

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 March 2015

Public Authority: Telford and Wrekin Council

Address: Darby House
Lawn Central
Town Centre
Telford
Shropshire
TF3 4JA

Decision (including any steps ordered)

1. The complainant has requested information about complaints handling at Telford and Wrekin Council (the council). The council's position is that it would exceed the appropriate limit of hour hours to determine if the outstanding information is held, and therefore section 12 applies.
2. The Commissioner's decision is that the council was correct to rely on section 12 in this case. Therefore he does not require the council to take any steps.

Request and response

3. On 2 June 2014 the complainant made a request to the council for the following information:

"1. Does the council have an Equality and Diversity Policy that it follows and can refer people to?

2. How many people in total are there in the complaints team - customer relations, to deal with people's concerns and complaints?

3. How many people were in the complaints, customer relations team in total in the years 2011, 2012, 2013 and 2014? Have the number of staff been reduced over these years?

4. How many complaints have not been handled properly where the procedures have failed completely - the council has not responded to the stage 1 or stage 2 complaints in the years 2011, 2012, 2013 and 2014. And how many people have had to take other action against the council? and lastly,

5. How many people have complained about the procedures not being followed properly by the council and how many have protected characteristics who have made these complaints?"

4. The council responded on 9 June 2014 and provided the information it held in relation to questions 1-4. With regard to question 5, it said that the information was not held, but that the work required to verify this would exceed 18 hours and so section 12 of the FOIA applied.
5. The complainant queried the council's response on 12 June 2014 particularly as she considered that she had made a complaint which fell into the scope of question 4. The council provided clarification to questions 4 and 5 on 12 June 2014. It explained that it maintained that its answer to question 4 was correct as the complainant's complaint had been dealt with in compliance with the complaints procedure. It provided more information about how it records complaints on its complaints system, and advised that there were no complaints with the descriptor 'complaints about complaints procedure'. However it may be the case, as happened in the complainant's complaint, that a 'complaint about complaints procedure' was submitted as a second stage complaint, and so was recorded as such within the original complaint record. It explained that the system is not able to produce reports about this information, so it would need to manually look at all the complaint records to see how many second stage complaints had been made about the complaints procedure. It said that for the year 2012/13 alone there were 1143 complaints which it would need to read through. It therefore maintained that section 12 applied as it would exceed the appropriate limit of 18 hours to locate and extract the requested information.
6. With regard to 'protected characteristics' aspect of question 5, it explained that it did not record these as part of the complaints process. It no longer sends out monitoring forms, so the only way it would hold this information was if it was contained within the body of the complaint correspondence.
7. The complainant submitted an official request for internal review on 25 June 2014. The council provided the outcome of its internal review on 3 July 2014 in which it upheld its original response and its clarification response of 12 June 2014.

8. The complainant then complained about the internal review process on 4 and 22 July 2014. The council gave this complaint a new reference number 33816. In its letter of 31 July 2014 it accepted that it should have treated the complainant's email of 12 July 2014 as a request for internal review. It also provided further clarification about its response to question 5. It provided the numbers of stage 2 complaints, but further explained that it could not provide information about the 'protected characteristics' of complainants as only 103 monitoring forms are held for 2012/13, which is less than 10% of the total complaints, and so is not considered complete enough for reporting purposes

Scope of the case

9. The complainant contacted the Commissioner on 1 August 2014 to complain about the way her request for information had been handled, particularly the difficulty she experienced with the internal review and the response to question 5.
10. The Commissioner considers therefore that the scope of the case is to determine whether the council was correct to rely on section 12 and whether there are any procedural breaches of the FOIA.

Reasons for decision

11. The Council has relied on the provisions of section 12 of the FOIA to refuse to provide information the information sought by the complainant.
12. Section 12 of the FOIA states that a public authority is not obliged to comply with a request for information if it estimates that the cost of complying would exceed the appropriate cost limit. The cost limit is set out in section 3(2) of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations) and is currently set at £450 for local authorities such as the council.
13. The £450 limit must be calculated at the rate of £25 per hour. This effectively provides a time limit of 18 work hours. Additionally regulation 4(3) the Fees Regulations only allow for four activities which can be considered in relation to complying with the requests. These activities are:
 - Determining whether the public authority holds the information requested;

- Locating the information or documents containing the information;
 - Retrieving such information or documents; and
 - Extracting the information from a document or other information source.
14. The cost of redacting relevant but exempt information may not be taken into consideration for the purpose of calculating the appropriate limit.
15. The council provided the Commissioner with additional information about the searches undertaken to determine whether the requested information is held. It explained that it uses a system called Respond to record and manage its complaints records. Each complaint has a descriptor field which is completed with a brief outline of the complaint. Having undertaken an electronic search of the descriptor field for 'complaint about complaints procedure', nothing was returned. However, the council advised that such a complaint may be held within an existing complaint record, and so would not be returned from an electronic search. As such, it maintains that to locate any such information, it would need to manually scrutinise each complaint record.
16. It explained that complaints records on Respond contain numerous entries/actions which would need to be opened and viewed to determine whether it contains any information about complaints about the complaint procedure. In addition to this. It advised that each action/entry may contain a number of attachment which would also need to be opened and viewed.
17. The total number of complaint records on Respond at 24 February 2015 was 6573. The council has said that it is impossible to determine how long it would take to search each of these records as they vary in the numbers of entries/actions recorded and the volume of each record. In order to make a reasonable estimate of the time it would take, the council undertook a sampling exercise as follows:
- Complaint 1 (00307) 14 entries that took 16 minutes to open and view
 - Complaint 2 (06021) 53 entries that took 32 minutes to open and view
 - Complaint 3 (07011) had 16 entries that took 21 minutes to open and view.
18. In respect of this sampling exercise, the council chose to use a conservative estimate of 15 minutes per record to determine if the requested information is held.

6573 records x 15 minutes per record to determine if the information is held = 1643 hours.

19. This far exceeds the 18 hour limit. The council has calculated that in order to bring the estimate under the 18 hour limit, the average time to check each record would need to be less than 1 minute. It maintains that this would be an unrealistic estimate.
20. The Commissioner understands why the complainant is of the opinion that the council must hold the information requested, as she made a complaint about the complaints process, and it would appear that her request is linked to this. The fact that the complainant's complaint does not show up on an electronic search of Respond suggests to the Commissioner that the steps highlighted by the council to determine if the information is held would be necessary to respond fully to the request.
21. The Commissioner therefore considers that council's estimate of 1643 hours to determine if the information is held is a reasonable one and so it is his view that the council was correct to rely on section 12 to refuse the request. Given the number of records held on Respond, it is clear that it would be necessary for the search of each record to take far less than 1 minute to come under the 18 hours threshold. This is certainly unrealistic, if not impossible.

Other matters

22. Although they do not form part of this decision notice, the Commissioner would draw the council's attention to the following points in relation to its handling of the internal review in this case.
23. Section 38 of the Section 45 Code of Practice states:

"Any written reply from the applicant (including one transmitted by electronic means) expressing dissatisfaction with an authority's response to a request for information should be treated as a complaint, as should any written communication from a person who considers that the authority is not complying with its publication scheme. These

communications should be handled in accordance with the authority's complaints procedure, even if, in the case of a request for information under the general rights of access, the applicant does not expressly state his or her desire for the authority to review its handling of the application."

24. The code of practice provides guidance about how internal reviews should be conducted, including that complaints procedures should be as clear and simple as possible, acknowledged and dealt with promptly, and apologies should be issued where procedures have not been followed.

Right of appeal

25. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

26. 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.
27. 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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