

Freedom of Information Act 2000 ('FOIA')

Decision notice

Date: 23 October 2012

Public Authority: Luton Borough Council
Address: Town Hall
George Street
Luton
Bedfordshire
LU1 2BQ

Decision (including any steps ordered)

1. The complainant has requested information relating to care arrangements. The Commissioner's decision is that Luton Borough Council ('the council') has not provided sufficient reasons for applying the exemption where the cost of compliance exceeds the appropriate limit and has taken too long to respond.
2. The Commissioner requires the public authority to take the following step to ensure compliance with the legislation:
 - Either disclose the information or issue a valid refusal notice in accordance with section 17 FOIA.
3. The public authority must take this step within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

4. On 8 November 2011 the complainant made the following request for information under the FOIA:

"Further to my original FOI inquiry (attached), I wish to request access to further information under the Freedom of Information Act.

In my original inquiry, I refer to the commissioning arrangements by Luton Council for the provision of services from Bedfordshire Pilgrims HA and Westminster Care. I understand that these arrangements have been reviewed since they commenced.

I wish to have have [sic] sight of:

- Agenda's for any such review meetings
- Notes/minutes of any such review meetings
- Any documents, correspondence, e mails, reports internally within Luton Council regarding the provision of this service
- Any subsequent correspondence between any of the parties advising/confirming any agreed amendments/required changes relating to the provision of services to support the vulnerable elderly people resident at Betty Dodds Court

As with my previous request, I do not require any material which could be considered to be commercially sensitive. However, if there are changes to the service provision as a result of finance, I do wish to be advised of what these changes are and why the financial situation has changed.

I also do not require access to any information of a personal nature and am happy for such information in any relevant documents to be redacted."

5. The council responded on 23 January 2012 and refused to provide the requested information citing the exemption at section 43(2) of the FOIA.
6. The complainant requested an internal review on 8 February 2012. The council responded on 2 April 2012 in which it disclosed 'Notes on meetings'. No reference was made to the other information requested.

Scope of the case

7. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
8. During the Commissioner's investigation, the council stated that it is no longer withholding information on the basis of section 43(2) as since the request was made the commercial sensitivity no longer applied and information was supplied to the complainant. However, it further stated that it has supplied quite a quantity of information which has taken almost 18 hours to retrieve and any exercise to retrieve further information would take this request above the charging limit and it would exercise its right to decline on this basis.

9. Therefore the Commissioner has considered the council's application of section 12 rather than section 43(2).

Reasons for decision

10. Section 12 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 which, in this case, is £450 as laid out in section 3(2) of the fees regulations.
11. Regulation 4(3) of the Fees Regulations states that an authority, when estimating whether complying with a request would exceed the appropriate limit, can only take into account the costs it reasonably expects to incur in:
 - determining whether it holds the information;
 - locating the information, or documents containing it;
 - retrieving the information, or documents containing it; and
 - extracting the information from any documents containing it.
12. As the costs are calculated at £25 per person per hour for all authorities regardless of the actual cost or rate of pay, the limit will be exceeded if the above activities exceed 18 hours.
13. The Commissioner requested that the council provide a detailed estimate of the time it would take to provide the information with reference to the four activities set out in paragraph 11.
14. In response, the council explained that the complainant's mother-in-law and father-in-law are both service users residing in extra care housing owned and managed by a local housing association where the care is monitored by the council. It stated that it had been working with the complainant for a good 12 months as the complainant and his wife had expressed concerns about the level of care and support being provided and had received information requests from the complainant which were linked to the services he wanted for his mother-in-law and father-in-law. It stated that it has spent over 20 hours on the case.
15. The council stated that it is difficult to put times on the requests and instead provided a chronology of what it described as FOI events with times stated next to most entries. The Commissioner has studied this chronology and notes that it mainly contains details of contact with the complainant such as emails, telephone calls and attempts to arrange meetings.

16. The Commissioner could only identify one entry on the chronology which specifically refers to time spent in relation to activities that can be taken into account for the purposes of determining whether the request would exceed the appropriate limit. The entry is as follows:

“[Named individual] – time 2 hours to go through and search for information manual and electronic to be released (eg. emails, agendas, minutes, action plans).”
17. The Commissioner notes that only one other entry specifically refers to time spent in relation to activities that can be taken into account for the purposes of determining whether a request would exceed the appropriate limit. However, this entry relates to two hours spent searching for information in response to a previous request and the council has not claimed that it wishes to aggregate the requests for the purposes of determining whether the appropriate limit is exceeded.
18. Examples of entries that cannot be included in the costs calculation include time taken on correspondence with the Commissioner, time taken conducting an unscheduled review of care and service requirements and time taken liaising with providers to ensure appropriate support is in place in accordance with care plans.
19. The Commissioner considers that the council did not provide adequate information to enable him to evaluate whether the estimate of 20 hours was reasonable, such as a calculation including a description of the type of work that would need to be undertaken. Therefore the Commissioner has no choice but to conclude that the exemption is not engaged.
20. The Commissioner considers that the council has been provided with sufficient opportunity to provide its rationale for withholding the requested information. The rationale should have been in place since the request was refused and therefore opportunities for providing this existed at the original refusal, at the internal review and when requested by the Commissioner.
21. The Commissioner also considers that the council took too long to respond as the request was received by the council on 8 November 2011 and responded to on 23 January 2012, significantly outside of the 20 working days statutory time limit contained at section 10(1) FOIA.

Other matters

Internal review

22. Paragraph 39 of the Code of Practice issued under section 45 of the FOIA (the 'Code') recommends that complaints procedures should:
23. "...provide a fair and thorough review of handling issues and of decisions taken pursuant to the Act, including decisions taken about where the public interest lies in respect of exempt information. It should enable a fresh decision to be taken on a reconsideration of all the factors relevant to the issue."
24. Paragraph 40 of the Code states that in carrying out reviews:

"The public authority should in any event undertake a full re-evaluation of the case, taking into account the matters raised by the investigation of the complaint."
25. As he has made clear in his published guidance on internal reviews, the Commissioner considers that internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the FOIA, the Commissioner's view of a reasonable time for completing an internal review is 20 working days from the date of the request for review. In this case the Commissioner notes that the public authority took almost two months to provide an internal review. The public authority should ensure that internal reviews are carried out promptly in future.

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: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

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

Andrew White
Group Manager
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