

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 July 2022

Public Authority: The London Borough of Croydon
Address: Bernard Weatherill House
8 Mint Walk
Croydon
CR0 1EA

Decision (including any steps ordered)

1. The complainant requested information from the London Borough of Croydon ("the Council") relating to the funding of schools. The Council refused to provide some of the requested information citing section 12 (cost limit) of the FOIA.
2. The Commissioner's decision is that the Council has failed to demonstrate that section 12(1) is engaged and therefore, is not entitled to rely on this exemption.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - The Council must issue a fresh response to the request which does not rely on section 12(1) of the FOIA.
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 FOIA and may be dealt with as a contempt of court.

Request and response

5. On 26 November 2020, the complainant wrote to the Council and requested information in the following terms:

"I am writing to request information under the Freedom of Information Act 2000. I would like to receive information regarding Croydon local authority spending on schools on educational placements of any young people aged 19 or under with educational health care plans.

Specifically, I would like to receive a list of local authority schools in this borough and their type (e.g. Specialist/Academy/Mainstream/Independent/Unit/ELP/PRU etc) followed by: -

Pupil numbers in 2019/20/21 academic year at each school
Funding allocated for the 2019/20/21 academic year per school in £
Cost per child with SEN 2019/20/21 academic year per school in £

Pupil numbers in 2019/20/21 academic year at each school
Funding allocated for the 2019/20/2119 academic year per school in £
Cost per child with SEN 2019/20/21 academic year per school in £

Please provide this information in machine-readable format by email. If this request is too wide or unclear, I would be grateful if you could contact me as I understand that under the Act you are required to advise and assist requester.

I understand that you are required to respond to my request within the 20 working days after you receive this letter. I would be grateful if you could confirm in writing that you have received this request."

6. The Council responded on 20 August 2021. It refused to provide the complainant with a list of schools within the borough of Croydon and information relating to pupil numbers and school funding for the 2019/20 and 2020/21 academic years. It cited section 21 (information accessible by other means) as its basis for doing so.
7. The Council also refused to provide information relating to the cost per child with SEN for the 2019/2020 and 2020/2021 academic years citing section 12 (cost limit) as its basis for doing so.

8. On 20 August 2021, the complainant requested an internal review.
9. Following an internal review the Council wrote to the complainant on 11 November 2021. It maintained its reliance on section 21 and section 12 of the FOIA.

Scope of the case

10. The complainant contacted the Commissioner to complain about the way their request for information had been handled. During the course of the Commissioner's investigation, the Council amended its position.
11. The Council maintained its reliance on section 21 of the FOIA to refuse to provide a list of schools in the borough of Croydon and information relating to pupil numbers and school funding for the 2020/2021 academic year.
12. The Council also maintained its reliance on section 12 of the FOIA to refuse to provide information relating to the cost per child with SEN for the 2019/2020 and 2020/2021 academic years.
13. However, the Council stated that it was no longer relying on section 21 of the FOIA to refuse to provide information relating to pupil numbers and school funding for the 2019/2020 academic year as the information is not reasonably accessible by other means. The Council refused to provide this information citing section 12 of the FOIA as its basis for doing so.
14. The scope of this case and the following analysis is to determine if the Council has correctly cited section 12(1) of the FOIA in response to the request.

Reasons for decision

Section 12 – cost of compliance

15. Section 12(1) of the 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.
16. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations') at £450 for public authorities such as the Council.

17. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 18 hours for the Council.
18. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the cost it reasonably expects to incur in carrying out the following permitted activities in complying with the request:
 - determining whether the information is held;
 - locating the information, or a document containing it;
 - retrieving the information, or a document containing it;
 - and extracting the information from a document containing it.
19. 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 decision in the case of *Randall v IC & Medicines and Healthcare Products Regulatory Agency EA/20017/00041*, the Commissioner considers that any estimate must be “sensible, realistic and supported by cogent evidence”. 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.
20. Section 12 is not subject to a public interest test; if complying with the request would exceed the cost limit then there is no requirement under the FOIA to consider whether there is a public interest in the disclosure of the information.
21. Where a public authority claims that section 12 of the FOIA is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit, in line with section 16 of the FOIA.

The Council's position

22. In its submissions to the Commissioner, the Council provided an explanation for how it had calculated that providing information relating to pupil numbers and school funding for the 2019/2020 academic year and information relating to the cost of SEN per child for the 2019/2020 and 2020/2021 academic years would exceed the cost limit.
23. With regards to the complainant's request for information relating to pupil numbers and school funding for the 2019/2020 academic year the

Council explained that whilst it usually collects information on pupil numbers and school funding from schools each year, due to the COVID pandemic this information was not collected for the 2019/2020 academic year. Therefore, this information is not held by the Council.

24. The Council explained that as information relating to pupil numbers and school funding for the 2019/2020 academic year is not held by the Council, in order to provide this information it would have to contact each of the 175 schools within the borough of Croydon to request the information. The Council estimated that it would take approximately 10 minutes to contact each school and collate the requested information. Therefore, in total, the Council calculated that it would take 29.17 hours to comply with this part of the request (10 minutes x 175 schools = 29.17 hours). This equates to £729.25 (29.17 hours x £25 = £729.25).
25. With regards to the complainant's request for information relating to the cost per child with SEN for the 2019/2020 and 2020/2021 academic years, the Council stated that it does not hold the requested information. Therefore, in order to provide the requested information, the Council explained that it would have to contact each of the 175 schools within the borough of Croydon and request the information.
26. The Council estimated that it would take approximately 10 minutes to contact each school and collate the requested information. Therefore, in total, the Council calculated that it would cost £729.25 to comply with this part of the request ((10 minutes x 175 schools = 29.17 hours) x £25 = £729.25).

The Commissioner's position

27. The Commissioner does not accept the Council's reasoning as to why the cost of complying with the request would exceed the appropriate limit.
28. In its submissions to the Commissioner, the Council has stated that it does not hold information relating to pupil numbers and school funding for the 2019/2020 academic year and information relating to the cost of SEN per child for the 2019/2020 and 2020/2021 academic years exceeded the cost limit.
29. Even if the Council does not hold information relating pupil numbers and school funding for the 2019/2020 academic year and information relating to the cost of SEN per child for the 2019/2020 and 2020/2021 academic years, it is not necessary for the Council to retrieve this information from each school in order to comply with the request. As the Council does not need to contact each school to ask for information, the Commissioner considers that the cost of complying with the request would not exceed the cost limit.

30. The FOIA places obligations on a public authority in relation to recorded information held by that public authority. It does not require public authorities to seek recorded information from other organisations in order to satisfy a request. In this case the Council was not required by the FOIA to gather information from schools that it did not itself hold. If it is the case that the Council does not hold the information requested by the complainant, the appropriate response to the request would have been to advise the complainant of that.
31. Therefore, the Commissioner's decision is that the Council is not entitled to rely on section 12(1) of the FOIA to refuse to provide information relating pupil numbers and school funding for the 2019/2020 academic year and information relating to the cost of SEN per child for the 2019/2020 and 2020/2021 academic years.
32. The Commissioner requires the Council to provide the complainant with a fresh response to their request which does not rely on section 12(1) of the FOIA. If it is the case that the requested information is not held by the Council, the Council should inform the complainant that this is the case.

Right of appeal

33. 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

34. 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.
35. 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

Ben Tomes
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF