

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 August 2013

Public Authority: Manchester City Council
Address: Town Hall
Albert Square
Manchester
M16 7UB

Decision

1. The complainant has requested information on the number of reports produced under section 7 of the Children Act (CA) by a named social worker prior to December 2010.
2. Manchester City Council originally refused to provide the information on the basis that it was exempt under section 40(2) – personal data. However during the Commissioner's investigation the Council changed its position and claimed that it was not obliged to comply with the request on the basis that to do so would exceed the cost limit for handling requests established by section 12.
3. The Commissioner's decision is that Manchester City Council is correct to rely on section 12 to refuse this request. In any event the Commissioner is satisfied that the requested information would be exempt under section 40(2) on the grounds that disclosing the information would be unfair to the named social worker.
4. The Commissioner does not require the public authority to take any further steps in this matter.

Request and response

5. On 12 July 2012 Manchester City Council received a request from the complainant. The complainant requested information in the following terms:

"I would like to know how many Children Act section 7 reports in private law cases [the named social worker] had completed for Manchester City Council prior to the completion of one in relation to [a named individual] in Dec 2010."

6. Section 8 of the CA gives the courts the power to make residence and contact orders in respect of children. Under section 7 CA social workers are required to produce a report which informs the judge's decision in such cases.
7. Manchester City Council responded on 7 August 2012. It refused to provide the information on the basis that it was exempt information under section 40(2). Section 40(2) provides that information is exempt if it is personal data and its disclosure would breach the data protection principles of the Data Protection Act 1998 (DPA).
8. Following an internal review Manchester City Council wrote to the complainant on 11 January 2013. It upheld its application of section 40(2).

Scope of the case

9. The complainant contacted the Commissioner on 5 February 2013 to complain about the way his request for information had been handled. In particular the complainant did not believe that disclosing the requested information would breach the DPA.
10. During the Commissioner's investigation the Manchester City Council changed its position. Whilst preparing its submission for the Commissioner, the Council found that it was not as simple to collate the withheld information as it had anticipated. In light of this it informed the Commissioner that it was now relying on section 12 to refuse to comply with the request. Section 12 provides that a public authority does not have to deal with a request if locating and retrieving the information would exceed a cost limit, known as the appropriate limit.
11. The Commissioner has discretion over whether to accept a late claim of section 12. That is, where a public authority does not claim that it would be too costly to comply with a request until after the time by which the public authority should have originally complied with that request, usually 20 working days, the Commissioner is not obliged to consider the application of section 12. This is because, usually, the public authority would have already incurred the cost of gathering the requested information together in order to consider whether any of the exemptions apply.

12. However in this case the public authority considered that the application of the exemption provided by section 40(2) was not dependent on the actual number of section 7 CA reports the named social worker had completed. The issue, it believed was whether it would be fair to release that number, regardless of what the exact number was. The Commissioner agrees with the public authority's reasoning and since it has not already undertaken the collation exercise that it now believes would exceed the appropriate limit, the Commissioner has decided to consider the late claim of section 12.
13. Manchester City Council informed the applicant that it was now relying on section 12 to refuse the request.
14. Therefore the Commissioner considers the issue which needs to be decided in this case is whether the Council was correct to rely on section 12 to refuse the request.

Reasons for decision

Section 12

15. Section 12 of FOIA states that a public authority is not obliged to communicate the requested information if it estimates that the cost of complying with the request would exceed the appropriate limit.
16. The appropriate limit is set out in a statutory instrument, The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. – Statutory Instrument 2004 No 3244. These are commonly known as the Fees Regulations.
17. Under regulation 3(3) of the Fees Regulations the appropriate limit for local authorities such as Manchester City Council is £450. When estimating the cost of complying with a request a public authority can only take account of certain activities. These are described in regulation 4 and are limited to the cost of:
 - a. determining whether the public authority holds the information,
 - b. locating the information, or a document which may contain the information,
 - c. retrieving the information, or a document which contain the information, and
 - d. extracting the information from a document containing it.

18. A public authority may take account of the time it would take a person to carry out any of these activities. However it can only estimate that cost at a £25 per person per hour. Since the cost limit is £450 this means that a public authority is not obliged to answer a request if it would take more than 18 hours to, essentially, locate and retrieve the information.
19. The Council does not deny that within its records it will hold the information necessary to provide an accurate figure for the number section 7 CA reports that the named social worker has produced. The issue is the amount of time it would take to extract that information from those records.
20. The Council has explained that it considered two alternative means of locating all the necessary information. The first was to search its social service records. The Council has explained that since early 2008 these files have been held electronically on, what it calls, its MiCARE system. These files are organised by the name of the client. However it is possible to search the system by reference to the social workers who are linked to that case. The Council has also explained that it is very common for more than one social worker to be linked with any one case.
21. The Council has undertaken a sampling exercise. It searched the social services files for a period of just over two months (16 May 2012 to 23 July 2012) and identified those linked to the named social worker. The search returned 385 cases. Although the period used for the sampling exercise is outside the time frame of the request, the Council has assured the Commissioner that there was nothing significantly different about the volume of cases allocated to the social worker during that period and that this was a representative sample.
22. It is understood that the two month period selected was convenient as it represented a period when the social worker was covering a particular area. The social worker would have been allocated a number of cases that they would be responsible for whilst they covered that area. Although the number of cases seems high the Council has explained that although a case is allocated to a social worker, there may be no action required during the period for which they are responsible for that client. The high number is also partly explained by the fact that many of the cases would relate to siblings, so that social services involvement in one family may generate, say, four case files, one for each child involved. Nevertheless each file would have to be searched to determine whether a section 7 CA report had been produced by the named social worker whilst she was responsible for that client.
23. To identify how many section 7 CA reports the social worker had completed in those cases would involve reading the files to identify

whether a section 7 report had been produced and then whether it was the named social worker who was the author of that report. The Directorate of Children and Commissioning Services estimated that it would take someone experienced with the system and the social work processes up to 30 minutes to search each file in this way.

24. It follows that to search the 385 files that the social worker was shown as being linked to, for that two month period would take 192 hours 30 minutes. Even if the time taken to read individual files could be reduced, the Commissioner accepts that just searching the files returned by this search would exceed the appropriate limit. As a full search of the MiCARE system for the requested information is very likely to return an even greater of files, the Commissioner is satisfied that this method of the locating and retrieving the requested information would exceed the appropriate limit.
25. The Council has informed the Commissioner that the MiCARE system cannot be searched by reference to section 7 CA reports. It is therefore not possible to interrogate the system so as to identify cases which were both linked to the named social worker, and contained a section 7 CA report. Even if it was, it would still be necessary to go through each of those files individually to see whether the author of the section 7 CA report was in fact the named social worker.
26. The second means of obtaining the number of section 7 CA reports completed by the named social worker would be to search the files held by that part of the Council's legal department that deals with Children's Services, that is the Children Service Legal Group. As explained earlier, a section 7 CA report is produced for court proceedings and therefore the Council's legal services are involved in the process. As before, these files are held electronically.
27. The Council explained that when a case is referred to the Children Service Legal Group it is necessary to complete a field which indicates the reason for the referral. It is possible therefore to identify the number of cases referred to the legal department marked as section 7 CA cases. However it is understood that in many cases the reason for the referral is just given as "advice". Furthermore, experience has shown that although at the time a case is originally referred to the legal department the main reason may not have been a section 7 CA report, circumstances change, and ultimately it could become a section 7 CA case.
28. This means that only searching the cases originally marked as section 7 CA would fail to capture all the files which held such a report. It would be necessary to search all the files marked as being referred for "advice" too.

29. The total number of files marked as section 7 CA cases for the period is 101, whilst the number simply marked "advice" is far greater, 813, giving a total of 914 files.
30. The Commissioner queried whether a search of these files could be made using the name of the social worker who made the referral. The Council responded that although there was a field for the social worker, this was not a reliable method. This is because the field is not routinely filled in and even where it is, the social worker making the referral may not be the same one who had completed any section 7 CA report. To be sure of identifying all the section 7 reports completed by the named social worker it would therefore be necessary to individually search all 914 files.
31. The files which the legal department work on focus on a narrower range of issues than the full social work file and are therefore easier to search through. Although it is not believed that it undertook a sampling exercise, the Council's Children Service Legal Group has advised the Commissioner that it would take between five and fifteen minutes to search each file. Using an average of 10 minutes per file, it would take (914 files x 10 minutes per file = 9,140 minutes / 60 = 152 hours and 20 minutes) 152 hours and 20 minutes. Again this is far in excess of the appropriate limit. Even at the lower limit of five minutes to search each file, it would take over 176 hours. It follows that the Commissioner is satisfied that this method of locating and retrieving the requested information would also exceed the appropriate limit.

Section 16 - Advice and assistance

32. Under section 16 of FOIA a public authority is required to provide advice and assistance to someone who has made a request. In particular a public authority is expected to provide advice and assistance where the public authority has refused to comply with a request because the cost of doing so would exceed the appropriate limit.
33. The aim of such advice should be to help the applicant make a fresh request which could be dealt with within the appropriate limit.
34. However in this case it is very difficult to see how the request could be refined so that any meaningful information could be provided within the appropriate limit. It is also relevant that the appropriate limit was not the only barrier to complying with the request in this case. Even if the public authority had been able to locate some information on the number of section 7 CA reports that the named social worker had completed within the appropriate limit, it would have gone on to refuse

that request. The refusal would have been under section 40(2) on the basis that the disclosure of the information would have been unfair to the social worker and therefore breached the first principle of the DPA. The Commissioner's view is that the disclosure would indeed have been unfair as is explained below.

35. In light of this the Commissioner does consider there would have been any value in the public authority trying to provide advice and assistance in this case. It follows there is no breach of section 16.

Section 40(2)

36. The Council originally withheld the requested information on the basis that its disclosure would breach the data protection principles of the DPA. In particular the Council believed the disclosure would breach the first data protection principle which states that information can only be processed, which includes disclosing information in response to FOIA requests, if the processing is fair and lawful and in particular shall not proceed unless certain conditions are met. These conditions are set out in schedules 2 and 3 of the DPA.
37. The first thing to be considered is whether any personal data would be disclosed when responding to the request. Personal data is information that both identifies and relates to a living individual. It is defined in section 1(1) of the DPA. The request refers to two named individuals, the social worker and the individual that was the subject of a section 7 CA report by that social worker in December 2010. Since the request can be dealt with without any reference to the individual about whom the section 7 CA report was completed, the Council disregarded their personal data. That is, it read the request as:

"I would like to know how many Children Act section 7 reports in private law cases [the named social worker] completed for Manchester City Council prior to December 2010"

38. In the particular circumstances of this case the Commissioner is satisfied that this is a sensible approach.
39. This leaves the question of whether disclosing information about the number of reports completed by the named social worker is personal data about that social worker. The Commissioner is satisfied that it is clearly is. The remaining question therefore is whether disclosing that personal data would be breach the first data protection principle.
40. When considering the first data protection principle the Commissioner will start by looking at whether the disclosure would be unfair to the

data subject, the person whom the information is about, in this case the social worker. If the disclosure would be unfair it would breach the first principle and section 40(2) FOIA would be engaged.

41. The Commissioner understands the complainant to be of the view that the information relates to the social worker solely in their professional capacity and that as such its disclosure would not be unfair. The Commissioner accepts that disclosing information about someone's professional life is less likely to be as intrusive as disclosing information about their personal life. However this does not mean that information about someone's professional life can never be intrusive.
42. In this case the request targets information about the named social worker and this changes the character of the information requested. There is a very real sense that the information seeks to discover something about the individuals' competence and experience. Furthermore the inferences that could be drawn from that information in relation to the officer's competence would not necessarily be accurate. As such the Commissioner finds that disclosing the information would be intrusive.
43. The Council has explained that social workers may reasonably expect their professional opinions to be revealed (apart from where this would undermine the confidentiality of clients or put individuals at risk), and to be accountable for the decisions they take. However the requested information does not target specific incidents, decisions or opinions, its focus is on the performance of one individual. The Commissioner accepts that social workers would not reasonably expect this sort of information to be disclosed.
44. In light of this the Commissioner finds that even if the request could be complied with within the appropriate limit, the information itself would be exempt under section 40(2) on the basis that its disclosure would be unfair to the named social worker and so breach the first data protection principle of the DPA.
45. In light of the above the Commissioner is satisfied that the Council, ultimately responded to the request correctly and does not require it to take any action.

Right of appeal

46. 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

47. 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.
48. 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

Pamela Clements
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF