

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 July 2014

Public Authority: Warwickshire County Council
Address: Law & Governance
PO Box 9
Shire Hall
Warwick
Warwickshire
CV34 4RR

Decision (including any steps ordered)

1. The complainant has requested information relating to the councils intention to make changes to its Integrated Disabled Service. The council aggregated the request along with others it had received from a parent group, Family Voice Warwickshire, and applied section 12(1) – that responding would exceed the appropriate limit.
2. The Commissioner's decision is that Warwickshire County Council has correctly applied section 12(1) to the requests.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 15 October 2013 the complainant wrote to the council and requested information in the following terms:
- a) *"Was the IDS budget reduced for savings identified to be realised in 2011/12 and 2012/13?"*
 - b) *Which grant relating to Children's services was reduced and announced at short notice?*
 - c) *What were the options/alternatives considered by the Council when considering the increase of the IDS savings target from £225k in 2013/14 to £1,786k?*
 - d) *This latter says that the £1,786k has to be realised as a full year recurring saving by the end of 2013/14, recognising that this sum is unlikely to be achieved in year - 'but it does not have to be reached until a point in the year which has regard to the need to consult.' When is that point in the year and where is this reflected in the Council's budget?*
 - e) *The Conservative Group Savings schedule for 2013/14 explaining the basis for the £1,786k saving refers to 'new legislative requirements.' Please detail what these 'new legislative requirements' are and when they came/will come into effect. Also please detail when the government's intention to make these changes was first flagged to Councils (indicative month is fine).*
 - f) *This same note identifies that there will be a 20% reduction in the short breaks service. Please identify the specific legislation relating to IDS that has superseded the guidance in 2011 that Council's should provide support to Carers at the level established at that time.*
 - g) *Please provide a copy of the advice provided by Legal as the corporate governance to the process, specifically relating to this amount and covering the above points.*
 - h) *The report to Cabinet dated 31 January 2013 includes Appendix A 'Savings Proposals to Offset the Children's Services Funding Reduction.' The Appendix identifies that the funding shortfall relate to LACSEG. However, the savings proposed do not appear to relate to areas LACSEG was provided to fund.*
 - i) *The sum needed in the Cabinet report to balance the Budget is £1,695k. The savings detailed in Appendix A is higher than this at £1,943k. The saving relating to IDS in Appendix A is £704k. Adding this to the original target of £225k gives a total of £929k. This is £857k below the target in the Conservative Group schedule.*

- j) *The Spending Pressures totals in Table 1: Overall Predicted Council Revenue Position (page 3 of 145) reported to Cabinet on 13 December 2013 appear to bear no relation to the figures provided in Appendix B (page 16 of 145) after 2013/14.*

<i>All figures £m)</i>	<i>Table 1</i>	<i>Appendix B</i>
<i>2013/14</i>	<i>8.628</i>	<i>8.628</i>
<i>2014/15</i>	<i>4.156</i>	<i>10.554</i>
<i>2015/16</i>	<i>4.067</i>	<i>14.013</i>

- a. *Given these figures are fundamental to the decision making process can this please be clarified.*
- k) *The report to Cabinet on 31 January 2013 identified that the Council's financial position had deteriorated by only £0.324m compared to December 2012. It also identifies that the savings schedule to the December Cabinet is unchanged other than the clarification relating to Children's (EIG and LACSEG). Please clarify why the savings target for IDS was increased by such a large sum when the overall target increased by a lower sum.*
- l) *There are significant differences between the Savings Schedules between Cabinets in December 2012 and January 2013, and the Council meeting on 5 February 2013. Can you please clarify when these differences were explained to and discussed by Councillors.*
- m) *Please identify the approved budgets by subjective heading and total for IDS in 2010/11; 2011/12; 2012/12 and 2013/14."*
5. The council responded on 12 November 2013 and, after aggregating the request with other requests received from members of a parent and carer forum, 'Family Voice Warwickshire' it said that responding to the request would exceed the appropriate limit and applied section 12(1).
6. Following an internal review the council wrote to the complainant on 23 December 2013. It maintained its position that section 12 was applicable.

Scope of the case

7. The complainant contacted the Commissioner on 16 January 2014 to complain about the way his request for information had been handled.
8. The complainant considers that the council was wrong to aggregate his request with other requests received from members of Family Voice Warwickshire. He said that his request was not part of a campaign and that as the forum is a parent group with a large number of members the

council was bound to receive a number of requests from parents who are likely to be members of the group, but this was not evidence of a direct 'campaign'. He therefore considers that the council should have disclosed the information which he requested to him.

9. The Commissioner considers that the complaint is whether the council could correctly apply section 12 as a reason to refuse his requests for information.

Reasons for decision

Section 12 – cost of complying with the request

10. Section 12(1) 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.
11. The appropriate cost limit is defined in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. Under Regulation 3 the appropriate cost limit is set at £450 for a public authority such as the Council. Under Regulation 4 the Council may apply a figure of up to £25 per hour to determine whether information is held, and then locate, retrieve and extract the information. At that rate, the appropriate cost limit equates to 18 hours – or 1080 minutes – of work.
12. In order to determine whether complying with the request would exceed the appropriate limit the Commissioner has considered the submissions put forward by the Council and determined whether these are reasonable.
13. The Commissioner notes that the council sought to aggregate the request with others it had received from a group which the complainant accepts that he is a member of, Family Voice Warwickshire.

Can the requests be aggregated?

14. Public authorities are entitled to aggregate requests under section 12(4) where the request has been:
 - made by one person, or by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign;
 - made for the same or similar information; and
 - received by the public authority within any period of 60 consecutive working days.

15. The council said that it considered that the requests have been made by a group of individuals who are acting collectively and as part of a campaign. This is because it had noted that the requests have all originated from individuals within a 60 day period who the council knows to be members of Family Voice Warwickshire.
16. The council said that Since 15 October 2013 the council has received 11 requests for information relating to the Integrated Disability Service (IDS). In summary the requests have been made for the following information:
 1. IDS budget – various questions
 2. Staff structure and budget
 3. Analysis of responses to consultation
 4. Needs assessment matrix and information regarding number of individuals remaining under Children's Services under new system
 5. Grants received from central government and IDS budget
 6. Cost to Council regarding delay in the implementation of budget cuts
 7. Sitting service arrangement from ILEAP
 8. Contracts with external providers
 9. Calculations of packages and how been reviewed
 10. IDS fixed assets
 11. Correspondence between officers in connection with IDS cuts
17. The Commissioner wrote to the council and asked it to reconsider its position as regards aggregating the requests. He highlighted that the issue was cuts to the funding of a service and that this affected all users of the service. As this was a controversial decision it was likely that individuals who were affected (and were likely to be members of the group) would make requests to establish what the council's intentions were and whether its decisions were appropriate. He also noted that the complainant said that the group was not a campaigning group and was simply a forum for parents.
18. The council responded by providing a link to the Family Voice Warwickshire's own website and asked the Commissioner to note a news section which states:

"WCC have decided not to answer the questions sent in by 11 parents under the Freedom of Information Act... We asked for an Internal Review but this reached the same conclusion and upheld their decision not to give us the information. You may notice that they do not even have our name correct! Some of the questions are ones that have been asked over and over again to officers and Councillors such as: Where did the figure of £1.78m come from? This has still not been answered

in 11 months; three times we were promised that 'someone from finance' would come to explain: they did not come. We felt the only course of action was to use FOI Act but this has been thwarted. As far as I am concerned any parent or carer of a child with a disability in Warwickshire is part of Family Voice Warwickshire, so by WCC reckoning around 6,000 families are not at liberty to ask for information under FOI Act. I also think that our 'challenging/questioning the process' has clearly been the right course of action and we have on several occasions questioned decisions and processes that were clearly unlawful."

19. The council pointed in particular to the statement "*We felt the only course of action was to use FOI Act but this has been thwarted*" and argues that this illustrates that the requests were not generated separately but came collectively from members of the group, some of whom are members of the committee. It also argues that they were made in the pursuance of the same campaign (or have a common purpose) regarding the IDS (i.e. to challenge the IDS consultation process and proposals to redesign the service, including the budget cuts).
20. The Commissioner therefore accepts the council's argument that there was a degree of collaboration between the 11 individual requests highlighted by the council. Family Voice Warwickshire's leadership were fully aware of the requests that had been made and the responses which had been received.
21. However the Commissioner notes that the news item refers to 11 requests being made by the group and the council admitted that it had received 11 requests in addition to the receipt of the complainant's request. This would appear to be evidence that the complainant's requests did not specifically form part of the organised campaign of the leadership of Family Voice Warwickshire at that point.
22. The Oxford English Dictionary website defines the word 'campaign' as to "*work in an organized and active way towards a goal.*" Whilst the complainant's individual request may not have been known specifically by the leadership of Family Voice there was a campaign to obtain information by its membership the complainant's request was for information on the same sorts of issues with the same overall purposes. The complainant is also a member of the group. The Commissioner therefore considers that it was reasonable for the council to consider that the complainant was acting in concert with the group, and that the request was part of a continuation of that campaign.

23. The Commissioner's decision is therefore that the council has demonstrated that the criteria for aggregation have been met and that it was therefore able to aggregate the requests together on this basis.
24. The council also confirmed that they were received within a 60 day period of time.

Would complying with the requests exceed the appropriate limit?

25. The council has demonstrated that dealing with one of the requests on its own would have exceeded the appropriate limit. It provided the following estimate:

"To demonstrate this, we consider that dealing with the 11th request detailed above alone would take around 181.6 hours. This is assuming that these individuals would have received in total around 50 emails a day and therefore between 1 April - 30 August (109 days) around 5450 emails would have been received by these individuals. Then presuming that locating the relevant information would have taken around 2 minutes per email, this would equate to 10,000 minutes which equals 181.6 hours, which is clearly in itself well over the 18 hour limit."

26. However when responding to the Commissioner's questions the council said that there had been a minor miscalculation in that the period in question was 110 days, and provide updated figures based upon this.
27. The Commissioner notes that the council made an assumption that officers would have received 50 emails a day. The Commissioner considers that this may exceed the actual amount received by officers during the relevant period. The council did not provide evidence to justify why it had chosen this number as the number of emails likely to have been received.
28. However even if the actual amount had been only 10 emails the time taken would have exceeded 30 hours (10 emails x 110 days x 2 minutes per email, divided by 60). This was for request 11 alone.
29. The Commissioner notes that the council clarified that the system it searched was an electronic email system. It did not state whether it had carried out searches using appropriate search terms however, and it is possible that this may have significantly reduced the time it would take to search the relevant information for this request.
30. Nevertheless the Commissioner is satisfied that even had the council done so this would only have reduced the estimate for one individual request, and there were many others to consider, including the complainant's request for information in this instance.

31. A public authority is not obliged to search for, or compile some of the requested information before refusing a request that will exceed the appropriate limit. If however, a public authority does carry out some searches without an initial estimate, it can stop searching as soon as it realises that it would exceed the appropriate limit. Furthermore, it is able to consider whether it would exceed the appropriate limit on any day up to the time of statutory compliance.
32. The council said that *"the requests were aggregated and reviewed collectively to determine which officers may hold the requested information, and this was without an initial estimate. This review took approximately 10 hours at which point the exercise was stopped and an estimate was made in relation to a random sample of the requests, as per above. The Council applied section 12 once we realised that the appropriate limit would be exceeded, and advised the applicant accordingly and within the statutory time for compliance."*
33. The Commissioner also notes the 18 hour appropriate limit could be applied to all items within the complainant's request. The council argues that in order to obtain relevant information for all of the items the scope of this request would have to be severely reduced in order to come within the appropriate cost limit.
34. Therefore, the Commissioner is satisfied that the Council has correctly applied section 12 to the complainant's request.

Section 16 – advice and assistance

35. Section 16(1) of the Act provides that a public authority is required to provide advice and assistance to any individual making an information request.
36. In relation to section 12, the Commissioner considers that adequate advice and assistance will have been given if the public authority has provided advice on how to reduce the scope of the request so that it may come within the appropriate cost limit.
37. In this case, the council suggested that the complainant liaised with other members of Family Voice Warwickshire and as a whole they reconsidered what information they required and resubmitted narrower requests in place of all of the previous ones. The complainant argued that he could not do so as he was not aware what other requests had been made by members of Family Voice Warwickshire as he was not requesting the information as part of a campaign.
38. The Commissioner considers however that this is reasonable advice. It is clear that as a group Family Voice Warwickshire are seeking further information about the intended changes, and so it is reasonable for the

council to ask the group to submit their requests as a whole rather than as a set of individual requests albeit with a common goal. In this way the council can aid the group as a whole to formulate requests which will fall within the appropriate limit rather than dealing with each individual requestor separately.

39. The Commissioner therefore considers that the council's response meets the obligation set out in section 16(1).

Other matters

40. The Commissioner notes that some of the requests made by the complainant are not requests for recorded information but questions regarding the council's actions and about the information it has already provided. He has not however found it necessary to consider this in detail in his decision notice.
41. The Commissioner has however provided verbal advice to the complainant regarding public authorities' obligations under the Act, and informed of the need to make requests for recorded information rather than simply ask questions which the complainant wishes the council to respond to.

Right of appeal

42. 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: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

43. 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.
44. 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

Andrew White
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