

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 June 2016

Public Authority: Hertfordshire County Council

Address: County Hall
Pegs Lane
Hertford
Hertfordshire
SG13 8DQ

Decision (including any steps ordered)

1. The complainant has requested information relating to referrals to Hertfordshire Children's Services. The Commissioner's decision is that Hertfordshire County Council has correctly applied the exemption at section 12 of the FOIA where the cost of compliance exceeds the appropriate limit.

Request and response

2. On 14 March 2016, the complainant wrote to Hertfordshire County Council ('the council') and requested information in the following terms (revising a request he made on 29 April 2015):

"1. For the calendar year 2014-2015, how many families with parents in a partnership were referred to Hertfordshire Children's Services by [name redacted], health visitor?

2. For the calendar year 2014-2015, how many families with lone parents were referred to Hertfordshire Children's Services by [name redacted], health visitor?

3. For the calendar year 2015-2016, how many families with parents in a partnership were referred to Hertfordshire Children's Services by [name redacted], health visitor?
4. For the calendar year 2015-2016, how many families with lone parents were referred to Hertfordshire Children's Services by [name redacted], health visitor?"
3. On the same day the complainant also made the following request:
 - "1. For the calendar year 2014-2015, how many families with parents in a partnership were referred to Hertfordshire Children's Services?
 2. For the calendar year 2014-2015, how many families with lone parents were referred to Hertfordshire Children's Services?
 3. For the calendar year 2015-2016, how many families with parents in a partnership were referred to Hertfordshire Children's Services?
 4. For the calendar year 2015-2016, how many families with lone parents were referred to Hertfordshire Children's Services?"
4. The council responded on 18 March 2016 (quoting reference number FOI/CSF/03/16/10689). It said that it is aggregating the two requests and cited section 12 of the FOIA because to ascertain whether it holds the information requested would exceed the appropriate limit.
5. The complainant did not request an internal review of either request. The Commissioner spoke to the council on 22 April 2016 and it was agreed that an investigation could take place without an internal review due to the circumstances in this case.

Scope of the case

6. The complainant contacted the Commissioner on 9 March 2016 to complain about the way the above request for information had been handled.
7. The Commissioner has considered the council's application of the exemption where the cost of compliance exceeds the appropriate limit at section 12 of the FOIA.
8. The complainant also made a complaint about the way a related request was handled. The complaint about that request is dealt with in the decision notice for case reference FS50626438.

Reasons for decision

Section 12 – Exemption where cost of compliance exceeds appropriate limit

9. 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.
10. Section 12(2) allows a public authority to refuse to confirm or deny whether it holds information of the nature requested if simply to do so would in itself exceed the appropriate limit.
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, in this case the limit will be exceeded if the above activities exceed 18 hours.
13. A public authority does not have to make a precise calculation of the costs of complying with a request; instead only an estimate is required. However, it must be a reasonable estimate and what amounts to a reasonable estimate has to be considered on a case by case basis. The Information Tribunal in the case of *Randall v Information Commissioner and Medicines and Healthcare Products Regulatory Agency*¹ said that a reasonable estimate is one that is "...sensible, realistic and supported by cogent evidence".

¹ Appeal number EA/2006/0004, 30 October 2007

14. In his guidance on this subject², the Commissioner states that a sensible and realistic estimate is one which is based on the specific circumstances of the case and should not be based on general assumptions.

15. In the aforementioned guidance, the Commissioner also states that;

“A public authority is not obliged to search for, or compile some of the requested information before refusing a request that it estimates will exceed the appropriate limit. Instead, it can rely on having cogent arguments and/or evidence in support of the reasonableness of its estimate. It is good practice to give these arguments or evidence to the requestor at the outset to help them understand why the request has been refused. This reasoning is also likely to be required if a complaint is made to the Information Commissioner.

However, it is likely that a public authority will sometimes carry out some initial searches before deciding to claim section 12. This is because it may only become apparent that section 12 is engaged once some work in attempting to comply with the request has been undertaken.”

16. In this case, the council has aggregated the two four-part requests detailed at paragraphs two and three. When a public authority is estimating whether the appropriate limit is likely to be exceeded, it can include the costs of complying with two or more requests if the conditions laid out in regulation 5 of the Fees Regulations³ can be satisfied. Those conditions require the requests to be:

- made by one person, or by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign;
- made for the same or similar information; and
- received by the public authority within any period of 60 consecutive working days.

17. The Commissioner considers that as the requests are clearly from the same person, relate to similar information and were received on the

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

³ <http://www.legislation.gov.uk/ukxi/2004/3244/made>

same day, the council are entitled to aggregate the requests in considering if compliance would exceed the appropriate cost limit.

18. In its initial response, the council provided the complainant with the following explanation:

"..HCC would have to manually search through all the referrals to look at each referral/referred case to ascertain if it holds the information you have requested. Hertfordshire County Council can receive up to 100 referrals a day, we estimate that the cost of carrying out this work would far exceed the appropriate limit of £450, which has been specified under the Freedom of Information Act 2000 and associated regulations. This represents the estimated cost of one person spending 2½ working days. Even looking at 1000 referrals would require a minimum of 3 minutes per record to read, and this would take 50 hours or over a week to complete."

19. The Commissioner sought further information from the council in relation to the costs estimate undertaken, in order to assess whether its estimate was reasonable and based on cogent evidence. He specifically asked for clarification as to actual number of total referrals made in 2014-2015 and 2015-2016, whether a sampling exercise had been undertaken to determine the estimate provided and whether the estimate had been based upon the quickest method of gathering the requested information. In addition, the Commissioner asked if the database (or other electronic system) records which individual health visitor made a referral, or whether families are in a partnership or lone parents and if so, whether the database (or other electronic system) can be searched to extract such information. He also asked if any manual records state which individual health visitor made a referral or whether families are in a partnership or lone parents.
20. The council explained that its Children's Services department has a computerised database system (LCS) upon which all referrals/contacts that are received in relation to a child within Hertfordshire are recorded. It explained that the contact can be for any reason, from a parent seen shouting at a child to a serious child protection issue, and within the system there are set contact reasons. It said that once the reason for contact has been recorded, there is a free text section in which the actual details for the contact can be listed and at this point any hard copy/attachments that have been provided as part of the contact and a pdf of the contact are electronically scanned on to an electronic storage system. The council explained that there is no way to report information from this electronic storage system. It said that the type of the source or reporting person is recorded via a drop down menu that consists of an option of Health Visitor and that any further details of the reporting person are recorded in the reason for referral/contact, which is a free

text section of the LCS system. The council said that relationship information is recorded on the system but this is by individual and their relationship to the child, rather than by relationship to other adults.

21. The council said that the LCS system does have a very basic reporting function which is generic. From that, it can produce a report that details referrals/contacts from a Health Visitor but this does not give details of the reporting Health Visitor and each referral/ contact highlighted in the report would need to be checked as details would be recorded in the free text section. It explained that any information that is part of the free text option is not searchable or as a consequence reportable. The council explained that due to the inability to be able to report on the free text sections of the contacts and also the fact that relationships are against the individual child, in order to obtain the information that was sought by the complainant for the first four questions, it would need to look at each contact made by a Health Visitor to assess if it met the request criteria. It said that to obtain the information sought for the second four questions would require a search of each individual child that had received a referral/contact for that specific time period, in order to ascertain what their family make up was. It said that even if it did examine each child and its familial relationship, it could possibly still not be able to ascertain whether or not the parents were in a partnership or lone parents.
22. In terms of collating the information for the first four questions, the council said that within the requested timeframe, its Children's Services Department received 310 referrals/ contacts from Health Visitors and each of these would need to be manually checked to obtain the requested information. As for the second four questions, the council said that within the requested timeframe, its Children's Services Department received 6,868 and 6,717 referrals/contacts per individual child for each of the years requested and again each of these would need to be manually checked to see if the information was detailed and obtainable.
23. In relation to whether a sampling exercise had been carried out, the council said that as part of its investigation into this complaint a sampling exercise of five individual records was carried out to determine the time required to read through the referral/contacts and determine if information was held which was relevant to the request. Five children with entries on its system were randomly chosen and the case notes/chronologies were examined to establish the family make up. Then each contact that met the date criteria was examined to determine that the contact was relevant and who made the referral. It said that the average time taken was six minutes per referral/contact which would equate to 31 hours to provide a response to the first four questions and over 1327 hours (actual would be 1358 hours but the 31 hours that the first search would have used has been deducted) of officer time to

provide a response to the second four questions. This equated to a total time of 1358 hours to check information and be able to provide a response to all eight questions, even if for some, it may be a nil return. It said that the original estimate of three minutes provided in the initial response was based on an officers estimates and not a sampling exercise and was conservatively estimated.

24. The council confirmed that the above search method is the quickest and only way of being in a position to ascertain what information is held in relation to the request. It said that the information is not held manually and it is not possible to run a report that would produce the information requested. It confirmed that the only way to accurately collate the information would be to read each contact that falls within the time frame.
25. The Commissioner accepts the council's arguments as to why its electronic storage system would need to be manually checked to identify if a referral related to a family with parents in partnership or a family with a lone parent and, for the first request, which referrals were made by a specific Health Visitor. That being that the only way to ascertain the familial relationship is to look at the details of each child and the only way to identify the specific Health Visitor is to read the free text system of the council's LCS system. He accepts that there is no way to report the requested information from the electronic storage system, as there is no requirement for the council to do so. The Commissioner considers that 5 referrals isn't particularly a large sample, however, even if a larger sample halved the time to check each referral, the time taken to comply with the request would still far exceed the limit of 18 hours.
26. The Commissioner considers that some of the 6868 and 6717 referrals may relate to the same child or family and so it may not take 6 mins to check each of the records if the familial relationship has already been established. However, the council would need to cross reference the referrals to establish this which itself would take time. In any event, the estimate is over 73 times over the appropriate limit and the Commissioner does not consider that any reduction of time due to referrals potentially relating to the same child or family would bring the time to within the costs limit.
27. The Commissioner therefore finds that the council correctly refused the complainant's request on the grounds of cost for compliance under section 12(2) of FOIA, as to establish if the information is held would exceed the appropriate cost limit.

Right of appeal

28. 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

29. 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.
30. 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

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