

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 September 2022

Public Authority: London Borough of Hammersmith and Fulham
Address: King Street
Hammersmith
London
W6 9JU

Decision (including any steps ordered)

1. The complainant has requested demographic information relating to children taken into care, and the record and transcript of a specific call and meeting from the London Borough of Hammersmith and Fulham ("the Council").
2. The Commissioner's decision is that the Council has correctly applied section 12(1) to elements of the first part of the request and that with regards to the second and third part, the Council does not hold any information falling within the scope of the request. The Council has also complied with its obligations under section 16(1) of FOIA to provide adequate advice and assistance to the complainant. However, in failing to respond to the request within the statutory timescale, the Commissioner has determined that the Council breached section 10(1) of FOIA.
3. The Commissioner does not require the Council to take any further steps.

Background

4. This request is related to a previous decision notice¹ which was served on 7 September 2020 to the Council. The complainant's request was a much broader request for information, relating to the demographic information of 5000 children taken into care and for the transcript of the telephone call and record of the meeting listed below. The Commissioner agreed with the Council's application of section 12(1) but required the Council to provide reasonable advice and assistance to the complainant to help them bring their request within the cost limit and ensure compliance with the legislation.
5. On 15 October 2020, the Council provided its advice and assistance to the complainant. As the complainant was not happy with the advice and assistance received, they submitted a new request for information.

Request and response

6. On 27 October 2020, the complainant wrote to the Council and requested information in the following terms. For ease of reference, the Commissioner has numbered them:

" 1. the breakdown of the ethnicity ,the background(country they are originally from), the religion ,the sector, the financial position (class) ,the reasons of those 100 or more Children taken during 2014,2015,2016,2017,2018.

According to the notice of 3 December 2019 I am asking you to provide me the information in my request part 1 and 2 under Data Protection Act :

2. the record of our meeting of 6 September 2018

3. the transcript of the strategic phone call that [redacted] made on 12 July 2016."

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2020/2618259/ic-46639-k8l7.pdf>

7. A response was provided on 17 June 2021 in which the Council stated that it held the information and provided the complainant with the anonymised data for a random sample of 100 children spanning the years 2014-2018.
8. Upon receiving this response, the complainant requested an internal review on 25 June 2021 stating that they "expected to receive five, separate, documents with the data on for 100 children" and that the second and third part of their request had not been addressed.
9. Following intervention by the Commissioner, the Council provided its internal review response on 7 January 2022, where upon it confirmed that it should have provided the complainant with the data for each of the five years, and so provided this information. Furthermore, the Council confirmed that nationality and religion are not required as part of a statutory data collection and so to check if it did hold this information would require a search through records held in a non-reportable format, and thus would exceed the cost limit to do so. In regard to the second and third parts of the complainant's request, the Council stated that it did not hold the information and that this had been previously explained to the complainant.

Scope of the case

10. The complainant contacted the Commissioner on 2 November 2021 to complain about the way their request for information had been handled.
11. The Commissioner explained to the complainant that they had not exhausted the authority's internal review procedure and wrote to the Council to remind it of its obligations.
12. On 20 July 2022, the Commissioner wrote to the complainant and asked whether they were happy with the internal response received.
13. The complainant informed the Commissioner that they still had not received the information requested in the second and third parts of their request.
14. The Commissioner has considered the Council's handling of the complainant's request, in particular its application of section 1(1) and section 12(1) of FOIA. He has also considered whether the Council breached section 10(1) of FOIA by failing to respond to the request within the statutory time for compliance and whether it complied with its obligations under section 16(1) of FOIA.

Reasons for decision

Section 1 (Held/Not Held)

15. Section 1(1) of 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.

16. Where there is a dispute between the information located by a public authority, and the information a complainant believes should be held, the Commissioner follows the lead of a number of First-tier Tribunal (Information Rights) decisions in applying the civil standard of the balance of probabilities.

17. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the authority to check that the information is not held, and any other reasons offered by the public authority to explain why the information is not held. Finally, he will consider any reason why it is inherently likely or unlikely that information is not held.

18. For clarity, the Commissioner is not expected to prove categorically whether the information is held, he is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.

The Complainant's position

19. In correspondence to the Commissioner the complainant stated that they have already asked for the information contained in parts two and three in successive requests.

20. The complainant believes that the Council has a telephone monitoring policy for social care and that social services must comply with case recording and policy guidelines.

21. Furthermore, the complainant has been told that an independent investigator of a stage two complaint had "found information about a strategic phone discussion that [redacted] made on 12 July 2016 and he wrote about this in his final report of 12 May 2018".

The Council's position

22. In its internal review, the Council explained that it had previously stated, to the complainant, that it does not hold the requested information.
23. The Council explained that no record of the meeting was ever taken for the meeting was not a formal one.
24. In reference to part three of the request, the Council explained that Children's Services do not record or make transcripts of telephone conversations. The Council further explained that it does record some incoming phone calls made to its contact centres, and that these are retained for six months. It provided a link to its telephone monitoring policy and explained that the call referred to in the complainant's request is not covered by the Council's telephone monitoring policy and therefore would not have been recorded.

The Commissioner's view

25. The Commissioner's view is that the Council does not hold information in parts two and three of the request.
26. In reference to part two, of the request, the Commissioner considers that no minutes were ever taken for this was an informal meeting to discuss the issues the complainant wished to raise with the department.
27. With regards to part three, the Commissioner has not seen the report of the independent investigator, that the complainant mentions in his complaint, however the wording the complainant describes the independent investigator as using "information about..." does not indicate that a transcript of the telephone call was kept.
28. On the balance of probabilities, the Commissioner is satisfied that the Council does not hold any information falling within scope of parts two and three of the complainant's request.

Section 12 – cost of compliance

29. Section 12(1) of FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate cost limit.

30. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations') at £450 for local government public authorities such as the Council.
31. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 18 hours for the Council.
32. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the cost it reasonably expects to incur in carrying out the following permitted activities in complying with the request:
 - determining whether the information is held;
 - locating the information, or a document containing it;
 - retrieving the information, or a document containing it;
 - and extracting the information from a document containing it.
33. 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 decision in the case of *Randall v IC & Medicines and Healthcare Products Regulatory Agency*², the Commissioner considers that any estimate must be "sensible, realistic and supported by cogent evidence." The task for the Commissioner in a section 12 matter is to determine whether the public authority made a reasonable estimate of the cost of complying with the request.
34. Section 12 is not subject to a public interest test; if complying with the request would exceed the cost limit then there is no requirement under FOIA to consider whether there is a public interest in the disclosure of the information.
35. Where a public authority claims that section 12 of FOIA is engaged it should, where reasonable, provide advice and assistance to help the complainant.

² EA/20017/00041

Would the cost of compliance exceed the appropriate limit?

36. The Commissioner asked the Council to provide a detailed explanation of its estimate of the time and cost of responding to the request.
37. In its submissions to the Commissioner, the Council maintained its reliance on section 12(1) of FOIA and offered an explanation for how it calculated that responding to part one of the request would exceed the appropriate limit.
38. In correspondence to the Commissioner, the Council explained that for both nationality and religion there is a data field on its electronic case management system but it is not a statutory field. Therefore the social workers or individuals that undertake the assessment "may not capture the information, or it may be captured as part of a free-text field or other uploaded documents which are not held in a reportable format."
39. The Council explained that in its initial response, it had mistakenly provided a random sample of 100 children's data across the five years, but that it was able to apply filters to look for records where all the requested criteria was captured in a reportable format and that this took several hours to provide the sample of 100 records across the five years.
40. When describing, to the Commissioner, the type of work that would need to be undertaken, to provide the information requested within part one of the request, the Council explained that it would need to do the following tasks:
 - Run an assessment report on the case management system to extract data relating to children that have progressed to assessment
 - Refine the report data parameters to look at the required five year period
 - Split the extract into each of the five years
 - For each of the year extracts, apply filters to look for records where all of the required criteria was captured
 - Where records had the required criteria these were compiled and were records where nationality and/or religion were not captured in a reportable format these were reflected as 'Null' 'not known' 'not stated.'

41. The Council then explained that there were 100 cases, across the five years, where nationality and religion were not held in a reportable format, and that it was at this point that the Council determined it would exceed the appropriate limit to manually check if this information was held in a non-reportable format for each of these cases.
42. Furthermore, it explained that to complete a manual review of this many records in under 18 hours would require the review of each record to take 10 minutes.
43. Having reviewed a single record the Council determined that it would take on average more than 15 minutes to "determine if the information was held for that child, and to extract it and capture it in the sample".

The Commissioner's conclusion

44. The Commissioner considers the Council's estimate of 25 hours to provide the nationality and religion for the 100 cases to be reasonable.
45. Furthermore, the Commissioner notes that the Council's estimate of 25 hours, does not take into account the time the Council has spent complying with the other parts of the request.
46. The Commissioner's decision is that the Council estimated reasonably that the cost of complying fully with part one of the request would exceed the appropriate limit. Therefore, the Council was correct to apply section 12(1) of FOIA.

Section 16(1)-duty to provide advice and assistance

47. Section 16(1) of 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 the good practice contained within section 45 code of practice³ in providing advice and assistance, it will have complied with section 16(1).
48. Where a public authority refuses a request under section 12(1) of FOIA, section 16(1) creates an obligation to provide advice and assistance on how the scope of the request could be refined or reduced to avoid exceeding the appropriate limit.

³ <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

49. In providing advice and assistance, the Commissioner believes the Council went above and beyond in that it provided the information it could without exceeding the cost limit, in regards to part one of the request, rather than suggesting this as a refined request. In doing this, it ensured that the complainant was not delayed further with the information the Council could provide within the cost limit.
50. The Commissioner is therefore satisfied that the Council has met its obligations under section 16(1) of FOIA.

Section 10 – time for response

51. Section 10(1) of FOIA states that a public authority must respond to a request promptly and in any event not later than the twentieth working day following the date of receipt.
52. The request for information was made on 27 October 2020 and the Council provided a response on 17 June 2021.
53. As this was more than 20 working days after the request was made, the Commissioner finds that the Council breached section 10(1) of FOIA.

Other matters

Section 45 – Internal review

54. There is no obligation under FOIA for a public authority to provide an internal review process. However, it is good practice to do so and, where an authority chooses to offer one, the section 45 code of practice sets out, in general terms, the procedure that should be followed. The code states that reviews should be conducted promptly and within reasonable timescales. The Commissioner has interpreted this to mean that internal reviews should take no longer than 20 working days in most cases, or 40 in exceptional circumstances.
55. In this case the complainant requested an internal review on 17 June 2021 and the Council provided the outcome of its review, only after invention by the Commissioner on 7 January 2022, over six months later. The Commissioner considers this to be poor practice.

Right of appeal

56. 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@justice.gov.uk

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

57. 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.
58. 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

Phillip Angell
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