

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 24 October 2018

**Public Authority:** Local Government & Social Care Ombudsman  
**Address:** PO Box 4771  
Coventry  
CV4 0EH

#### Decision (including any steps ordered)

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1. The complainant has requested information from the Local Government & Social Care Ombudsman (LGSCO) about the cost to the public authority of his own complaint case. The LGSCO's position is that it does not hold the requested information.
2. The Commissioner's decision is that the LGSCO does not hold the requested information and therefore has complied with section 1(1) of the FOIA.
3. The Commissioner does not require any steps to be taken.

#### Request and response

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4. On 8 June 2018, the complainant wrote to the LGSCO and requested information in the following terms:
  - "1. Over the last five years, how many LGO investigations have taken over twelve months to reach the final decision statement?
  2. The case details of all of these investigations?
  3. Over the last five years, how many cases went to a Judicial Review?
  4. The case details of all Judicial Reviews that were rejected and those that were referred back to LGO between 2013-2018?
  5. What has been the cost to LGO of my case **[reference number redacted]** to investigate?"
5. The LGSCO responded on 11 June 2018. It provided information regarding the first four questions but stated that the information at question five was not held.

6. The complainant asked for an internal review on 12 June 2018 querying why a response could not be provided to question five, pointing to information in the public authority's annual report and accounts for 2016-17 that had provided some figures regarding the cost of complaints.
7. The LGSCO wrote to the complainant on 21 June 2018, following an internal review, in which it maintained its position that the information at question five was not held.

## Scope of the case

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8. The complainant contacted the Commissioner on 21 June 2018 to complain about the way his request for information had been handled. He did not accept that an organisation like the LGSCO would not know the cost of individual cases and queried how it controlled costs without this knowledge.
9. The Commissioner considered that the scope of this case was to determine whether the LGSCO handled the request in accordance with the FOIA and whether the LGSCO was correct in stating that it does not hold the information relating to question five.

## Reasons for decision

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### **Section 1 – general right of access to information held by public authorities**

10. Section 1(1) of the FOIA states that:

*"Any person making a request for information to a public authority is entitled-*

*(a) To be informed in writing by the public authority whether it holds information of the description specified in the request,*

*and*

*(b) if that is the case, to have that information communicated to him."*

11. In cases where there is a dispute over the amount of information held, the Commissioner applies the civil test of the balance of probabilities in making her determination. This test is in line with the approach taken

by the Information Rights Tribunal when it has considered whether information is held (and, if so, whether all of the information held has been provided).

12. On 7 September 2018 the Commissioner asked the LGSCO to respond to some detailed questions concerning what searches it had made to determine whether it held the information requested at question five.
13. The LGSCO replied to the Commissioner on 3 October 2018 stating that there is no operational business case to hold the requested information. The LGSCO further explained that many people can work on a case, depending on its complexity and the length of time it takes to investigate it.
14. A file is created for each eligible complaint which contains the relevant documents. The file can subsequently be worked on by a number of people. Sometimes the complainant is contacted for further information and the case is then left aside whilst awaiting a response. The LGSCO explained that there is a document held on the file which provides a running commentary on the complaint. Each entry is dated and in this way the start and end date of the investigation can be clearly ascertained but this does not indicate how long each individual piece of work took to do.
15. Case costs could potentially be estimated in circumstances where the complaint was premature and it was only necessary to assess a call adviser's time spent logging it. This would still only be an estimate. It is not possible to search the electronic or hard copy records for the information requested because there is no requirement for the individual working on it to record how long they spent and it would not yield any meaningful return. There is no business need to record this information and it is not part of the LGSCO's operating model.
16. The LGSCO stressed that it could not accurately provide the cost of a case that had taken a year, nor determine how it compared with the average cost of a case which it had explained in its review is based on dividing its operating costs by the number of cases it dealt with.
17. The Commissioner wrote to the complainant on 9 October 2018 outlining his preliminary conclusion and explaining the searches that the LGSCO had carried out. The Commissioner stated that the FOIA provides a right of access to recorded information, unless it is subject to any exemption. She explained that the FOIA does not require a public authority to create new information or to record information it does not need for its own business purposes. A public authority cannot provide a copy of recorded information it does not hold, regardless of whether an individual considers that it should be held.

18. The complainant did not accept the Commissioner's view, writing on 10 October 2018 to argue that the LGSCO must know how much an investigation costs or, if not, that the figure could be calculated. He further argued that it was incomprehensible that this was the situation and supported his argument with a response to what he believed to be a similar request from another public authority. He further copied to the Commissioner a list of questions that the LGSCO had not considered as part of his complaint to it but these were not matters relevant to his complaint to the Commissioner.
19. The Commissioner accepts that the calculation of an average cost per case by means of dividing operating costs by the number of cases dealt with does not mean that the LGSCO holds the costs of this individual case or has the means to calculate it with any degree of accuracy. The Commissioner is satisfied that the LGSCO has no business or statutory requirement to hold this information. She is therefore satisfied that the LGSCO has complied with its obligations under section 1(1) of the FOIA, and does not require it to take any steps.

## Right of appeal

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20. 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](mailto:GRC@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

21. 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.
22. 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 .....**

**Pamela Clements  
Group Manager  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**