

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 November 2022

Public Authority: Leeds City Council

Address: Merrion House
110 Merrion Way
Leeds
LS2 8BB

Decision

1. The complainant requested information from Leeds City Council ("the Council") relating to staff sickness levels, exit interviews, complaints, disciplinary actions and settlement agreements.
2. The Commissioner's decision is that the Council is entitled to rely on section 12(1) (cost limit) of the FOIA to refuse to provide the requested information.
3. However, he finds that the Council failed to provide reasonable advice and assistance and therefore failed to meet its obligations under section 16(1) of the FOIA.
4. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - The Council must provide the complainant with advice and assistance to help them submit a request falling within the appropriate limit.
5. 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

6. The complainant made the following information request to the Council on 20 January 2022:

"Please can you provide the following information.

1) Copies of annual statistics and data for the last 6 years (including 2021) for the following - annual satisfaction levels and sickness analysis (by category) for the following departments.

- Strategy and Investment or previous incarnations (Planned Works)
- Responsive repairs, Voids and Corporate Property management (CPM) – or previous incarnations.

2) How many exit interviews have been completed over the last 6 years (by year) for the following departments?

- Strategy and Investment or previous incarnations (Planned Works)
- Responsive repairs, Voids and CPM or previous incarnations?

Of those how many have raised concerns about management or line managers?

Of those how many raised concerns about bullying or harassment?

3) Number of complaints formal or informal for the last 6 years (by year), including 2021 relating to management style within for the following departments.

- Strategy and Investment or previous incarnations (Planned Works)
- Responsive repairs, Voids and CPM or previous incarnations.

Of those how many have raised concerns about management or line managers?

Of those how many raised concerns about bullying or harassment?

4) How many settlement agreements/payments (excluding ELI) requiring non-disclosure agreements have been instigated

withing the departments below within the last 6 years (by year).

- Strategy and Investment or previous incarnations (Planned Works)
- Responsive repairs, voids and CPM or previous incarnations.

Linked to the above please confirm the number of risk assessments produced to address concerns relating to these settlement agreements/payments and non-disclosure agreements.

- 5) Number of employees disciplined for bullying, harassment, or behaviour considered gross misconduct over the last 6 years.

Of those how many were subject to the following actions:

- Not upheld
- Verbal warning
- Written warning
- Final written warning
- Dismissal

- 6) Number of risk assessments produced over the last 6 years (by year, including 2021) to mitigate sickness levels, satisfaction levels, negative exit interviews and complaints for the following departments:

- Strategy and Investment or previous incarnations (Planned Works)
- Responsive repairs, Voids and CPM or previous incarnations."

7. The Council denied holding information within the scope of questions 1, 3, 5 and 6 of the request. The Council refused to provide information within the scope of question 2 and 4 of the request citing section 12(1) (cost limit) of the FOIA as its basis for doing so.

Reasons for decision

8. This reasoning covers whether the Council is entitled to rely on section 12(1) of the FOIA to refuse to provide information within the scope of questions 2 and 4 of the request. It will also cover whether the Council is correct when it says that it does not hold information within the scope of questions 1, 3 and 5 of the request.

Section 12(1) – cost of compliance

9. 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.
10. 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.
11. 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.
12. 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.
13. 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.
14. With regards to question 4 of the request, the Council explained that it has instigated 442 settlement agreements in the last six years. Whilst these settlement agreements are stored electronically, they are not stored on a database. The settlement agreements are stored in individual electronic folders by employee name.
15. The Council explained that in order to provide the requested, it would have to review each of the 442 settlement agreements to establish which department the relevant employee worked in, whether the

settlement agreement related to ELI and whether the agreement involved a non-disclosure agreement or risk assessment. As some settlement agreements do not relate to employees leaving the Council, the Council considers that it would have to cross check each settlement agreement with files held by the Council's legal services to make sure that the information fell within the scope of question 4 of the request. In some cases, it may be necessary to consult a HR adviser.

16. The Council estimates that it would take approximately 15 minutes to a review each agreement. Therefore, the Council calculated that in total, it would take 110 hours to provide all the information it held within the scope of question 4 of the request (442 settlement agreements x 15 minutes = 110 hours).
17. The Commissioner considers the Council's estimate of 15 minutes to review each settlement agreement for information within the scope of question 4 of the request to be reasonable. Even if the Council was to take 5 minutes to review each of the 442 settlement agreements, the cost of complying with question 4 the request would exceed the appropriate limit.
18. Under section 12 of the FOIA, a public authority can refuse to comply with a request in its entirety if it estimates reasonably that the cost of complying with part of a request would exceed the cost limit, even if the request could be complied with in part within the cost limit.
19. Therefore, whilst the Council has only applied section 12(1) to part of the request, as the cost of complying with question 4 of the request exceeds the cost limit, the Commissioner considers that the Council is entitled to refuse to comply with the request in its entirety.
20. The Commissioner's decision is that the Council estimated reasonably that the cost of complying with the request would exceed the appropriate limit. Therefore, the Council is entitled to rely on section 12(1) of the FOIA to refuse to comply with the entirety of the request.
21. As the Council is entitled to rely on section 12(1) of the FOIA to refuse to comply with the request in its entirety, the Commissioner has not gone on to consider whether the Council holds information within the scope of questions 1, 3 and 5 of the request.

Section 16 – advice and assistance

22. Section 16(1) of the 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).

23. In its submissions to the Commissioner, the Council stated that it has not provided the complainant with advice and assistance to help them refine their request. The Council considers that even if the complainant was to change the search criteria of their request, the cost of complying with the request would still exceed the appropriate limit as the Council would still have to review 442 settlement agreements in order to provide the requested information.
24. The Commissioner considers that the Council could have provided the complainant with advice and assistance to help them submit a new request which falls within the appropriate limit. For example, the complainant could narrow the scope of their request by reducing the time period of the request.
25. Therefore, the Commissioner's decision is that the Council did not provide the complainant with adequate advice and assistance and therefore breached section 16(1) of the FOIA.

¹ <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

Right of appeal

26. 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

27. 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.
28. 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

Daniel Perry
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
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