

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 January 2023

Public Authority: Suffolk County Council
Address: Endeavour House
8 Russell Road
Ipswich
Suffolk
IP1 2BX

Decision (including any steps ordered)

1. The complainant requested information from Suffolk County Council ("the Council"). The Commissioner's decision is that the Council was entitled to refuse to comply with the request in accordance with section 12(1) (cost limit) of FOIA. The Commissioner also finds that the Council did not comply with its obligations under section 16 of FOIA to offer advice and assistance.
2. The Commissioner now requires the Council to provide advice and assistance to the complainant.
3. 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

4. On 5 June 2022, the complainant made the following request for information to the Council:
"How many active, finalised Education, Health and Care Plans EHCPs are in place?"

How many of these plans include a requirement for Speech and Language Therapy (SaLT) from a qualified therapist?

For how many of the above plans has SaLT been secured (i.e. arranged and fully delivered according to the plan) ?

On average (mean and median) how much time elapsed from the EHCP date to the time at which SaLT was secured.

How many of these plans include a requirement for Occupational Therapy (OT) from a qualified therapist?

For how many of the above plans has OT been secured (i.e. arranged and fully delivered according to the plan) ?

On average (mean and median) how much time elapsed from the EHCP date to the time at which OT was secured."

5. The Council refused to provide the requested information citing section 12 (cost limit) of FOIA as its basis for doing so.

Reasons for decision

Section 12 – cost of compliance

6. This reasoning covers whether the Council is correct to apply section 12(1) (cost limit) of FOIA to the request.¹ The appropriate limit² for the Council in this case is £450.
7. The Council considers that the cost of complying with this request would exceed the appropriate limit under FOIA. It has explained that the information requested is not held in a format that would make it immediately available via automatic means (i.e., in a easily accessible report).
8. It will therefore be necessary to undertake a manual search of all 6,605 Education Health & Care Plans (" the EHCP's") in order to extract the information required. The service has estimated that it would take 10 minutes to search each EHCP for the data required, which in total would take 66,060 minutes (1100 hours 50 minutes) of staff time.

¹ <https://www.legislation.gov.uk/ukpga/2000/36/section/12>

² <https://www.legislation.gov.uk/uksi/2004/3244/regulation/4/made>

9. The Council state that the EHCPs are stored in an electronic format in several digital locations. The capabilities of their system do not allow a report to be generated across all EHCPs and therefore would require a member of staff to open each one manually and extract the information requested.
10. The estimated 10 minutes would require staff to locate, retrieve and collate the information requested and would require them to action the following steps:
- Open SharePoint where the information is stored;-
 - Filter on child's surname;-
 - Locate individual EHCP;-
 - Open document and go through to find the relevant information;-
 - Locate any provision information to determine if said therapy determined;-
 - Contact educational setting/NHS/Private commissioned provider to confirm how many plans have SaLT/OT have been determined; and
 - Calculate on average mean/median how much time elapsed from the EHCP finalised date to the time at which therapy was delivered/received.
11. As a result, this would cost the Council £27,520.80, due to staff member's time of 66,060 minutes (1100 hours 50 minutes) at a cost of £25 per hour, which is vastly excess of the £450 limit set out in Section 12 of FOIA.
12. The Commissioner is satisfied that the Council's arguments above are justified because the EHCP's are not in one location and it would take some time to locate the information. Also the complainant has asked very specific questions in regard to the EHCP records and to decipher the records for this information will further increase the time to comply with the request, thereby increasing costs. Even were the estimate to be reduced to just 1 minute per record, the cost of complying with this request would still be significantly greater than the £450 specified under FOIA.
13. The Commissioner's decision is that the Council was therefore correct to apply section 12(1) of FOIA to the request.

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

14. 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 practice³ in providing advice and assistance, it will have complied with section 16(1).

15. The Commissioner notes that the Council did not provide advice and assistance to the complainant. The Commissioner is therefore satisfied that the Council did not meet its obligations under section 16 of FOIA. The public authority must now provide appropriate advice and assistance to the requester.

³ <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

Right of appeal

16. 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

17. 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.
18. 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
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**