

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 October 2023

Public Authority: Kent County Council
Address: Sessions House
County Hall
Maidstone
Kent
ME14 1XQ

Decision (including any steps ordered)

1. The complainant has requested information about referrals of young people to the counter terrorism programme, Prevent. Kent County Council ('the Council') refused to comply with most of the request, citing sections 24(1) (National security) and (12)(2) (Cost of compliance exceeds appropriate limit) of FOIA.
2. The Commissioner's decision is that the Council was entitled to apply section 24(1) of FOIA to refuse parts (2) – (3) of the request, and that the public interest favours maintaining the exemption. He also finds that it was entitled, by section 12(2) of FOIA, to refuse to confirm or deny whether it holds the information specified in parts (4) – (6) of the request, and that it complied with the requirements of section 16 (Advice and assistance).
3. The Commissioner requires no steps as a result of this decision.

Request and response

4. As part of a "round robin" request circulated to around 20 local authorities, on 30 May 2023, the complainant wrote to the Council and requested information in the following terms:

"I would like to request the following information via the Freedom of Information Act...In your response please do not identify anyone referred to the Prevent programme. Please do not identify anyone who has approached the service to express concerns about another individual(s). Please do not identify any school in any response. Please do not identify any member of staff working for the local authority or for the Prevent programme. Please do not identify any member of the public.

(1) Do staff based at the local authority and or staff employed on behalf of the local authority participate in the Prevent programme.

(2) Since 30 May 2022 how many individuals aged sixteen or under have been referred to the Prevent team. These individuals could have been referred by a school and or social services staff and or the police and or another law enforcement agency and or a voluntary organisation and or a place of worship and or a member of the public.

(3) In the case of each individual referred can you state their age and their given / preferred gender.

(4) Can you describe the main area of concern. For instance, is the concern about their use of social media. For instance, is the concern to do with links to religious extremism. A broad description will suffice.

(5) Can you state whether the individual was referred by their school. Please do not identify the school.

(6) Have the individuals and or organisations making the referrals cited the child's interaction with and use of the following (listed below) as the reason for the referral.

- (i) A published book (s) whether that be a work of fiction and or non-fiction. Can you identify the book (s).
- (ii) A cinema release (s) including live action or animated releases. Can you identify the cinema release (s).
- (iii) A television programme of any kind including dramas and or comedies and or documentaries. Can you identify the show (s).
- (iv) A comic and or graphic novel (or similar) Can you identify the comic (s) or graphic novel (s).
- (v) A computer game of any description. Can you identify the gamp [sic]
- (vi) Material either viewed by them and or created them online. Can you identify any relevant websites. But please do not identify any material which would leave to the identification of the individual.

- (vii) Material either viewed by them and or created by them on social media. Can you identify the material but please do not identify any material which would lead to the identification of the individual.
 - (viii) Any visual artwork. Can you identify the artwork.”
5. The Council responded on 14 June 2023. It answered part (1) of the request. In respect of parts (2) – (6) of the request, it suggested that local Counter Terrorism Police may hold the information.
 6. Following an internal review, the Council stated that it was applying section 12(2) of FOIA to neither confirm nor deny that it held the information at parts (2) – (6), due to the costs involved in establishing whether it did.

Scope of the case

7. The complainant contacted the Commissioner on 21 July 2023 to complain about the way his request for information had been handled. He disagreed with the Council’s application of section 12(2) to the request.
8. During the Commissioner’s investigation the Council revised its position. It said it did hold information falling in scope of parts (2) – (3) of the request, but it was exempt from disclosure under section 24(1) of FOIA. It maintained that it did not know whether the information included the information described in parts (4) – (6) of the request, and that establishing whether it did would engage section 12(2) of FOIA.
9. These late revisions have not been put to the complainant, to forego any further delay in the investigation. The Commissioner does not consider the complainant has been disadvantaged by this approach, as he has already provided his views on the application of section 24 when complaining about another public authority’s handling of the same request.
10. Following the combined cases of the Home Office v Information Commissioner (GIA/2098/2010) and DEFRA v Information Commissioner (GIA/1694/2010) in the Upper Tribunal, a public authority is able to claim a new exemption or exception either before the Commissioner or the First-tier Tribunal and both must consider any such new claims.
11. The Commissioner has therefore considered the Council’s application of section 24(1) of FOIA to withhold the information described in parts (2) – (3) of the request, and section 12(2) to refuse parts (4) – (6) of the request.

Reasons for decision

Section 24 – National security

12. Section 24(1) of FOIA states:

“Information which does not fall within section 23(1) [information supplied by, or relating to, bodies dealing with security matters] is exempt information if exemption from section 1(1)(b) is required for the purpose of safeguarding national security.”

13. In broad terms, the exemption allows a public authority not to disclose information if its release would make the UK or its citizens vulnerable to a national security threat.

14. The request in this case is identical to the complainant’s request for information to Leeds City Council, which the Commissioner has considered alongside this case, under reference IC-247374-N3L8, and which may be viewed on the ICO’s website¹.

15. Having considered all the factors applicable in this case, the Commissioner is satisfied that the similarity between this case and the request in case reference IC-247374-N3L8 is such that he is able to reach the same decision here about the citing of section 24(1) of FOIA to withhold the information at parts (2) – (3) of the request.

16. For brevity, the Commissioner will not reproduce the content of the decision notice for case reference IC-247374-N3L8 here, but he has adopted the same analysis and concluded that the Council was entitled to rely on section 24(1) of FOIA to withhold the information in parts (2) – (3) of the request, with the public interest favouring maintaining the exemption.

Section 12 - Cost of compliance exceeds appropriate limit

17. The Council has explained that while it had been possible to determine that it held information falling within the scope of parts (2) and (3) of the request, parts (4) – (6) asked for very specific information, which might, or might not, be recorded in connection with individual referrals. It said it would be excessively costly to establish whether the information was held.

¹ <https://icosearch.ico.org.uk/s/search.html?collection=ico-meta&profile=decisions&query>

18. Section 1(1)(a) of FOIA states that on receipt of a request for information, a public authority must confirm or deny that it holds that information.
19. However, section 12(2) of FOIA exempts a public authority from the duty to confirm or deny if to do so would exceed 'the appropriate limit'.
20. 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 public authorities such as the Council. The Fees Regulations also specify that the cost of complying with a request must be calculated at a flat rate of £25 per hour. This means that the Council may refuse a request for information if it estimates that it will take longer than 18 hours to comply with it.
21. Where section 12(2) is relied upon, a public authority can only take into account the costs it reasonably expects to incur in determining whether it holds the requested information.

Aggregation of requests

22. In respect of each referral, parts (4) – (6) of the request ask for a description of the main areas of concern, whether the referral was made by a school, and details of any source materials regarded as concerning.
23. Multiple questions within a single item of correspondence are considered to be separate requests for the purpose of section 12. However, as set out in the Commissioner's guidance on the cost limits², where requests relate to the same overarching theme, a public authority may aggregate³ two or more separate requests.
24. Having considered the questions, the Commissioner is satisfied that they are on an overarching theme. This is because they each ask for information about particular referrals made under the Prevent programme. Therefore, the Council was entitled to aggregate the costs of dealing with each part of the request.

² https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

³ That is, they may add together the costs of dealing with separate questions when estimating the total cost of compliance

Would the appropriate limit be exceeded?

25. In setting out why the appropriate limit would be exceeded, the Council explained that there is no central record of Prevent referrals and so multiple locations would need to be searched to identify whether the requested information was held:

"...complying with the request would predominantly involve attempting to identify any instances where a Prevent referral Word document had been completed and sent by email. This template was prepared by the Police.

An adequate search would also necessitate searching for any referrals that could have been made ad hoc through other formats and mediums, as staff may have chosen not to use the referral template. This could include locating free text email contents, or letters issued by post.

This would primarily involve searches of the following locations:

- Individual staff mailboxes – a staff member's own mailbox.
- Individual staff network drives – a staff member's local laptop file storage.
- Shared team mailboxes – mailboxes operated on behalf of teams or particular functions.
- Shared team network drives – team storage, either cloud-based or on KCC physical servers.

To do this, staff members would be asked to carry out searches of mailboxes and network areas they are responsible for (individual and shared). This would be done by requiring a mailbox keyword search for "Prevent" or "Prevent referral" to find sent emails. Network drive searches would take advantage of local knowledge to guide search efforts of local and shared network drives.

The Council has therefore adopted the Commissioner's approach (as noted in IC-170074-S7L9⁴) of assuming a sufficiently thorough search could be carried out by each staff member within an arbitrary value of 1 minute on average. Across the Council's workforce of approximately 10,000 individuals ... this would still result in an initial search time in excess of 160 hours."

⁴ <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4023478/ic-170074-s7l9.pdf>

26. Explaining why it had not conducted a sampling exercise to arrive at this estimate, the Council said:

“For this to fall within the appropriate limit, each officer would need to complete their portion of the search and extract any identified data within 6.4 seconds. Based on past experience, the Council does not consider this prospect to be likely.”

The Commissioner’s decision

27. When dealing with a complaint to him under FOIA, it is not the Commissioner’s role to make a ruling on what information a public authority should hold, or how it should hold it. He is not concerned with how a public authority deploys its resources, on how it chooses to hold its information, or the strength of its business reasons for holding information in the way that it does as opposed to any other way. Rather, in a case such as this, the Commissioner’s role is simply to decide whether or not the request can be complied with, within the appropriate cost limit.
28. The Commissioner’s job when considering the application of section 12(2) is to determine whether the Council has demonstrated that the work involved in determining whether it holds the information described in parts (4) - (6) of the request would be likely to exceed 18 hours, and thus the £450 cost limit established under the Fees regulations.
29. As the requested information is not recorded centrally, the Council has provided an estimate that compliance with the request would require at least 160 hours work. Parts (4) - (6) of the request ask for a variety of information which is clearly not readily available. Having considered the search strategy proposed and the specific estimates provided by the Council as set out above, the Commissioner’s conclusion is that the Council has estimated reasonably and cogently that the costs involved in determining whether it holds the information described in parts (4) - (6) would exceed the £450 limit.
30. The Council was therefore entitled to apply section 12(2) of FOIA to refuse to comply with the request.

Section 16 – Advice and assistance

31. When refusing a request under section 12 of FOIA, a public authority should offer meaningful advice and assistance to the requester, where reasonable. The aim of this advice and assistance is to help the requester to refine their request to one that might be dealt with without exceeding the appropriate limit.
32. The Council explained:

“The Council’s internal review advised that it would not be possible to meaningfully alter the original request. This is because there is no way to reduce the required search without fundamentally changing the nature of the request.

The burden of compliance primarily stems from the volume and breadth of the search that would need to be carried out. Restricting the date range from May 2022 to May 2023 - as an example - would still require each officer to carry out the same search, which in aggregate would still exceed the appropriate limit.

The Council also explained that it was not responsible for receiving Prevent referrals as was implied in question 2; rather as a public authority, we are subject to the Prevent duty to make referrals to the appropriate authorities if radicalisation concerns are identified.

The Council referred the requester to other public authorities (Counter Terrorism Police South East and the Home Office) who centrally collate these referrals and would be best placed to answer questions and provide statistics about them.

Additionally, the Council advised the requester that Counter Terrorism Police South East make a web referral portal available for use, and that the Council would not hold any details at all regarding referrals made through this route. This is because the referral is typed directly into the police website, meaning the Council would not retain a copy as a sent message or equivalent.

This means that even were the Council able to carry out a search for referrals made through other means and formats, it would by nature be partial data that is unlikely to provide the complete picture the requester requires.”

33. Having considered the range of information requested and the time it would take to search and review each record, the Commissioner agrees that it is unlikely that the request could be meaningfully refined to allow it to be complied with, within the appropriate limit. He notes the Council also provided information which it believed would be helpful to the complainant.
34. The Commissioner further notes that even if it had been possible to refine parts (4) – (6) of the request, so as to bring them within the cost limit, the information, if held, would likely engage the exemption at section 24(1), for the reasons set out in case reference IC-247374-N3L8.
35. Taking the above into account, the Commissioner is satisfied that there was no failure to comply with section 16(1) of FOIA.

Right of appeal

36. 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

37. 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.

38. 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

Samantha Bracegirdle
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