

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 October 2011

Public Authority: Kent County Council
Address: County Hall
Maidstone
Kent
ME14 1XQ

Decision (including any steps ordered)

1. After reading a particular press article, the complainant requested information relating to a number of social services cases that had been reviewed by Kent County Council ("the council"). The article referred to over 500 cases that caused concern. The council said that it did not hold the information. Following the Commissioner's intervention, the council conceded that it did hold the information however it would take more than 18 hours work to comply with the request and an exclusion relating to costs applied under the Freedom of Information Act 2000 ("the FOIA"). Despite this, the council provided to the complainant part of the requested information that it was able to obtain by working up to and a little way beyond the costs limit. However, the complainant remained dissatisfied.
2. The Commissioner's decision is that the council correctly determined that to comply with the request would exceed the costs limit under section 12 of the FOIA and that it had provided appropriate advice and assistance.
3. The Commissioner also noted that there were a number of procedural issues that arose because of the way in which the authority handled the request. In particular, he noted that the council failed to respond to the request within the statutory time frame. It also failed to identify that it held information falling within the scope of the request. Once this had been identified, the council applied the costs limit exclusion under the FOIA but did not consider the associated obligations to offer reasonable advice and assistance until prompted to do so by the Commissioner.
4. The Commissioner does not require any steps to be taken.

Request and response

5. On 21 January 2011, the complainant requested information from the council. At points 3 and 5, he wrote the following:

"A recent review has highlighted has identified [sic] more than 500 cases which raise cause for concern. Link provided here: <http://www.bbc.co.uk/news/uk-england-kent-12154738> so so [sic] called "isolated incident" of "human error". We now have 500 cases so human error is not the cause of these failings.

3) Please break down the failure to safeguard children figures by the social services offices within Kent.

5) Please provide details each failing and the category into which it falls into and a synopsis of the failure to that child".

6. On 1 March 2011, the council replied and said that the information requested at points 3 and 5 was not available.
7. The complainant requested an internal review on 4 March 2011.
8. The council replied on 17 March 2011. It conceded that it had been late in responding but it did not uphold any other complaint.

Scope of the case

9. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He asked the Commissioner to consider whether the council held the information that he had requested at points 3 and 5 of his request.
10. During the Commissioner's investigation, the council conceded that it did hold the requested information. It reconsidered the matter and decided that it would exceed the costs limit under FOIA to respond to the request however it subsequently provided information up to the costs limit. The complainant remained dissatisfied and said that he was not prepared to accept that the costs limit had been exceeded, despite the fact that the council had carried out work up to and beyond the costs limit. The scope of the Commissioner's investigation is therefore whether the cost limit did apply to the request and if so, whether the council had provided reasonable advice and assistance.

Reasons for decision

Section 12 – Appropriate Costs Limit

11. Section 12 of the FOIA states that section 1(1) does not oblige a public authority 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 applies, the authority can only take into account certain costs as set out in Statutory Instrument no 3244 "The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004". Paragraph 4(3) states the following:

"In a case in which this regulation has effect, a public authority may, for the purpose of its estimate, take account only of the costs it reasonably expects to incur in relation to the request in –

 - (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. When estimating the cost of a staff member carrying out the above activities, the costs are taken to be at a rate of £25 per hour which equates to 18 hours work.
14. In cases where an authority has made an estimate in accordance with section 12, the Commissioner would expect the authority to itemise the activities in the regulations shown above at a - d and state a time estimate for each relevant activity. It should also explain fully why it has estimated that the activity would take that long, specifying in detail what would be involved. In cases where a public authority has already determined that it held the information, it may take into account the time taken for it to do that although the amount of time taken should still be reasonable and the authority will need to justify the time taken.
15. When the Commissioner wrote to the council and set out the above description of what the council needed to do, the council replied and stated that it had worked up to and beyond the costs limit. It said that it had provided directly to the complainant some of the information that he required. It provided the Commissioner with a copy of the same information. The document provided was headed "Case Review Analysis" and it set out the names of some of its social services offices,

the total number of cases that had been reviewed, the number where concerns had been identified and it broke the cases down into the following categories:

- Recording not up to date
 - Visits not within timescale/not undertaken
 - Strategy discussions not concluded/recorded
 - Assessments not complete
 - Case not progressed
 - Lack of plan/plan not effective
 - Unallocated/inappropriately allocated
 - Children not seen
 - Other
16. The council explained to the Commissioner that the analysis provided in the spreadsheet concerned those cases where the council was able to use existing spreadsheets to extract the relevant information. It said that it had been able to cover 7 out of the 12 offices using this method. However, it said that this work had been extensive and had exceeded the costs limit.
17. The council explained that to carry out work in respect of the remaining offices would also be time consuming because in respect of these offices, the spreadsheets concerned did not contain sufficient information to enable the council to understand what concerns were raised during the review. In relation to these offices, it said that it would need to undertake a case by case analysis and look at the individual "proformas" on each case.
18. The council explained that, contrary to the complainant's expectations, there had not been any consistent recording process in place when the council carried out the review and the concerns raised had not been categorised in the way that the complainant appears to have envisaged.
19. The council did not break down its activities in relation to the work that it had already carried out up to and beyond the costs limit. However, it provided some details of how much time it estimated that it would take to carry out any more work in relation to the remaining social services offices based on an average time estimate of 10 minutes per proforma as follows:
- Dover – 400 Proformas will need to be reviewed (83 hours)
 - Swale – 869 Proformas will need to be reviewed (143 hours)
 - Ashford – 763 Proformas will need to be reviewed (127 hours)

- Tonbridge and Malling – 10 proformas will need to be reviewed (1.6 hours)
 - Gravesend – 533 proformas will need to be reviewed (88 hours)
20. The Commissioner asked the council to provide more detail in relation to the work it had carried out and the work that would be required in accordance with the categories he had set out in his correspondence. The Commissioner also asked the council whether it was willing to provide some sample copies of the information it was using to help the Commissioner to understand what the information looked like.
21. The council provided the Commissioner with copies of two spreadsheets to illustrate the situation. It provided one where it had been able to extract the concerns raised without looking into the individual case, and it also provided a spreadsheet from one of its social services offices where this was not possible. It explained that the latter spreadsheet did not contain comments relevant to the review as its focus was on providing an overview of the case and the reasons why social services intervention had been required in the first place.
22. The council also provided a more detailed explanation of the work it had already carried out to respond to the request as follows:

To determine whether the council holds the information

- Emails to the area Heads of Service and all District Managers to ask what information they held – 5 minutes
- Searching various electronic folders, either in the area teams or in centrally held records – checks in 12 districts = 5 minutes for each district and 1 hour to check central folders. An additional 15 minutes checking individual folders totalling 2 hours and 15 minutes.
- Total approximate time estimate 2.2 hours.

Locating and retrieving the information

- Requesting release of all spreadsheets to be submitted in response to the ICO enquiry – 5 minutes
- Responding to enquiries where district practitioners sought clarification as to what was required – 5 phone calls/emails – 15 minutes
- Undertaking follow up enquiries to ensure release of the information as required – 30 minutes
- Saving all documents to a central folder – 10 minutes
- Total approximate time estimate – 1 hour

Extracting the information from a document containing it

- Review all spreadsheets to identify which contain sufficient information to enable analysis to provide response and mapping out work required to enable full analysis – 4 hours
- Identify appropriate outline concerns categories and develop grid to capture information – 1 hour
- Review all 7 districts concerns data where available and break down the data into individual concerns category (5 minutes per case to review information, record category and then transfer to grid). With 210 cases of concern to consider this leads to 1050 minutes – 17.5 hours
- Total approximate time estimate = 22.5 hours

Drafting responses to queries from the complainant and the ICO

- Initial response and follow up correspondence – 1 hour
23. For clarity, the Commissioner does not accept that the time taken to respond to the ICO's correspondence or queries from the complainant is a relevant factor to take into account when determining a time estimate for the purposes of section 12. The Commissioner therefore disregarded this time.
24. As regards compliance with the remainder of the request, it was not clear to the Commissioner precisely how the council had arrived at the estimated number of hours taken to deal with the proformas because the council did not provide any further details other than that set out in this Decision Notice. However, the Commissioner accepts that the work involved is likely to be time-consuming and the Commissioner accepts that the council had demonstrated, by actually undertaking part of the work involved, that the appropriate limit under the FOIA would be exceeded by compliance with the request.
25. The Commissioner is usually asked to determine whether a costs estimate would exceed the appropriate limit without the authority having undertaken any of the work involved to comply with the request. In this case, the authority worked up to and beyond the appropriate limit. It has been able to account for the time that this took in a reasonable way. In determining that section 12 was engaged in this case, the Commissioner considers that he is able to attach significant weight to the reliability of the authority's estimation based on the fact that the authority has actually carried out part of the work required.

Procedural issues

26. If a public authority wishes to maintain that section 12 is engaged, it then needs to consider its duty to provide advice and assistance under section 16 of the FOIA. The Code of Practice under section 45 of the FOIA states the following on the subject:

“Where an authority is not obliged to comply with a request for information because, under section 12(1) and regulations made under section 12, the cost of complying would exceed the appropriate limit (i.e. cost threshold) the authority should consider providing an indication of what, if any information could be provided within the cost ceiling. The authority should also consider advising the applicant that by reforming or re-focusing their request, information may be able to be supplied for a lower or no fee”.

27. The Commissioner noted that in this case, the authority refused the request without considering its obligations under section 16. When asked about this, its response appears to have been to work up to and a little way beyond the appropriate limit. It did not consult the complainant prior to undertaking this work. The Commissioner would like to explain that there is no obligation upon public authorities to work up to the appropriate limit automatically in these circumstances. As a matter of best practice, public authorities should also ensure that they consult with the complainant when deciding what, if any, advice and assistance may be appropriate. However, by working up to the appropriate limit and writing to the complainant directly during the course of the Commissioner's investigation to explain the work involved in responding to the request, it is the Commissioner's view that the authority demonstrated what information could be provided within the costs ceiling, which is the refinement of the request that would have been suggested if it had offered reasonable advice and assistance at the time of dealing with the initial request. The Commissioner therefore does not require the authority to take any further steps in relation to its obligation under section 16.
28. Section 10 of the FOIA provides that a public authority should respond to a request within 20 working days. This did not happen on this occasion.
29. Section 1 of the FOIA provides that there is a general obligation upon public authorities to identify that they hold information falling within the scope of a request. The council did not do this in this case until during the Commissioner's investigation.

Right of appeal

30. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

31. 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.
32. 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

Graham Smith
Deputy Commissioner
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