

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 June 2015

Public Authority: Calderdale Council
Address: Northgate House
Halifax
HX1 1UN

Decision (including any steps ordered)

1. The complainant has requested to know the number of people's records being stored and/or processed outside of data protection policies in the Children's and Social Care Service. Calderdale Metropolitan Borough Council (the council) initially advised that it did not hold the information, but during the Commissioner's investigations it considered section 12 of the FOIA was engaged because to retrieve and extract the information would exceed the appropriate limit.
2. The Commissioner's decision is that the council is able to rely on section 12 of the FOIA to refuse the request.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 9 December 2014, the complainant made the following information request to the council:

"The Children's and Social Care Service was recently found to be storing and/or processing data both contrary its own data policies and in breach [sic] of the data protection act 1998.

I would like to know:

1: The number of people whose records have been stored and/or processed unlawfully by Children's and Social Care Service?

2: Have ALL records which the Children's and Social Care Services unlawfully stored and/or processed now been destroyed/deleted?"

5. The council responded on 8 January 2015. It advised that it does not hold the information for part 1 of the request and for part 2, its response was no, but explained that a review is currently taking place to ascertain the numbers of historic paper and electronic files currently held which have passed the appropriate retention date, in order to work out a plan for deletion.
6. The complainant requested an internal review on 13 January 2015. He considered it difficult to believe that a review conducted over such a long period of time has been unable to discover how many people have been affected.
7. The council provided its internal review response on 15 January 2015. In its review it advised that its Information Governance team is currently undertaking a review to address the issues of data not being deleted when the retention period has lapsed.
8. It also explained that the council holds a large amount of paper and electronic data and to undertake this review across many sites will take a considerable amount of time. It concluded that it cannot tell him the number of children's files that are currently being held past their retention period at this time, as it is a major piece of work involving a number of people, resources and time.

Scope of the case

9. The complainant contacted the Commissioner on 6 February 2015 as he is not satisfied with the council's response being that the information is not held.
10. During the Commissioner's initial investigations and after discussions with it about the information requested, the council amended its decision to instead rely on section 12 of the FOIA for part 1 of the request, as it was determined that the information would be held, but would take over the 'appropriate limit' to retrieve and extract it to give the amount of people's records being withheld past their retention periods.
11. The Commissioner advised the complainant of the council's application of section 12 of the FOIA on 28 April 2015. The complainant has advised

the Commissioner that he does not consider that it would take over the appropriate limit to provide him with the information.

12. The Commissioner considers the scope of the case is to determine whether the council is correct to rely on section 12 of the FOIA to refuse part 1 of the request. He has not considered part 2 of the request, as the council has already answered that not all of the records would have been destroyed.

Reasons for decision

Section 12 of the FOIA

13. Section 12 of the FOIA states that a public authority does not have to comply with a request for information if it estimates that the cost of complying with the request would exceed the appropriate limit.
14. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations") sets the appropriate limit at £450 for the council.
15. A public authority can charge £25 per hour of staff time for work undertaken to comply with a request which, in this case, amounts to 18 hours of work in accordance with the appropriate limit set out above. If a public authority estimates that complying with a request may cost more than the cost limit, it can consider the time taken 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.
16. In determining whether the council has correctly applied section 12 of the FOIA in this case, the Commissioner has considered the council's rationale it provided to the Commissioner during his investigation.
17. The council explained to the Commissioner that it is unable to provide the information requested as it does not hold the requested information in a form that would directly provide the numbers requested in part 1 of the request.

18. It is true that the council would hold people's records and files, but these records would have to be individually checked to determine whether or not they are being stored or processed 'unlawfully' – outside of its retention policies.
19. The council has explained that to check the records is a massive undertaking, but it is currently undertaking a task to back scan hundreds of files in order to reduce its paper archiving space and address its retention and destruction registers. It is keeping an Asset Register and it is also looking to build an automated electronic system to accommodate out of date records.
20. It has told the Commissioner that it is undertaking this task throughout its 237 buildings, and although it acknowledges that not all of these buildings would hold the information specific to the request, the files and records that would need to be reviewed in order to obtain the information are held in different forms, from electronic systems to manual records, and need to be sifted to determine whether they comply with retention periods.
21. The council has explained to the Commissioner that it has a 2 year plan to go through each building to sort out its records and this will be done in stages determined by the council's Chief Executive through the course of business. As a result of this, the council is not in a position to be able to determine how many files or records are out of date within the appropriate limit.
22. The complainant has advised the Commissioner that he does not consider that the council would need to search all these places and so it would dramatically reduce the time required to provide the requested information if it focused on locating the information held by its Children and Social Care services.
23. The Commissioner took this point back to the council and asked it to clarify whether it was able to focus its searches to specific areas in order to locate the information requested and from this, determine how this would affect the time it would take it to locate the information.
24. The council responded stating that information on its Children and Social Care Services is held in several locations such as Northgate House, Carlton Mill, Town Hall Strong Rooms and various children's homes and care centres. Also its social workers use local drop in centres around the borough. So it is a large task for the council to log all of these files, checking their retention periods, creating an information asset register and updating the electronic systems. It estimates that this is still going to take years to do and considers it is not in a position to provide the information requested at this time.

25. The council gave a specific example to the Commissioner to demonstrate how much time is involved in retrieving the information. It explained that in one of its warehouses, which contain children's files, there are 400 archived filing cabinets containing 32,000 paper files dating back to the 1950s. Some of these being held on microfiche.
26. The Commissioner has calculated that even if the council were to retrieve the paper files from just this warehouse and it could review a file a minute – taking into account that the council would have to review the date and the contents of the file itself to see if the information is within retention periods – then this would amount to 533.33 hours of officer time to review and extract the information from the files held in this warehouse alone.
27. This is already significantly over the appropriate limit of 18 hours for section 12 of the FOIA. If it were to review and extract the requested information from the 32000 files, held in just this one warehouse, within the 18 hours, the council would have to review and extract the information from each paper file in less than 3 seconds. The Commissioner does not see that this would be practically possible.
28. Based on the explanations given above, the Commissioner is satisfied that section 12 of the FOIA is engaged with this request.

Right of appeal

29. 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@hmcts.gsi.gov.uk

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

30. 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.
31. 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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