

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 23 April 2019

**Public Authority:** Local Government & Social Care Ombudsman  
**Address:** 53-55 Butts Road  
Coventry  
CV1 3BH

#### Decision (including any steps ordered)

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1. The complainant requested data relating to the way the Local Government & Social Care Ombudsman ("the LGSCO") handles its investigations of complaints.
2. The Commissioner's decision is that the request could not be answered within the cost limit and therefore the LGSCO was entitled to rely on section 12 of FOIA to refuse the request.
3. The Commissioner does not require any further steps to be taken.

#### Request and response

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4. On 17 July 2018 you requested information of the following description:

*"Could you please provide the following information:*

- a. Your website indicates that any complaint to the LGO must first exhaust the relevant Council's complaints process*
- b. Mr Conroy stated in a letter dated 27 July 2017: There is no requirement to do so.*

*[1] Please indicate where on your website the latter information (b) can be located by the public?*

*[2] Please provide copies of all investigations carried out that did not comply with a) over the last 3 years?*

*[3] How many times in the last 5 years did the LGO have a face to face meeting with a complainant*

*i) at the complainant's request?*

*ii) at the LGO's invitation?"*

5. On 8 August 2018, the LGSCO responded. In respect of element [1], the LGSCO supplied the information and stated that the information was not displayed on its website.
6. In respect of elements [2] and [3], the LGSCO refused the request citing section 12 as its reason for doing so.
7. The complainant requested an internal review on 10 August 2018, in which he challenged the LGSCO's use of section 12 to refuse the request. The LGSCO issued the outcome of its internal review on 7 September 2018. It upheld its previous position.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 24 September 2018 to complain about the way his request for information had been handled.
9. In correspondence with the Commissioner, the complainant accepted that element [1] had been answered to his satisfaction. He stated that he was primarily interested in the answer to element [3](ii) and was happy to drop element [2] if the request would not otherwise exceed the appropriate limit.
10. Whilst the LGSCO provided arguments as to why both elements [2] and [3] would, individually, exceed the cost limit, it also referred correctly to a public authority being entitled to refuse an *entire* request if *any* individual component would engage section 12.
11. The Commissioner has therefore considered whether complying with the entire request would exceed the appropriate limit.

## Reasons for decision

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12. 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.*

13. Section 12 of the FOIA states that:

- (1) Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.*
- (2) Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.*

14. The "Appropriate Limit" is defined in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Regulations") and is set at £450 for a public authority such as the LGSCO. The Regulations also state that staff time should be notionally charged at a flat rate of £25 per hour, giving an effective time limit of 18 hours.

15. When estimating the cost of complying with a request, a public authority is entitled to take account of time or cost spent 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. A public authority does not have to make a precise calculation of the costs of complying with a request; instead only an estimate is required. However, it must be a reasonable estimate. In accordance with the

First-Tier Tribunal in the case of *Randall v IC & Medicines and Healthcare Products Regulatory Agency EA/2007/0004*, the Commissioner considers that any estimate must be "sensible, realistic and supported by cogent evidence"<sup>1</sup>. The task for the Commissioner in a section 12 matter is to decide whether the public authority made a reasonable estimate of the cost of the request.

17. The LGSCO explained that it did not record either information about the steps a person bringing a complaint had explored with the local authority, or about whether either party to a complaint had requested a face-to-face meeting, in an easily searchable form. It explained that it had no business need for either of these pieces of data. Any information which it did hold would be buried within each individual complaint file or within case officers' electronic diaries.
18. The Commissioner accepts that the LGSCO would have no business need to record the information within the scope of either element [2] or element [3] of the request in a format which would be easy to collate. Therefore any information which was held could only be identified and extracted via a manual search of each individual complaint file.
19. In relation to element [2], the LGSCO provided a detailed estimate of how long it would take to comply with the request, stating that:

*"To carry out the individual checks, we would firstly run a report from our case management system to identify the complaint reference numbers for the years in question. This would take a minimum of 90 minutes to complete. We would then need to export this information into a spreadsheet to create a workable document.*

*"Once we have the spreadsheet detailing the complaint reference numbers, we would input each individual reference number into the search screen on our case management system and press enter. That search produces a link to the complaint which we click to access the complaint summary. The next step would be to click on the link for the Notes & Analysis document. Having sampled 12 complaints this process takes an average of 1 minute.*

*"The next step would be to read, for each individual case, the Notes & Analysis document, which is a chronological narrative of actions*

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<sup>1</sup> <http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i136/Randall.pdf>

*about the complaint. This would be an initial check to see if there are any comments about the completion of the complaints procedure. I have sampled 12 cases and the average time is 4 minutes per complaint reference, plus the initial 1-minute checking totalling 5 minutes per complaint reference."*

20. The LGSCO noted that this information would not be recorded in every published decision and therefore only a case-by-case manual search would be guaranteed to identify all the information within the scope of the request. The Commissioner accepts that the information could not be identified in a less time-consuming manner.
21. The LGSCO had identified 26,707 decisions which it had published in the timeframe identified by the requestor (although it noted that there were further unpublished decisions too). It estimated that searching the published decisions alone, at five minutes per case, would take in excess of two hundred hours of staff time.
22. The Commissioner notes that searching such a large volume of decisions would require each decision to be scanned in under three seconds – which she considers unfeasible. She therefore accepts that the LGSCO has put forward a cogent argument, supported by evidence, as to why complying with the request would exceed the appropriate limit
23. The LGSCO identified further arguments as to why it believed answering element [3] of the request alone would engage the cost limit. It initially stated that it would require a manual search of some 141,000 working days' worth of diary entries or a manual search of 37,000 complaint files.
24. The Commissioner is not convinced that such extensive searches would be required to satisfy element [3] of the request. The LGSCO admitted that such meetings were uncommon and therefore the Commissioner considers that the time taken for each existing member of staff to check their own calendar would be much less. However she has not made a detailed assessment of how long such a process would be likely to take.
25. In order for section 12 to be engaged, a public authority need only demonstrate that a single element of the request could not be answered within the cost limit. The Commissioner therefore considers that the LGSCO was entitled to rely on section 12 to refuse the request.

## Other matters

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26. The complainant asked the Commissioner, in his grounds of complaint, to insist that the LGSCO must collate information of the type sought in his request in the future. The Commissioner has no legal authority to do so. Her role in assessing complaints is to consider information which is (or is not) held and not whether information *should* be held.

## Right of appeal

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27. 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)

28. 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.
29. 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 .....**

**Ben Tomes  
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Wycliffe House  
Water Lane  
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