

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 November 2018

Public Authority: Surrey County Council
Address: County Hall
Penhryn Road
Kingston Upon Thames
Surrey
KT1 2DN

Decision (including any steps ordered)

1. The complainant has requested internal guidance documents sent to staff on the implementation of the Council's Home to School Transport Policy. The Council refused the request on the basis that it would exceed the cost limit at section 12 of the FOIA to comply.
2. The Commissioner's decision is that the Council has correctly applied the provisions of section 12 to refuse the request and she also finds that the Council has attempted to provide advice and assistance to refine the request in line with its duties under section 16 of the FOIA.

Request and response

3. On 8 May 2018, the Commissioner served a decision notice¹ on Surrey County Council ("the Council") in which she found the Council had failed to comply with section 1 of the FOIA by stating no further information was held in response to a request when it had not conducted appropriate searches. The Commissioner required the Council to conduct additional searches of emails for information within the scope of the
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¹ ICO reference FS50731328

third part of the request and to issue a fresh response by either disclosing information of the description specified if it was located (subject to any part II exemption) or by refusing the request in accordance with section 17 of the FOIA.

4. The third part of the original information request was as follows:

"Any internal guidance documents intended for employees of the SEN or TCC departments regarding the implementation of Surrey County Council's Home to School Transport policies for the academic years 2011-12 to 2016-17 inclusive."

5. The full background to the request is outlined in the previous decision notice but in short the issues stemmed from the Council not initially accepting that *internal guidance documents* could include emails sent within the Council in which guidance was provided by one member of staff to another on implementation of the policy.
6. Following the decision notice the Council wrote to the complainant on 12 June 2018. The Council confirmed it had now conducted preliminary searches of email accounts using keywords and looking at email accounts of relevant individuals and had determined that, following the first results, it would exceed the cost limit to comply with part 3 of the initial request.
7. The complainant responded on 12 June 2018 and asked for further information from the Council to help him narrow his request and fulfil the Council's obligations to provide advice and assistance under section 16 of the FOIA.
8. The Council responded on 3 July 2018 and provided some additional explanations to the complainant. The complainant again responded with further questions in order to establish if he could narrow his request. A further response to these enquiries was sent by the Council on 2 August 2018.

Scope of the case

9. The complainant contacted the Commissioner on 7 September 2018 to complain about the way his request for information had been handled.
10. The Commissioner considers the scope of her investigation to be to determine if the Council has correctly refused the request under section 12 of the FOIA and if there is any meaningful advice and assistance that could have been offered to the complainant to refine his request in line with section 16 of the FOIA.

Reasons for decision

Section 12 – cost of compliance exceeds the appropriate limit

11. Section 12 of the FOIA allows a public authority to refuse to deal with a request where it estimates that it would exceed the appropriate limit to:
 - either comply with the request in its entirety, or
 - confirm or deny whether the requested information is held.
12. The estimate must be reasonable in the circumstances of the case. The appropriate limit is currently £600 for central government departments and £450 for all other public authorities. Public authorities can charge a maximum of £25 per hour to undertake work to comply with a request; 18 hours work in accordance with the appropriate limit of £450 set out above, which is the limit applicable to the Council.
13. A public authority is only required to provide a reasonable estimate or breakdown of costs and in putting together its estimate it can take the following processes into consideration:
 - determining whether it holds the information;
 - locating the information, or a document which may contain the information;
 - retrieving the information, or a document which may contain the information; and
 - extracting the information from a document containing it.
14. Where a public authority claims that section 12 of the FOIA is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit, in line with section 16 of the FOIA.
15. The previous decision notice had required the Council to conduct searches to determine if further information was held and to provide a fresh response to the complainant. The complainant had already provided clarification to the Council as to what emails he was looking for that might be internal guidance on the implementation of the Home to School Transport policy. He had stated the emails should be:
 - "i) addressed to any employee of either the SEN or TCC departments and*
 - ii) which contains guidance on how Home to School Transport Policy should be implemented for academic years 2011-12 to 2016-17 inclusive, and*

iii) which is sent by a manager with an authority to make such an interpretation (such as [named redacted])”

16. The response from the Council was to state that preliminary search of emails had been done using the keywords “Transport” and “SEND transport guidance”. The email accounts searched were those the current SEN Manager and Business Development Manager and these searches had returned 1794 emails that would need to be reviewed at a time of one minute per email. The Council further explained there were 32 staff in each SEND area team and the search would need to be replicated for each of these. The Council also indicated it could think of no advice or assistance that could be offered to narrow the scope of the request any further.
17. The complainant pointed out that he had already limited the request to only emails sent by individuals with the authority to make an interpretation of the policy and had asked for clarification as to whether the SEN Manager and Business Development Manager were such individuals and whether the search terms used were for “Transport” AND “SEND transport guidance” or “Transport” OR “SEND transport guidance”.
18. The Commissioner is of the view these were reasonable questions asked by the complainant to understand how the search had been conducted by the Council in order to consider if further refinement of the request was possible.
19. The Council’s response to these enquiries was somewhat unclear. The Council explained that the Business Development Manager had access to emails as her role involved FOI requests. The Commissioner took this to mean that the Business Development Manager had her email account searched not because she had authority to make interpretations of the policy in question but because she may have held emails from managers that did have this authority on the policy from her role in handling FOI requests.
20. In terms of SEN Managers; the Council explained that in the time period that the request covered there had been several managers, some of whom had left the Council. Again, this would appear to be why the Business Development Manager’s account was searched to identify any emails from manager’s no longer in post that may be within the scope of the request.
21. However, the Commissioner was not clear about some of the explanations given by the Council. The Council had explained that the Area SEN Manager had only been in post for two years so this was the time period used in the search. The Commissioner was therefore unsure

about how the searches were conducted and asked the Council to clarify if the current Area SEN Manager's accounts were used to search for any emails relevant to the last two years and the Business Development Manager's used to search for any emails that dated back to 2011-12.

22. The Commissioner also asked the Council to specifically set out how the searches that returned the 1794 emails were conducted. For example, the exact search terms and data ranges used on the specific email accounts.
23. The Council responded to the Commissioner's enquiries and firstly confirmed that the policy itself was the main source of guidance for officers and it would have only been when this needed to be interpreted or there was some uncertainty that it might be discussed by officers and this may have involved officers outside the SEN and Transport teams. The Council confirmed the purpose for searching the Business Manager and SEN Manager's email accounts was to gauge the amount of work involved if a wider search were undertaken. The Council confirmed the Business Development Manager's email account was searched to check if there were any emails flagged that had been sent by previous managers.
24. The Council provided some further detail on the searches it had conducted and clarified the current NE SEN Manager's account was searched by subject "Transport" OR "SEND transport guidance" and this returned 451 'sent' emails going back to August 2017 relating to Transport and SEND transport guidance. For received emails the numbers were 62 (2014), 338 (2015), 343 (2016), 500 (2017). The Business Manager had 500 email in her inbox for 2017. The Council stated this gave a total of 1794 emails and in order to determine which emails specifically related to guidance each email would need to be opened and read which would take more than 18 hours.
25. The Council further explained that there are 4 area teams and each has a SEN Manager plus Assistant Team Managers and there are 32 staff in each area team. The Council argues that as the request is seeking information on the wider guidance provided on the policy and not just for SEND teams, this exercise would need to be replicated across more teams and include more staff and managers.
26. The Commissioner accepts that to fulfil the request the Council would have to review a large number of emails. Whilst many of the emails it has already identified may be part of the same email chains it would not be possible to know this without opening and reviewing them. For this reason, the Commissioner does consider the estimates provided by the Council to be reasonable in light of the explanations given and she accepts it would take more than the 18 hour limit to respond to the

request. She is therefore satisfied that the Council is correct to apply section 12(1) to the request.

Section 16(1) – The duty to provide advice and assistance

27. Section 16(1) of the FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45 code of practice (the "code")² in providing advice and assistance, it will have complied with section 16(1).
28. The complainant has corresponded with the Council at length to try and understand the work that has already been done by the Council and how the searches would need to be conducted in order to establish if or how he could refine his request.
29. There were a number of points raised by the complainant that were answered by the Council and the Commissioner has considered these responses to determine if there was any further advice the Council could have provided that would have led to the complainant being able to refine his request in a meaningful way.
30. The complainant asked questions around who at the Council had the authority to provide guidance on the policy and asked if there was a list of job titles/roles and details of who had fulfilled these roles for the period in question.
31. The Council explained that the difficulties around searching for the information came from the fact it was not as simple as identifying the individuals with 'authority' as this could be a wide range of people. Whilst some are obvious, such as the SEN Area Manager, advice could also have been given by any number of people. The Council explained one of the original emails that had been disclosed to the complainant had been as a result of legal advice requested on the policy and this was seen to be of wider value and disseminated to other people but this would not be the case of all emails. The Council maintained it would need to search a wide range of email accounts to find information which could be seen as 'guidance' and to also determine if this was sent by someone with the appropriate authority (in terms of knowledge, seniority or other factors) to be offering advice.

² <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

32. Some of the difficulties in narrowing the request are as a result of the number of individuals who have been in roles likely to have had the 'authority' to offer advice on the policy. Two named individuals that would have been likely to have had relevant emails and who were the authors of some documents disclosed to the complainant in response to the initial request have both left the Council and the Council therefore stated that to search for any emails they sent would require other staff in SEN teams to conduct searches.
33. The Council explained to the complainant that the email accounts for these two named individuals had in fact been deleted and this raised an additional area of concern for the complainant who questioned why these email accounts would have been deleted during a time when the complainant was still pursuing this issue with the Council.
34. The Council state that whilst they do not have exact dates for the deletion of the email accounts of these individuals they have been able to confirm that one individual left in August 2017 and the other in July 2017 so the accounts would have been deleted shortly after this in line with the Council's retention policy.
35. The complainant has pointed to the Code of Practice which requires that records should not be kept after they have ceased to be of use to a public authority unless it is known they are relevant to an ongoing complaint and all appeal provisions have not been exhausted.
36. The Commissioner can understand the complainant's concern that this appears as though the Council have allowed certain email accounts to be deleted whilst an appeal is still ongoing but at the time the email accounts were routinely deleted the Council was still interpreting the request as being for information specifically in the form of documents. It was only later, during the Commissioner's investigation and subsequent decision notice that the Council accepted that the request would also encompass any ad hoc advice contained in emails.
37. Turning to the search terms used; the Council has explained the keywords used when searching email accounts and has clarified that this was done on the basis of "OR" rather than "AND", as well as explaining exactly why this would take time. In terms of offering advice and assistance to narrow this; the Council has stated it is not sure how it could do this given it has now accepted this wider definition of "document". If it is to search all emails then it will exceed the cost limit and the only way to refine the request and bring it under the cost limit might be to narrow the timespan specified. This advice was provided to the complainant.

38. On balance, the Commissioner has concluded that the Council has complied with section 16(1). It has explained how it conducted its searches and attempted to answer all of the questions put to it by the complainant to help him refine the request but has stated that the only likely way that the request might be responded to within the cost limit would be to reduce the time period it covers. The Commissioner is not sure there is any further meaningful advice or assistance that can be provided in the circumstances and she accepts the Council has tried to provide as much information as is reasonably possible to the complainant to assist in this case.

Right of appeal

39. 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

40. 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.
41. 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

Jill Hulley
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