

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 February 2023

Public Authority: London Borough of Lewisham

Address: Laurence House
1 Catford Road
London
SE6 4RU

Decision (including any steps ordered)

1. The complainant has requested information regarding the London Borough of Lewisham's (the Council) reasonable adjustment processes and procedures.
2. The Commissioner's decision is that:
 - The Council has correctly applied section 12 and was entitled to refuse the request.
 - The Commissioner also finds that the Council did not comply with its obligations under section 16 of FOIA to offer advice and assistance
 - The Council failed to respond within 20 working days and therefore breached section 17 of FOIA.
3. The Commissioner now requires the Council to provide the complainant with advice and assistance to help them submit a request falling within the appropriate limit, or state that it is not possible to refine the request in such a way as to fall 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 FOIA and may be dealt with as a contempt of court.

Request and response

5. On 20 May 2022, the complainant wrote to the Council and requested information in the following terms:
- "1. How has the council considered its public sector equality duties when designing automated or online services? What other means of contact are available to the public and how is this publicised?
 2. What training does the council provide to staff regarding the council's duties under the Equality Act 2010 and how regularly is this reviewed?
 3. How does the council record reasonable adjustments and can it provide statistics on what proportion of people who use its services require reasonable adjustments?
 4. How many complaints has the council had in the past year regarding disability discrimination or a failure to make reasonable adjustments?
 5. Does the council have good information sharing agreements with other bodies and services which allow it to share information about reasonable adjustments to ensure continuity of service?
 6. How does the council regularly review the range of reasonable adjustments it can provide to members of the public and is this information shared with public facing staff?
 7. Please disclose the report(s) of the Lewisham Disabled People's Commission (LDPC) that was established by the Council in the last administration, 2018-2022, and provide details of the costs of the LDPC to date."
6. The Council responded on 3 August 2022; it provided some information within the scope of the request. The Council went on to explained to the complainant that either the remaining information was not held, or those parts of the request were not valid under FOIA.
7. Following an internal review, the Council wrote to the complainant on 6 August 2022. It stated that it was revising part of its response, explaining the cost of complying with the request would exceed the cost limit. The Council concluded the internal review, advising it was upholding the remaining responses.

Scope of the case

8. The complainant contacted the Commissioner 8 September 2022 to complain about the way their request for information had been handled.

9. During the Commissioner's investigation, the Council provided a cost estimate to support its application of Section 12(1) for questions 3 and 4 of the request. The Council also provided the Commissioner with further detailed arguments for the remaining parts of the request. Once the cost of compliance is exceeded, a public authority is not expected to continue to search for information nor provide any information.
10. Therefore, the Commissioner will only consider whether the Council was entitled to rely on Section 12(1), when refusing the request.

Reasons for decision

11. 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.
12. When considering whether section 12(1) applies, the authority can only take into account certain costs, as set out in The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Regulations'). These are:
 - 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.
13. The Regulations state that the appropriate cost limit is £600 for central government, legislative bodies and the armed forces, and £450 for all other public authorities. The cost limit in this case is £450, which is equivalent to 18 hours' work.
14. Section 12 of the FOIA makes it clear that a public authority only has to estimate whether the cost of complying would exceed the appropriate limit. It is not required to provide a precise calculation. The task for the Commissioner here is to reach a conclusion as to whether the cost estimate made by the Council was reasonable.

The Council's position:

15. The Council explained in relation to questions 3 and 4 that reasonable adjustments are not recorded centrally within the Council, meaning to gather the relevant information the Council would need to contact

individual departments/service areas. The Council would have to enquire how reasonable adjustments are recorded by these departments/services and if statistics can be provided on what proportion of people who use the service require reasonable adjustments.

16. The Council explained that "a reasonable adjustment could be recorded on a service users file, each individual file would need to be interrogated to establish if a reasonable adjustment had been requested. This would involve hundreds of files being interrogated which would exceed the time and cost limit."
17. The Council provided the Commissioner with a sampling exercise advising, as of the end of November 2022 it had 3566 active service users in adult social care. To ascertain the number of these service users who require reasonable adjustments would require a manual search of those 3566. The Council assumed that each file would take approximately 10 minutes to interrogate, taking the total time to 594 hours.
18. The Council also explained that it does not record complaints regarding disability discrimination, or failure to make reasonable adjustments centrally. It advised that locating, retrieving, and collating this information would involve a manual search of systems and individual files which would exceed the cost limit.
19. The Council did a similar sampling exercise regarding complaints, it advised there are 2049 stage 1 complaints held on its Icasework system from April 2021 to March 2022. The Council explained they are unable to filter the complaints to "disability discrimination or a failure to make reasonable adjustments," so it would need to manually search all files it held, again working on the assumption each file would take approximately 10 minutes to interrogate, this would take 341.5 hours.
20. The Council advised that both estimates provided were based upon the quickest method of gathering the requested information. The Council further confirmed that files referred to in the examples were from electronic files rather than manual.

The complainant's position:

21. The complainant explained to the Commissioner that statistics and monitoring should be routinely carried out if the Council was abiding by the statutory duties and policies imposed on them.

22. The complainant also explained that disability discrimination complaint statistics should be collected routinely and therefore should not exceed the cost limit.

The Commissioner's position:

23. It is not for the Commissioner to state what a Council should and should not be recording, the Commissioner is a regulator and in these circumstances is only concerned with the handling of the request for information under FOIA.
24. Whilst the Commissioner is sceptical that it would take the Council 10 minutes to review each individual file, he does agree that the cost limit imposed on the Council would be exceeded.
25. The Commissioner concluded that even at 3 minutes per file, the cost limit would be exceeded. For just questions 3 and 4 of the request for information, the estimated time to retrieve the information would be around 280 hours. This clearly is far over the reasonable limit of 18 hours, for the reasons above the Commissioner is satisfied the Council was entitled to rely on Section 12(1) to withhold the requested information.

Section 16 - Advice and assistance

26. 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.

Procedural matters

27. Section 17(5) of FOIA provides that "A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact."
28. Section 10 of FOIA requires that a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.
29. The complainant made their request for information on 20 May 2022. The Council provided the complainant with its response on 3 August 2022. This falls outside of the period of 20 working days required by section 10 of FOIA.

30. The Commissioner has therefore decided that the Council did not comply with the requirements of section 17 in this instance.

Other matters

31. The Commissioner would like to remind the Council that where it estimates that the cost limit would be exceeded for any part of the request, it should avoid providing information it has found as a result of its searching. Although it may have been done with the intention of being helpful, it ultimately denies the requestor the right to express a preference as to which parts or parts of the request they wish to receive under the appropriate limit.
32. In practice, as soon as a public authority becomes aware that it intends to rely on section 12, it makes sense for it to stop searching for the requested information and inform the complainant. This avoids any further and unnecessary work for the public authority as it does not need to provide any information at all if section 12 is engaged.

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

Catherine Fletcher
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