could be sufficiently achieved as to make such a speed feasible.
32. The Commissioner is therefore satisfied that those parts of the request which were valid could not be answered without exceeding the appropriate limit. The LGSCO was therefore entitled to rely on section 12 of the FOIA to refuse these elements.

c) Procedural Matters

33. Section 17(5) of FOIA requires a public authority, relying on section 12 of FOIA to refuse a request, to issue a refusal notice, stating that fact, within 20 working days of the request being received.
34. Whilst the LGSCO did respond to the request within 20 working days, it did not issue a refusal notice, stating that it wished to rely on section 12 to refuse the request, until June 2022. The Commissioner therefore finds

that the LGSCO breached section 17(5) of FOIA when handling this request.

35. When a public authority relies on section 12 to refuse a request, it should also provide meaningful advice and assistance to help the requestor narrow their request such that it would fall within the cost limit – or state that it was unable to do so.
36. In this case, the LGSCO stated that, due to the volume of complaints, refining the request by year, month or category was unlikely to make the request fall within the cost limit. The Commissioner accepts that this would be the case, notes that a public authority is not required to “lavish ingenuity” on suggesting a refined request and is therefore satisfied that the LGSCO complied with its obligations under section 16 of FOIA, as there was no meaningful advice and assistance it could provide.

Other matters

37. In its response of 17 June 2022, the LGSCO stated that, if the complainant wished to make a request that sought the details of 175 randomly-selected complaints, it would be willing to process such a request as best it could.
38. The Commissioner recognises that the LGSCO did this in an effort to be helpful and it would be a matter for the LGSCO to decide whether it wished to process such a request, if one was made.
39. However, the Commissioner feels obliged to point out that such a request would not be one that would meet the definition of a valid request as it does not describe the information requested for the purposes of section 8(1)(c) of FOIA.
40. If the complainant were to make such a request, the LGSCO would have no way of determining which 175 complaints it should pick – choosing entirely at random might not produce an example that is representative of its caseload and if the LGSCO were to try to create a representative sample, not only would that not be a random sample, but it would require some form of value judgement from the LGSCO as to what records would and would not fall within scope. If the LGSCO has no valid, objective, criteria with which to judge whether a particular piece of information does or does not fall within scope, the request is unlikely to be one which is valid.
41. If the LGSCO wishes to encourage requestors to submit requests which would not be valid under FOIA, it should explain that such requests would not be dealt with under FOIA and that the requestor would have no recourse to the Commissioner if they were dissatisfied.

Right of appeal

42. 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

43. 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.
44. 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

Roger Cawthorne
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