

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 May 2022

Public Authority: Derbyshire County Council

Address: County Hall
Smedley Street
Matlock
Derbyshire
DE4 3AG

Decision (including any steps ordered)

1. The complainant requested information from Derbyshire County Council ("the Council") associated with disciplinary related procedural measures applied to employees of the County Council.
2. The Commissioner's decision is that the Council were entitled to refuse to comply with the request under section 12(1) of FOIA (cost of compliance), and that it has complied with its obligations under section 16(1) of FOIA to provide adequate advice and assistance to the complainant.
3. The Commissioner does not require the public authority to take any further steps.

Request and response

4. On 29 April 2021, the complainant submitted a revised request to the Council in the following terms:

"Under the provisions of the Freedom of Information Act I am submitting a request for information associated with disciplinary related procedural measures applied to employees of the County Council (not including schools). This applies to employees covered by all conditions of service.

Can the information please be broken down by department and by year. I am requesting information since 2018. I.e. January 2018 to December 2018, January 2019 to December 2019, January 2020 to March 2020. For each year I request to be provided with the following information:-

- 1) The number of complaints/allegations that did not lead to any action being undertaken i.e considered unfounded/unsubstantiated (if available)
- 2) The number of informal improvement undertaken (if available)
- 3) The number of formal improvements undertaken (if available)
- 4) The number of written warnings issued
- 5) The number of final written warnings issued
- 6) The number of actions short of dismissal
- 7) The number of dismissals
- 8) The number of appeals

If any senior salary posts are captured within the data reporting, please also provide a separate report as per the format as set out in 1 to 8 above for any such posts. Posts attracting senior salaries I interpret as those that are included and published within the Transparency Code data on the Council website.

I consider that the requested information should be readily available as there is a requirement for the monitoring of disciplinary action to be undertaken by the responsible Executive Directors and reported to the Executive Director of Commissioning, Communities and Policy – the now Temporary Managing Executive Director on a regular basis."

5. The Council responded on 25 May 2021 which advised that despite the amendments of the revised request, it considered the requested information to be exempt under section 12 of FOIA.
6. The Council issued an internal review response on 16 September 2021 which upheld the original exemption at section 12 of FOIA to refuse disclosure of the requested information.

Scope of the case

7. The complainant contacted the Commissioner on 26 September 2021 to complain about the way their request for information had been handled.
8. The Commissioner considers the scope of this case is to determine if the public authority has correctly cited section 12(1) of FOIA in response to the request.

Reasons for decision

Section 12 – cost of compliance exceeds the appropriate limit

9. Section 1(1) of FOIA states that:

“(1) Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.”

10. Section 12(1) of FOIA states that:

“Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.”

11. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (“the Regulations”) sets the appropriate limit at £450 for the public authority in question. Under the Regulations, a public authority may charge a maximum of £25 per hour for work undertaken to comply with a request. This equates to 18 hours work in accordance with the appropriate limit set out above.

12. A public authority is only required to provide a reasonable estimate, rather than a precise calculation, of the cost of complying with the request, and in putting together its estimate it can take the following processes into consideration:
 - 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.
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. In accordance with the First-Tier Tribunal decision in the case of *Randall v IC & Medicines and Healthcare Products Regulatory Agency EA/20017/0004*¹, the Commissioner considers that any estimate must be "*sensible, realistic and supported by cogent evidence*".
14. Where a public authority claims that section 12(1) of FOIA is engaged it should, where reasonable, provide advice and assistance to help the applicant refine the request so that it can be dealt with under the appropriate limit, in line with section 16(1) of FOIA.

The Complainants position

15. The complainant has argued that from their own experience, they cannot understand why the Council is unable to supply the requested information as it should be a simple task of manipulating and extracting information from spreadsheets already held for reporting purposes.

The Council's position

16. The Council informed the Commissioner that when the request was received, work was undertaken to confirm if the information was held. It explained that to provide the information in the requested format it would require locating, retrieving, extracting, and collating information and data from specific business areas and information sources. Due to the breadth and nature of the request, they estimated that meeting the

¹<https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i136/Randall.pdf>

request could not be done within the appropriate limit set out by FOIA.

17. The Council further explained that it became apparent that the work involved to obtain the initial information would exceed the cost limit:

"in view of the specific and detailed questions asked, it has been necessary for HR to scrutinise and consider the case log held by A&S, in order to identify which cases fall against each of the criteria."

18. The Council went on to explain to the Commissioner:

"Spreadsheets are held in respect of each Department/Directorate of the Council and then for each type of HR procedure. In order to work on the above response HR developed a spreadsheet containing each of (name redacted) questions. These were then cross referenced against the above spreadsheets. This process was commenced by the A & S team and the time spent on the task was quantified. It was not known when it was commenced that the task would be as time consuming as it turned out to be. This task has taken officers a cumulative total of 31.25 hours to undertake."

19. And went on to refine this:

"An attempt to collate historical information prior to the setup of the A&S team would be an even more difficult, onerous and time-consuming task. As explained above, the HR function was subject to a re-organisation in 2020. Prior to the re-organisation HR was a devolved structure, with HR functions being undertaken at Departmental level. For example, HR officers sat within the Adult Social Care and Health Department, the Children Services Department, Place (formally Economy Transport and Environment) and the Commissioning Communities and Transformation Department. Each Department kept their own records, usually on Excel spreadsheets. These were kept on Departmental drives and following the centralisation of HR Services were then archived to these drives."

20. They advised within the internal review to the complainant that:

"I have now gone back to the relevant dept and asked for further details of the assertion that the authority estimate that the cost of complying with the request would exceed the appropriate cost limit of £450, which is calculated at £25 per hour equating to 18 hours of officer time. In a previous exercise undertaken in relation to a similar request for the information from January 2018 to June 2019, there were 24 records. Each file had to be examined and checked for accuracy. Each file took 40/50 minutes to complete. As there are 60

files for the period you request, it is clear from this exercise that S12(1) of the Act is applicable in this case.”

21. From the Councils submissions and the initial investigatory work undertaken; it was evidenced that to comply with the request in full would exceed the appropriate limit.

The Commissioner’s conclusion

22. Paragraph 6.6 of the Freedom of Information (FOI) Code of Practice states:

“Public authorities do not have to search for information in scope of a request until the cost limit is reached, even if the applicant requests that they do so. If responding to one part of a request would exceed the cost limit, public authorities do not have to provide a response to any other parts of the request.²”

23. The Commissioner’s guidance states that whilst a public authority may search up to or even beyond the appropriate limit of its own volition, there is no requirement for a public authority to do so. For more information, see paragraph 28 onwards of the Commissioner’s guidance on costs of compliance exceeds appropriate limit.³
24. During the Commissioner’s investigation, the Council provided the Commissioner with an explanation of what it would need to do to obtain the requested information. The Commissioner accepts that the Council’s estimates are reasonable and that it would exceed the appropriate limit to obtain the information.
25. The Commissioner acknowledges the complainant’s view that disclosure of the information is in the public interest with regards to the Council’s accountability and transparency obligations, and why the complainant would want this information, however, section 12 of FOIA is not subject to a public interest test.
26. Therefore, the Commissioner considers that the Council estimated reasonably that the request could not be answered within the cost limit,

² [CoP FOI Code of Practice - Minor Amendments 20180926 .pdf](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/682222/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926.pdf)
(publishing.service.gov.uk)

³ https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

and as such, the Council are entitled to rely on section 12(1) of FOIA to refuse the request.

Section 16(1) – duty to provide advice and assistance

27. Section 16 of FOIA states:

“(1) It shall be the duty of a public authority to provide advice and assistance, so far as would be reasonable to expect the authority to do so, to persons to propose to make, or have made, requests for information to it.

(2) Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case.”

28. Where a public authority refuses a request under section 12(1) of FOIA, section 16(1) creates an obligation to provide advice and assistance on how the scope of the request could be refined or reduced to avoid exceeding the appropriate limit.

29. In this case, in their internal review, the Council advised the complainant of their consideration to provide the information over one year, as a narrowed response, however, this was also considered to be outside the 18 hour time limit.

30. The Commissioner considers that the advice and assistance the Council offered the complainant was adequate. The Commissioner is therefore satisfied that the Council have complied with its obligations under section 16(1) of FOIA in its handling of this request.

Right of appeal

31. 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@justice.gov.uk

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

32. 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.
33. 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

**Phillip Angell
Group Manager
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Wycliffe House
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