

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 September 2022

Public Authority: London Borough of Lambeth
Address: Lambeth Town Hall
Brixton Hill
London
SW1 1RW

Decision (including any steps ordered)

1. The complainant requested information from the London Borough of Lambeth ("the Council") relating to the number of children taken into care in the borough. The Council refused to comply with the request citing section 12 (cost limit) of FOIA.
2. The Commissioner's decision is that the Council was entitled to refuse to comply with the request in accordance with section 12(1) of FOIA. However, it has breached section 16 of FOIA by not providing assistance on how the complainant could reduce the scope of their request.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation:
 - Provide the complainant with reasonable assistance on how to limit the scope of their request so that it may be complied with within the appropriate 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 1 October 2021, the complainant made the following request for information to the Council:

"I would like to make a Freedom of Information request. I would be grateful if you could provide:

The number of children in the Borough taken into care between 1 April 2018 and March 31 2019, between 1 April 2019 and 31 March 2020 and between 1 April 2020 and 31 March 2021 a) in total b) over the age of 12 c) over the age of 16, including by gender and ethnicity.

The number of children in the Borough where 1) gangs 2) child sexual exploitation was a factor during assessment by a social worker between a) 1 April 2018 and 31 March 2019 and b) 1 April 2019 and 31 March 2020, c) 1 April 2021 and 31 March 2021, including by gender and ethnicity.

The number of children in care in the Borough where 1) gangs, 2) child sexual exploitation was a factor identified during a referral to children's social services between a) 1 April 2018 and 31 March 2019 b) 1 April 2019 and 31 March 2020 c) 1 April 2020 to 31 March 2021, including by gender and ethnicity.

What assessment the Borough has made about the number of children in the Borough who are active members of gangs between 1 April 2019 and 31 March 2020, including by gender and ethnicity?

The number of children in care in the Borough living in semi-independent accommodation between a) 1 April 2018 and 31 March 2019 b) 1 April 2019 and 31 March 2020 c) 1 April 2020 and 31 March 2021, including by gender and ethnicity.

The number of children in the Borough who are home educated between a) 1 April 2018 to 31 March 2019 b) 1 April 2019 to 31 March 2020 c) 1 April 2020 to 31 March 2021, including by gender and ethnicity.

The number of children in care in the Borough who are assessed as having Special Educational Needs between a) 1 April 2019 and 31 March 2020 and b) 1 April 2020 to 31 March 2021, including by gender and ethnicity.

The number of children in care in the Borough who have a criminal record between a) 1 April 2019 and 31 March 2020 and b) 1 April 2020 to 31 March 2021, including by gender and ethnicity.

The number of children in care in the Borough who have been detained in a police station in the previous 24 months between a) 1 April 2019 and 31 March 2020 and b) 1 April 2020 to 31 March 2021, including by gender and ethnicity.

The number of children in care in the Borough who spent some or all of their time in a placement a) outside the Borough b) outside Greater London by year since 1 April 2017."

6. The Council responded on 29 October 2021. It stated that it held information within the scope of the request, but that the cost of complying with the request would exceed the cost threshold of £450 for public authorities. In accordance with this finding, the Council issued a section 12 refusal notice in reply to the complainant's request for information. The Council advised that the complainant could redefine or shorten the request and resubmit it, but they offered no practical or specific guidance as to how this might be achieved.
7. The Council upheld its initial application of section 12 of FOIA via internal review on 29 November 2021.

Scope of the case

8. The complainant contacted the Commissioner on 1 December 2021 to complain about the way their request for information had been handled. The complainant disagrees with the Council's application of section 12 of FOIA.
9. The Commissioner considers the scope of this case to be to determine if the Council has correctly cited section 12(1) of FOIA in response to the request. The Commissioner has also considered whether the Council met its obligation to offer advice and assistance, under section 16 of FOIA.

Reasons for decision

Section 12 – cost of compliance

10. 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 limit" as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations").

11. Section 12(2) of FOIA states that subsection (1) does not exempt the public authority from the obligation to comply with paragraph (a) of section 1(1) (the duty to inform an applicant whether it holds information of the description specified in the request) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit. The Council relied on section 12(1) in this case.
12. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 at £600 for central government, legislative bodies and the armed forces and at £450 for all other public authorities. The appropriate limit for the Council is £450.
13. 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.
14. 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.
15. 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". 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.
16. 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 FOIA to consider whether there is a public interest in the disclosure of the information.

17. Where a public authority claims that section 12 of 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 FOIA.

Would the cost of compliance exceed the appropriate limit?

18. As is the practice in a case in which the public authority has informed the complainant that it holds the information, the Commissioner asked the Council to provide a detailed estimate of the time/cost taken to provide the information falling within the scope of this request.
19. In its submission to the Commissioner, the Council stated that it had reviewed its records and advised that the following parts of the request would be irretrievable within 18 hours:

“The number of children in care in the Borough who have been detained in a police station in the previous 24 months between a) 1 April 2019 and 31 March 2020 and b) 1 April 2020 to 31 March 2021, including by gender and ethnicity.”

“What assessment the Borough has made about the number of children in the Borough who are active members of gangs between 1 April 2019 and 31 March 2020, including by gender and ethnicity?”

20. The Council explained that it would need to review in excess of 13,000 records representing the number of children referred to or contacted by its Children’s Services department each year. At a conservative estimate of 5 minutes per record, the Council explained that this would still exceed 1000 hours to ascertain whether the children had been detained or were active members of gangs.
21. When prompted for further detail by the Commissioner, the Council added that, as the information is not centrally collated, it would need to look at each child’s record to ascertain any gang involvement or police detainment. It would also need to check their gender/ethnicity to collate information for those parts of the question. The necessity of these manual searches having to be carried out adds to the burden of complying with the request.
22. The Council estimated that if it could review a record in as little as one minute that this would still exceed 200 hours of officer time to provide the information and it considered that it would take significantly longer than this including reviewing gender and ethnicity and notes on each record.
23. The Commissioner’s decision is that the Council is entitled to rely on section 12(1) in respect of the complainant’s request as it has

demonstrated clearly that attempting to compile the information required to respond to the questions of the request referenced in paragraph 19 alone would far exceed the cost limit under FOIA.

Section 16(1) – The duty to provide advice and assistance

24. Section 16(1) of FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45 code of practice¹ in providing advice and assistance, it will have complied with section 16(1).
25. The Commissioner notes that the Council advised the complainant that they could redefine or shorten the request and resubmit it but did not provide any specific assistance on how to do so. The Commissioner notes that the Council could have provided more specific advice and assistance on how the request could be redefined or reduced to try and fall under the cost limit.
26. Therefore, the Commissioner requires the Council to provide the complainant with assistance on ways in which to reduce the scope of their request so that it complies with FOIA.

Other matters

27. The Commissioner wishes to comment more generally on the way the Council has handled this request for information. The Council's correspondence to the complainant on 29 November 2021 setting out the outcome of the internal review, was limited to one sentence, "I write in connection with your request for an Internal Review and confirm we maintain our reliance on s12." The FOIA section 45 Code of Practice provides guidance to public authorities on their responsibilities under the FOIA. Paragraphs 5.8 – 5.10 explain that the internal review procedure should provide a fair and thorough review of procedures and decisions taken in relation to the FOIA. It says that the public authority should "in all cases re-evaluate their handling of the request and pay particular attention to concerns raised by the applicant".

¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf

28. While the Council may have conducted a thorough internal review, the cursory nature of the correspondence it has had with both the complainant and the Commissioner, does not demonstrate this.
29. The Commissioner has set out on his website the positive benefits for public authorities of conforming with the section 45 Code of Practice. These include improved public perception of an organisation, saving of staff time and potentially less resource being spent on dealing with complaints to the Commissioner.
30. The Commissioner is also disappointed in the quality of the engagement the Council has had with his office. Whilst the Commissioner attempts to restrict the information required to that necessary to reach a decision, he expects public authorities to provide comprehensive answers to all of his questions and to provide the necessary evidence to back up any assertions. The Commissioner has had to prompt the Council for the more detailed information.
31. The above concerns will be logged and used by the Commissioner when considering the overall compliance of the Council.
32. The Commissioner will use intelligence gathered from individual cases to inform his insight and compliance function. This will align with the goal in his draft Openness by design strategy to improve standards of accountability, openness and transparency in a digital age. The Commissioner aims to increase the impact of FOIA and EIR enforcement activity through targeting of systemic non-compliance, consistent with the approaches set out in his Regulatory Action Policy².

² <https://ico.org.uk/media/about-the-ico/documents/2259467/regulatory-action-policy.pdf>

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: 0300 1234504

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

Michael Lea
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