

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 January 2024

Public Authority: Oxford City Council
Address: Town Hall
St Aldate's
Oxford
OX1 1BX

Decision (including any steps ordered)

1. The complainant has requested the number of employees who have been formally or informally disciplined due to sickness absence every month for a period of five years. Oxford City Council ("the Council") refused the request under section 12(1) (cost of compliance) but provided the information it was able to provide within the cost limit under the duty to provide advice and assistance (section 16).
2. The Commissioner's decision is that the Council is entitled to refuse to comply with the request under section 12(1) and has complied with the requirement of section 16. However the Council breached section 17(1) by issuing a refusal notice outside the statutory time period.
3. The Commissioner does not require further steps.

Request and response

4. On 9 November 2021, the complainant wrote to the Council and requested information in the following terms:

"1. I would like to know the number of Oxford City Council employees who have formally or informally disciplined due to sickness absence every month in the past five years.

2. I would like to know the number of Oxford Direct Services employees who have formally or informally disciplined due to sickness absence every month in the past five years."

5. The Council subsequently issued responses that the Commissioner did not consider complied with section 1(1)(b) of FOIA. The Commissioner required the Council to issue a fresh response to the request in decision notice IC-161401-S0H7¹.
6. The Council issued a fresh response on 17 July 2023. It refused to comply with the request under section 12(1) of FOIA. In doing so it also indicated that some of the information would be exempt under section 40(2) (personal information).
7. On 17 July 2023, the complainant asked the Council to provide an internal review.
8. The Council provided an internal review on 10 August 2023. It maintained its earlier response.

Scope of the case

9. The complainant contacted the Commissioner on 10 August 2023 to complain about the way their request for information had been handled, and specifically that the Council was not entitled to refuse the request under section 12(1) and section 40(2).
10. The Commissioner perceives that the Council's reference to section 40(2) has been based on a misunderstanding of FOIA. The Commissioner reminds the Council that it should not seek to rely upon an exemption (to withhold information) if the request itself would engage section 12(1). The Commissioner has therefore not considered this aspect further.
11. The Commissioner considers that the scope of his investigation to be whether the Council is entitled to refuse to comply with the request under section 12(1), and whether it has complied with the duty to provide advice and assistance under section 16.

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4023675/ic-161401-s0h7.pdf>

Reasons for decision

12. This reasoning covers whether the Council is correct to apply section 12(1) (cost of compliance) of FOIA to the request.
13. Under section 12(1), the appropriate limit in costs for the Council as a local public authority is £450, or 18 hours of officer time.
14. The Commissioner has therefore asked the Council to provide its arguments for the application of section 12(1).
15. The Council explained to the Commissioner that the request seeks information that cannot be automatically retrieved from its records. This is because the information sought (formal and informal disciplinary action about sickness absence) is not managed through the disciplinary procedure, but through the attendance management procedure. Because of this, the information is not recorded in a way that can be easily identified and extracted, such as by able by viewing an immediate summary or dashboard of information. Instead, it will be contained in staff records on the iTrent system (the Council's HR management system), line manager files, and historic HR records. These would need to be manually reviewed, with some judgement applied (specifically to 'informal' disciplinary action) to compile the requested information.
16. The Council has detailed that there will be over 10,000 sickness absences over the past 5 years (with 2550 instances occurring over the previous 12 months). These sickness absences relate to approximately 800 staff at any one time (with a turnover of approximately 12%). To identify whether an attendance management process had taken place, line managers (approximately 100) would therefore need to manually review the staff records relating to over 1000 individuals over a 5-year period.
17. The Council argues that even allowing for 5-15 minutes for line managers to review each staff record on iTrent, would considerably exceed the appropriate limit, and that this timescale does not include collation of the information, or the review of historical records and manager files (which may take an additional 5-10 minutes per individual).
18. The Commissioner has reviewed the Council's argument and recognises that the request seeks a significant volume of information that cannot be easily retrieved and collated without significant officer involvement and review. In particular, the Commissioner notes that even allowing for a minimum 10-minute search and collation for each of the 1000 individuals would require over 166 hours of officer time.

19. The Commissioner has considered this and is satisfied that compliance with the request would exceed the appropriate limit of £450, or 18 hours of staff time.
20. Therefore, the Commissioner's decision is that the Council was correct to apply section 12(1) of FOIA to the request.
21. When section 12(1) is engaged the Commissioner will typically consider whether a public authority can provide appropriate advice and assistance to the requester, so that they may refine the request to within the appropriate limit.
22. In the circumstances of this case the Council has argued that the only reasonable advice and assistance that it can offer to refine the request is to provide the annual statistics for staff leavers who have been dismissed due to attendance (and which it has voluntarily provided due to the information already being collated). The Council also provided the 'Attendance Management Policy and Procedures', and directed the complainant to the publicly available annual equalities reports for the Council.
23. The Commissioner perceives that even if the Council offered to provide the requested information for the period of one year, this would still require the manual review of records relating to 800 employees. For the reasons given above, the Commissioner is satisfied that to do so would exceed the appropriate limit. The Commissioner is therefore satisfied that, in the circumstances of this case, the steps taken by the Council represent appropriate advice and assistance.
24. Therefore, the Commissioner's decision is that the Council has complied with section 16 of FOIA.

Procedural matters

25. The Council failed to issue a refusal notice in response to the request within the statutory time period, the Commissioner has therefore found a breach of 17(1) of FOIA.

Right of appeal

26. 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

27. 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.
28. 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

Daniel Perry
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
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SK9 5AF