

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 January 2022

Public Authority: London Borough of Croydon
Address: Bernard Weatherill House
8 Mint Walk
Croydon
CR0 1EA

Decision (including any steps ordered)

1. The complainant made a request for information from the London Borough of Croydon ("the Council") on 10 June 2020. The Council aggregated this request with three further requests about Data on disabilities/SEN within the BAME community. The Council relied on section 12(1) of the FOIA (cost of compliance exceeds the appropriate limit) to refuse the requests.
2. The Commissioner's decision is that the Council was entitled to aggregate the requests under section 12(4) of the FOIA, and is entitled to rely on section 12(1) of the FOIA to refuse the requests. The Commissioner considers that the Council has complied with its obligations under section 16(1) of the FOIA to provide adequate advice and assistance. However the Council has breached section 10(1) FOIA as it has failed to respond within the statutory time for compliance.
3. The Commissioner does not require any further steps to be taken.

Background

4. The Commissioner has noted the Council has aggregated four requests received between 10 June and 28 July 2020 as similar in context and overall scope.

5. For the purpose of the administration of this Decision Notice, the Commissioner will provide full details of the complainant's requests which can be found in Annex A at the end of this Notice.

Request and response

6. Between 10 June and 28 July 2020, the complainant wrote to the Council and requested information in four separate requests. The full details of these requests are included in Annex A at the end of this decision notice
7. The complainant chased the Council for a response to the first request on 8, 10 and 28 July 2020.
8. On 5 August 2020, the Council responded to the first request, providing some information but a number of questions were refused. The Council relied on section 12(1) of the FOIA in order to do so.
9. The complainant requested an internal review of the Council's response to their first request on 11 August 2020. The Council responded on 8 September 2020 outlining their response of 5 August 2020 and requesting clarification of the specific parts of the refusal the complainant was querying.
10. The complainant once again requested an internal review on 24 September 2020 regarding the Council's handling of their first request.
11. The Council acknowledged the internal review of the first request on 7 October 2020, and after a further chaser on 6 January 2021, the Council completed its internal review on 5 February 2021. It upheld its original position, citing section 12(1) for the withheld information.
12. During the course of the Commissioner's investigation, the Council decided it wished to aggregate the first request with the further three requests included in Annex A.

Scope of the case

13. The complainant contacted the Commissioner on 25 March 2021 to complain about the way their first request for information had been handled.
14. The Commissioner considers that the scope of his investigation to be to determine if the Council has correctly aggregated the requests under

section 12(4) of the FOIA and, if so, if the requests have been correctly refused as it would exceed the cost limit under section 12 of the FOIA to respond.

Reasons for decision

Section 12(4) – Aggregation of related requests

15. When a public authority is estimating whether the appropriate limit is likely to be exceeded, it can include the costs of complying with two or more requests if the conditions laid out in regulation 5 of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (“the Fees Regulations”) can be satisfied.

16. Section 12(4) of FOIA states:

“The Secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority –

(a) by one person, or

(b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign, the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them.”

17. Regulation 5 of the Fees Regulations states:

“(1) In circumstances in which this regulation applies, where two or more requests for information to which section 1(1) of the 2000 Act would, apart from the appropriate limit, to any extent apply, are made to a public authority –

(a) by one person, or

(b) by different persons who appear to the public authority to be acting in concern or in pursuance of a campaign,

the estimated cost of complying with any of the requests is to be taken to be the total costs which may be taken into account by the authority, under regulation 4, of complying with all of them.

(2) This regulation applies in circumstances in which –

(a) the two or more requests referred to in paragraph (1) relate, to any extent, to the same or similar information, and

(b) those requests are received by the public authority within any period of sixty consecutive working days.

(3) In this regulation, "working day" means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom."

18. The Commissioner has reviewed the complainant's four requests aggregated by the Council. These requests were submitted on 10 and 11 June and 20 and 28 July 2020. He is satisfied that all four of the requests were made by the same complainant and within 60 working days of each other, fulfilling the criteria at regulations 5(1)(a) and 5(2)(b).

19. The Commissioner must now consider whether these requests relate, to any extent, to the same or similar information. The Commissioner's view on aggregating requests can be found in the guidance on requests where the cost of compliance exceeds the appropriate limit¹. Paragraphs 44 and 45 state:

"Regulation 5(2) of the Fees Regulations requires that the requests which are aggregated relate "to any extent" to the same or similar information. This is quite a wide test but public authorities should still ensure that the requests meet this requirement.

A public authority needs to consider each case on its own facts but requests are likely to relate to the same or similar information where, for example, the requestor has expressly linked the requests, or where there is an overarching theme or common thread running between the requests in terms of the nature of the information that has been requested."

20. The Fees Regulations' wording of "relate, to any extent, to the same or similar information" makes clear that the requested information does not need to be closely linked to be aggregated, only that the requests can be linked.

¹ [costs of compliance exceeds appropriate limit.pdf \(ico.org.uk\)](https://ico.org.uk/for-organisations/our-approach-to-transparency/requests-where-the-cost-of-compliance-exceeds-the-appropriate-limit)

21. Having reviewed the wording of the complainant's requests made within a 60 day period, the Commissioner is satisfied that there is an overarching theme in that they all request information on SEN and BAME or other ethnic groups. More specifically, the requests all ask for details of special education needs of children in a) the whole population and b) the BAME community that the Council have dealt with over a period of time.
22. The Commissioner, therefore, finds that the Council was entitled to rely on section 12(4) of FOIA to aggregate these three later requests with the one currently under consideration here.

Section 12 – Cost of Compliance Exceeds Appropriate Limit

23. 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.

24. 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.

25. 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 Council. 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.
26. 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.
27. 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 Information Commissioner & Medicines and Healthcare Products Regulatory Agency EA/2007/0004*, the Commissioner considers that any estimate must be "sensible, realistic and supported by cogent evidence".² 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.
28. In determining whether the Council has correctly applied section 12 of FOIA in this case, the Commissioner has considered the Council's rationale provided to him during the investigation.
29. The Council has provided the Commissioner with some background information to understand the difficulties in establishing information relevant to the request.

The Council's position

30. The Council explained to the Commissioner that it did not record this information in a manner that would make it easily retrievable. Therefore, in order to compile the requested information, it would be required to conduct a manual review of its records of over 3500 files to establish how many files fell within scope of the request. They estimated there would be at least 380 files that would initially need to be extracted from the 3500 for further consideration.
31. They also stated:

² <http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i136/Randall.pdf>

“Additionally, Tribunal outcomes for most types of appeals will require careful reviewing as each is based upon the individual circumstances of the appeal and the reasons for the decision that has been reached in respect of each. The Council does not hold a central log of these details alongside every individual case for the whole of the time period requested. As such each file would need to be reviewed to find the Tribunal order and then read that in detail before determining the nature of the outcome. For 2014 and 2015 there is no central log of appeals for that period. It has been estimated that to review each file to locate and provide you with the information requested would take at least 1 hour per file.”

32. The Council added that the number of files did not include historical files, therefore the estimate was low. These files would include where an assessment was requested but not proceeded with for various reasons. The initial figures of 20 minutes per file was arrived at by the SEND service from their understanding and previous experience of the complexity of the files that they hold.
33. The Council also pointed out that even if it only took 1 minute to establish that a file was in scope, this would still equate to well over 50 hours just to establish which files were in scope of the requests.

The Commissioner's view

34. The Commissioner accepts that Council has reasonably estimated that the cost of complying with the request would exceed the appropriate limit.
35. The complainant has argued that the Council ought to be able to disclose the withheld information to them as they hold it as part of their equality monitoring processes. However, the Council has explained how the information within scope is held and the processes required in order to ascertain the specific information requested.
36. Therefore, even if the Commissioner were to consider that the Council's estimate may not be completely accurate (given that it is based on real work experience of the SEND service), he does not consider that the estimate could be reduced to the point at which it would fall within the cost limit.
37. The Commissioner is therefore satisfied that the Council was entitled to rely on section 12(1) of the FOIA to refuse the request.

Section 16 – advice and assistance

38. Section 16 of the FOIA requires public authorities to provide reasonable advice and assistance to those making or wishing to make requests for information.
39. The Section 45 FOIA Code of Practice states that, where a public authority is relying on section 12 to refuse a request, it should help the requestor to refine their request within the cost limit.
40. The Council's refusal notice did not contain any specific advice and assistance that would have assisted the complainant in making a fresh request for the withheld information. However, in its internal review, the Council did explain the process by which the information would have to be sought and reiterated the reasons for refusal of the request. The Council also provided some assistance to the complainant with some information that was available.
41. Having considered the available evidence, the Commissioner is satisfied that the Council offered reasonable advice and assistance, including providing some of the information requested. The Commissioner accepts that it would not be possible to narrow the request in order to bring this within the cost limit.
42. The Commissioner considers that the advice and assistance the Council offered the complainant to be adequate. Therefore, the Commissioner is satisfied that the Council has complied with its obligations under section 16 of the FOIA in its handling of the requests.

Section 10 - time for compliance

43. Section 10(1) provides that:

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”
44. Section 1(1) provides 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.
45. The original request was made on 10 June 2020 and a response was not provided by the Council until 5 August 2020. The Commissioner

therefore finds that the Council breached section 10(1) in failing to provide a response within 20 working days.

Right of appeal

46. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

47. 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.
48. 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
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex A

The requests

Between 10 June and 28 July 2020, the complainant wrote to the Council via the What Do They Know (WDTK) website and requested information for four separate requests in the following terms:

10 June 2020 (First request)

"Please provide the following information within London Borough of Croydon from Year 2014 TO DATE regarding each of the questions (numbered 1-12) listed below with exact numbers relating to the following two sub-parts being:

- a) The precise number of the whole population
- b) The precise number within this population (a) above from the BAME community being Black, Asian, Minority of Ethnic /mixed race or multiple ethnic groups.

1. How many children and young adults from 0-25 have Special Education Needs

- a) The precise number of the whole population
- b) The precise number within this population (a) above from the BAME community or other being mixed race or multiple ethnic groups

2. How many appeals were made to SENDIST against Croydon Local Authority for refusal to assess a child's needs

- a) The precise number of the whole population
- b) The precise number within this population (a) above from the BAME community or other being mixed race or multiple ethnic groups

3. How many appeals were made to SENDIST against Croydon Local Authority for refusal to make an EHCP for Educational needs

- a) The precise number of the whole population
- b) The precise number within this population (a) above from the BAME community or other being mixed race or multiple ethnic groups

4. How many appeals were made to SENDIST against Croydon Local Authority for amendments to parts B/F and I of the EHCP for of educational needs

a) The precise number of the whole population

b) The precise number within this population (a) above from the BAME community or other being mixed race or multiple ethnic groups

5. How many appeals did the authority concede? (no hearing necessary)

a) The precise number of the whole population

b) The precise number within this population (a) above from the BAME community or other being mixed race or multiple ethnic groups

6. How many appeals did parents concede? (no hearing necessary)

a) The precise number of the whole population

b) The precise number within this population (a) above from the BAME community or other being mixed race or multiple ethnic groups

7. How many appeals to SENDIST were heard at tribunal by a panel?

a) The precise number of the whole population

b) The precise number within this population (a) above from the BAME community or other being mixed race or multiple ethnic groups

8. How many appeals in question were found in favour of the Local Authority?

a) The precise number of the whole population

b) The precise number within this population (a) above from the BAME community or other being mixed race or multiple ethnic groups

9. How many appeals were made to SENDIST by parents?

a) The precise number of the whole population

b) The precise number within this population (a) above from the BAME community or other being mixed race or multiple ethnic groups

10. How many appeals were lodged with SENDIST on behalf of the same child?

- a) The precise number of the whole population
- b) The precise number within this population (a) above from the BAME community or other being mixed race or multiple ethnic groups

11. How many appeals were made to SENDIST by the same family (family being persons who reside at the same address regardless of surname) regardless of which child they were appealing for?

- a) The precise number of the whole population
- b) The precise number within this population (a) above from the BAME community or other being mixed race or multiple ethnic groups

12. How many families (children who are related or reside at the same address will count as one family for such purposes) in total lodged appeals with SENDIST?

- a) The precise number of the whole population
- b) The precise number within this population (a) above from the BAME community or other being mixed race or multiple ethnic groups."

Response

The Council responded to this request on 5 August 2020, citing section 21 FOIA, and provided the relevant links.

They also provided information in response to parts 1a) & b), 2a) 3a), 4a) 5a), 6a) & b), 7a), 8a), 9a), 11 a) & b), 12 a) & b), and cited section 12(1) (cost of compliance exceeds appropriate limit) for the remainder.

An internal review was requested on 11 August 2020, and the Council responded on 5 February 2021 upholding their original response.

11 June 2020 (Second request)

"Please can you advise the following data from 2013 to date and categorise by each year and by the two sub-parts requested:

1) How many SENDIST tribunal appeals for EHCP have been made against the council with exact numbers relating to the following two sub-parts being:

- a) The precise number of the whole population
- b) The precise number within this population (a) above from the BAME community being Black, Asian, Minority of Ethnicity. Or other being Mixed race or multiple ethnic groups.

2) How many of the appeals have been dismissed against the council with exact numbers relating to the following two sub-parts being:

a) The precise number of the whole population

b) The precise number within this population (a) above from the BAME community being Black, Asian, Minority of Ethnic. Or other being Mixed race or multiple ethnic groups.

3) The cost to the council of defending these cases against the council with exact numbers relating to the following two sub-parts being:

a) The precise number of the whole population

b) The precise number within this population (a) above from the BAME community being Black, Asian, Minority of Ethnic. Or other being Mixed race or multiple ethnic groups."

Response

The Council responded on 2 July 2020 requesting clarification of two parts of the request, which the complainant provided on 3 July 2020.

The Council responded on 31 July 2020, providing information for parts 1 a), and advising further clarification was required for 2a) & b), 3a) & b). Section 12(1) was being applied to the remaining withheld information. An internal review was requested on 16 February 2021, and the Council responded on 14 June 2021 upholding their original response.

20 July 2020 (Third request)

"Please provide the following information based on the full population of a young person ages 0-25 with SEN (Special educational Needs) resident within London Borough of Croydon and data required for the following based upon all educational settings :

a) The precise number of SEN Children who are registered to attend all educational settings OUT OF LB Croydon borough for both Primary, Secondary, 6th form that are funded by LB Croydon whom are registered to attend each out of borough school.

b) The number of each educational placement and cost per year for each educational placement

c) The precise number of the whole population (population definition being the number of children and young adults of all ages) whom are registered to attend whom are registered to attend OUT OF LB Croydon educational

settings for each year group: Primary, Secondary, 6th form, Residential or other.

d) The precise number within this population whom are registered to attend each out of borough educational settings from data in (c) above of in each year how many of the cohort are from the BAME community - being Black, Asian, Minority of Ethnic or other being Mixed race or multiple ethnic groups within each of the categories of Primary, Secondary, 6th form, Residential or other.

(e) The costs for each out of borough educational settings by (b) educational placement (c) population and (d) by ethnicity that are funded by LB Croydon."

Response

The Council responded on 8 October 2020, providing information for a), c), d), & e), advising section 40 (Personal Information) for withholding information for b). An internal review was requested on 16 February 2021, and after clarification, the Council responded on 14 June 2021 changing their original response, citing section 12(1) (cost of compliance exceeds appropriate limit) was now being applied.

28 July 2020 (Fourth request)

"Please can you advise the following data from 2013 to DATE:

The precise number of SEND (to clarify what is meant "Special Educational Needs and Disability") for a child or young person ages 0-25 by population (being per person for residents who live within LB Croydon) that have been made against the LB Croydon with exact numbers by each year relating to the following two sub-parts being:

a) The precise number of the whole population of children who are out of education.

b) The precise number within this population (a) above from the BAME community being Black, Asian, Minority of Ethnic/or other being mixed race or multiple ethnic groups and to give numbers for each of these categories who have had to go to appeal and tribunal per person."

Response

The Council responded on 30 September 2020 and stated they did not hold all of the requested information, however, they did provide some advice and assistance with a link to the Croydon Observatory. An internal review was requested on 5 October 2020, and they responded on 4 August 2021 citing

Reference: IC-97090-V7M6

section 12(1) (cost of compliance exceeds appropriate limit) to the outstanding information.