

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 April 2018

Public Authority: Cumbria County Council
Address: 117 Botchergate
Carlisle
CA1 1RD

Decision (including any steps ordered)

1. The complainant has requested information with regards to complaints Cumbria County Council (the council) had received. The council provided some information and advised other information requested was not held.
2. During the Commissioner's investigation, the council amended its response to part of the request from 'not held' to instead rely on section 12 of the FOIA to refuse to respond. The complainant was not satisfied with the council's section 12 refusal and the time it took to issue it.
3. The Commissioner's decision is that the council is able to rely on section 12 of the FOIA but has breached section 17(5) of the FOIA in issuing the refusal notice outside the required timeframe.
4. As the council has now issued its refusal, the Commissioner does not require it to take any steps.

Request and response

5. On 20 April 2017 the complainant requested the following information from the council:

"1. The number of complaints received by Cumbria County Council over the last 5 years by quarter.

2. An analysis of the above data which confirms which Council services the complaints related to (eg. roads, child social care, adult social care, DPA SARs, etc)

3. An analysis of the above data which confirms the gender and age profile of the complainants.

4. An analysis of the above data which confirms how many of the complaints made were found in favour of the complainant in full (ie. successful), how many of the complaints made were found in favour of the complainant in part, and how many were not upheld.

5. An analysis of the above data which confirms how many of the complaints were subsequently appealed.

6. An analysis of the above data which confirms how many of the complaints that were subsequently appealed were successful.

7. An analysis of the above data which confirms how many of the complaints were subsequently referred to the LGO or other statutory body.

8. An analysis of the above data which confirms how many council officers or employees were subsequently subjected to disciplinary action, how many resigned, how many were dismissed and how many were referred to the police for criminal prosecution."

6. The council responded on the 19 May 2017. For parts 1 and 2 of the request it advised that the information is partially held, stating that its annual complaints figures are reported via the Information Governance Annual Report to its Audit and Assurance Committee each year and provided a web link for these papers.
7. For part 3 of the request, the council advised that it does not hold the requested information. It explained that it does capture the age profile of the service user under three age ranges, but this is only in relation to the service user, not the complainant.
8. For parts 4, 5, 6 and 7 of the request, the council provided web links to the information requested.
9. For part 8 of the request, the council advised that it does not hold the information.
10. The complainant requested an internal review, which the council received on the 30 July 2017. For parts 1 and 2 of the request, the complainant asked the council to provide the documents referred to, or a more accurate web link, as the one provided was to the minutes of all council meetings.

11. For parts 4, 5, 6 and 7 of the request, the complainant advised the council that he has read the reports, highlighted parts of it to the council and stated that it is consistent with the appalling treatment he has been subjected to and asked what the council is going to do to address the injustice against him.
12. For part 8 of the request, the complainant disputed the council's response that it does not hold this information, stating that the council's HR records would provide all such evidence.
13. The council provided its internal review on the 28 July 2017. For parts 1 and 2 of the request, the council attached the documents referred to in its original response.
14. For parts 4, 5, 6 and 7 of the request the council concluded that it provided the information requested. With regards to the complainant's question asked in the internal review "*What is CCC going to do to address the injustice against me*" the council responded that this does not relate to the information requested and that the FOIA only requires it to provide the information it holds as opposed to creating new information to answer a question.
15. The council also explained to the complainant that if he was not happy with how it had handled his complaint or its outcome, then he would need to contact the Local Government Ombudsman directly about that matter.
16. Lastly, for part 8 of the request, the council upheld its initial response that no information is held.

Scope of the case

17. The complainant contacted the Commissioner on the 31 July 2017 to complaint about the council response to part 8 of his request as he considers that the council would hold the information requested.
18. During the Commissioner's initial investigations, the council amended its response to part 8 of the request to instead refuse it under section 12 of the FOIA: As after further review, it considered that information may be held, but in order to determine this, it would take over the appropriate time limit of 18 hours. It advised the complainant of its amended response on the 17 January 2018.
19. The complainant has asked the Commissioner to determine whether section 12 of the FOIA is engaged, he is also not satisfied with the council delay in responding to his request.

20. The Commissioner considers the scope of the case is to determine whether the council can rely on section 12 of the FOIA to refuse part 8 of the complainant's request. She will also determine whether the council has breached section 17(5) of the FOIA in the time it took to refuse part 8 of the request.

Reasons for decision

Section 12 of the FOIA – Appropriate limit

21. 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.
22. 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.
23. A public authority can charge £25 per hour of staff time for work undertaken to comply with a request in accordance with the appropriate limit set out above. This equates to 18 hours of officer time. If a public authority estimates that complying with a request may cost more than the cost limit, it can consider 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 of a document which may contain the information, and
 - d) Extracting the information from a document containing it.
24. In determining whether the council has correctly applied section 12 of the FOIA in this case, the Commissioner asked the council, with reference to the four activities set out above, to provide a detailed estimate of the time/ cost it would take for it to provide the information, to clarify whether a sampling exercise has been undertaken and confirm that the estimate has been based upon the quickest method for gathering information.

25. The council has responded to the Commissioner's enquiries explaining that it does hold information in relation to disciplinary action taken, including where the disciplinary action results in a dismissal e.g. "disciplinary – breach of professional code of conduct", "disciplinary – safeguarding", or "disciplinary – bringing the council into disrepute" along with the outcome of the disciplinary case.
26. However, there is no category of disciplinary action which shows it has arisen from a complaint being received via the council's complaints process. The council states that it may hold the information but a manual review of its electronic folder that is used by the council's People Management Team, which holds and stores the disciplinary records, would be required.
27. The council has told the Commissioner that a sampling exercise has been carried out on its electronic folder in order to determine the time it would take to search for any relevant information. This sampling exercise found that records vary in size dependant on the nature of the case. Some files contain only a small number of documents (e.g. an occupational health report) some were more sizable and took significantly longer to review (for example, an investigation report running to over 400 pages).
28. The council has advised the Commissioner that, during the sampling exercise, where it was obvious there was no disciplinary case or that the case was not the result of a corporate complaint, only the minimum amount of information required to establish this position was checked before moving on to the next case.
29. The council has stated to the Commissioner that the electronic folder currently has 971 case folders which would need to be reviewed in order to respond to the request. The sampling exercise was carried out on 32 of these cases and it took two hours to review them. The council also advised, of the records reviewed, that no disciplinary records were found.
30. Based on this sample, the council has concluded that it would take approximately 60 hours of officer time to review all the case folders held on its system, which equates to a cost of £1500. The council has confirmed to the Commissioner that this sampling exercise search was carried out using the quickest method to locate any relevant information held.
31. The council has also pointed out to the Commissioner that this electronic system has only been in use for the last three years, the complainant has requested the last five years. To review records for the last five

years, the council has told the Commissioner that this would require an additional check of approximately 400 further cases.

32. The Commissioner, on reviewing the council's estimates notes that the council took an average of just over three and a half minutes to review each case folder. This does not seem an unreasonable estimated amount of time required to read through varying sized case files. 60 hours to review these cases is clearly over the appropriate limit of 18 hours.
33. For the council to be able to review the 971 case folders within 18 hours it would need to be able to review each file in approximately one minute, which the Commissioner sees as an unreasonably short timeframe for the council to undertake manually, based on the explanations provided.
34. If the further 400 files is also then included, (those held prior to the council's records system now being used), then this would require the council to bring its average search time down even further, to less than one minute per case folder.
35. The Commissioner has considered the council's reasons provided above, and based on the council's explanations that a manual search would need to be carried out because it does not record the specific category of disciplinary action requested by the complainant, the Commissioner is satisfied that the council has provided a reasonable time estimate in this case.
36. Therefore the Commissioner finds that the council is able to rely on section 12 of the FOIA to refuse this request.

Section 17(5) of the FOIA

37. Section 17(5) of the FOIA states that a public authority which is relying on a claim that section 12 or 14 of the FOIA applies must, within the timeframe for complying with section 1(1), give the applicant a notice stating that fact.
38. Section 10(1) of the FOIA requires a public authority to comply with section 1(1) of the FOIA within 20 working days. Therefore a public authority must comply with section 17(5) of the FOIA within this same 20 working day timeframe.
39. In this case, the request was made on the 20 April 2017 and although the council responded on 19 May 2017, within the 20 working days, it did not issue a refusal notice citing section 12 of the FOIA to part 8 of the complainant's request until 17 January 2018.

40. Therefore the Commissioner finds that the council breached section 17(5) of the FOIA as the refusal notice was issued outside the required 20 working days, following receipt of the request.
41. As the refusal notice has now been issued, the Commissioner does not require the council to take any steps.

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: 0870 739 5836

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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