

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 December 2022

Public Authority: Oldham Metropolitan Borough Council
Address: Civic Centre
PO Box 33
West Street
Oldham
OL1 1UG

Decision (including any steps ordered)

1. The complainant has requested information relating to the sexual health testing service provided by Oldham Metropolitan Borough Council (the council).
2. The Council initially advised that the information was not held. Following the Commissioner's intervention the Council then stated that it would exceed the cost limits to comply with the request in its entirety, and that it was therefore relying on section 12(1) of FOIA.
3. The Commissioner is satisfied that the Council is entitled to rely on section 12(1) as its basis for refusing the request. Furthermore, as the Council has proactively provided some information to the complainant, the Commissioner considers that it has met its obligations under section 16(1) to offer advice and assistance.
4. The Commissioner does not require the Council to take any steps as a result of this decision notice.

Request and response

5. On 9 November 2021, the complainant wrote to the Council and requested information in the following terms:
- “Please can I have data on STI test results by services commissioned by the council (such as Virgin Care Sexual Health Hub), for each individual year for 2019, 2020, and 2021. For unit of time please use calendar days unless otherwise specified. For any times under one day please use hours and make this clear.
- 1) Average time between test taken and negative result supplied to patients
- 1a) Goal time for above
- 1b) Maximum recorded time for above
- 2) Average time between test taken and positive result supplied to patients
- 2a) Goal time for above
- 2b) Maximum recorded time for above
- 3) Average time between test taken and result supplied to patients
- 3a) Goal time for above
- 3b) Maximum recorded time for above.
- 4) Average time between test taken and result supplied to patients in case PrEP prescribing where a negative result is required to start PrEP
- 4a) Goal time for above
- 4b) Maximum recorded time for above.
- 4c) Policy on whether PrEP is provided to the patient at the time the test is taken or whether it is provided to the patient only after a negative result is confirmed.”
6. The Council response to the complainant stated that it did not hold the requested information; it then upheld the decision at the internal review stage.
7. Following the Commissioner’s intervention, the Council re-considered its position, accepting that the requested information was held on its behalf by a service provider.

8. The Council confirmed that the relevant individuals usually receive notification of their test results by telephone or text message. It went on to say that the only way in which it could identify those results that had been issued by telephone would be to carry out a search of each patient record, and to identify and assess the telephone calls for each relevant time period. The Council advised that, given the time that this would take, it was refusing to comply with the request under section 12(1) of the FOIA, as the cost of compliance would exceed the cost limit.
9. However, the Council advised the complainant that it was able to provide the requested information relating to results sent to individuals via text message, as this could be done using a different process (although this only covered the period 2020 onwards, as the SMS messaging service was not available prior to that time).

Scope of the case

10. The complainant contacted the Commissioner on 22 February 2022 to complain about the way his request for information had been handled.
11. The Commissioner will decide whether the council is entitled to rely on section 12(1) of the FOIA as its basis for refusing the complainant's request.

Reasons for decision

Section 12 FOIA – cost limits

12. 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 limit" as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations").
13. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 at £450 for the Council.
14. 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 provides a time limit of 18 hours for the Council.

15. 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.

Would the cost of compliance exceed the appropriate limit?

16. As is the practice in a case where the public authority has informed the complainant that it holds the information, the Commissioner has asked the Council to provide a detailed estimate of the time/cost taken to provide the information falling within the scope of this request.

17. In its submission to the Commissioner, the Council confirmed that in order to provide all the relevant data, each record held would have to be reviewed to separate negative and positive results. Whilst it could then remove the SMS results (as they have now been provided) from the remaining records, the date the test was ordered, the date the result was received, and the date the telephone call was made, would still then need to be identified and extracted.

18. The Council has confirmed that for the year 2019 and 2020, 15,823 and 15,370 records respectively would have to be checked in order to comply with the request.

19. The Council goes on to say that a sampling exercise was carried out and that it had estimated from this that the process would take up to five minutes per record.

20. Whilst the Commissioner is not necessarily persuaded that it would take five minutes for the Council to deal with each record, he accepts that for the request to fall within the cost limits, the relevant officer would be required to consider each record in less than three seconds, which is not realistic or achievable.

21. Having considered the information available, the Commissioner is therefore satisfied that the Council is entitled to rely on section 12(1) of FOIA as its basis for refusing to comply with the complainant's request.

Section 16(1) of FOIA – Advice and assistance

22. 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 good practice contained within the section 45 code of practice in providing advice and assistance, it will have complied with section 16(1).
23. In this instance, the council has already proactively released the information that it held where it was able to do so within the cost limits. The Commissioner does not consider that the complainant's request could be meaningfully refined in any other way to allow the information to be provided within the cost limit. As such, he is satisfied that there was no breach of section 16(1) of FOIA.

Right of appeal

24. 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

25. 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.
26. 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
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF