

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 July 2017

Public Authority: Cornwall Council
Address: County Hall
Treyew Road
Truro
Cornwall
TR1 3AY

Decision (including any steps ordered)

1. The complainant has requested statistics about adoption support provided by Cornwall Council ("the Council"). The Council refused to comply with the request under section 12(1) of the Freedom of Information Act ("the FOIA"). The complainant subsequently contested the Council's refusal.
2. The Commissioner's decision is that the Council has correctly applied section 12(1), and has complied with the requirement of section 16(1) to provide advice and assistance.
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 7 July 2016 the complainant wrote to the Council and requested information in the following terms:

- 1) *How many adoptive parents has the Local Authority declined adoption support to in each of the years 2014, 2015 and 2016?*
- 2) *How many adoptive children has the Local Authority declined adoption support to in each of the years 2014, 2015 and 2016?*
- 3) *How many adoptive adults has the Local Authority declined adoption support to in each of the years 2014, 2015 and 2016?*

For the avoidance of doubt my enquiry has no interest in whether adoption support is funded by the Adoption Support Fund. This is merely a basis of funding. I am interested in establishing where support has been requested by the above and declined by the Local Authority for whatever reason.

5. The Council responded on 11 July 2016. It stated that the response to each question was "0".
6. The complainant requested an internal review on 11 August 2016.
7. On 11 September 2016 the Complainant wrote further to the Council to clarify what information the request sought:

My question asks about those who have been "declined adoption support". It does not ask has every adoptive parent been given support. It is seeking numbers where parents have asked for support, but the support has been declined.
8. Following an internal review the Council wrote to the complainant on 19 September 2016. It stated that the clarified request would engage section 12(1).

Scope of the case

9. The complainant contacted the Commissioner on 29 September 2016 to complain about the way his request for information had been handled, and specifically that the Council's response to the original request was inaccurate.
10. The Commissioner asked the Council to provide its final position. The Council subsequently informed the Commissioner that it considered the complainant's statement of 11 September 2016 to be a clarification of the request, and that this clarified request was refused under section 12(1) at internal review.
11. Although the difference between the original request and clarified request is unclear to the Commissioner, it is understood that there is a

wider dispute between the parties about what constitutes the scope of 'adoption support' as it is currently provided by the Council, and that this is the basis on which the complainant submitted the clarification. However, the purpose of the internal review is to provide a fresh decision based on the available information, and in this case the Commissioner must consider that the internal review outcome replaces the original response.

12. Although both the Council and complainant raise matters specifically related to the accuracy of the Council's original response, it is not appropriate for the Commissioner to consider the basis of the original response when it has clearly been replaced by an internal review outcome. On this basis the Commissioner will therefore only consider the Council's application of section 12(1).

Reasons for decision

Section 12(1) – The cost of compliance

13. Section 12(1) of the FOIA states:

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.

14. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004¹ ("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.
15. A public authority is only required to provide a reasonable estimate or breakdown of costs and in putting together its estimate it can take the following processes into consideration:
 - determining whether it holds the information;
 - locating the information, or a document which may contain the information;

¹ <http://www.legislation.gov.uk/uksi/2004/3244/contents/made>

- retrieving the information, or a document which may contain the information; and
- extracting the information from a document containing it.

Is section 12(1) engaged?

The Council's position

16. The Council considers that compliance with the request would require the manual review every adoption record for the years specified. These records would include referrals, assessments and case notes.
17. The Council has provided the Commissioner with a 'Charging Template' that outlines the calculations that it has undertaken in respect of the cost of compliance. From this document the Commissioner has noted that to compile statistics for the years specified by the request, the Council would need to manually review 2496 relevant electronic documents, and 498 relevant hardcopy files. The Council considers that to review each electronic document and hardcopy file would take 10 minutes each, requiring a total of nearly 500 hours. This is in addition to other work that the Council believes would be required, such as liaising with involved council officers.
18. The Council has in particular stressed that compliance with the request would present difficulties as, although detailed information is kept as part of the adoption process, the statistics sought by the request are not routinely recorded. In addition to this, the records are treated as being sensitive due to their subject matter, and access is limited to a small number of council officers. The Council has also noted that compliance would require the retrieval of some paper files from its long term records-storage provider.

The Commissioner's conclusion

19. The Commissioner has considered the Council's submissions and recognises that compilation of the statistics sought by the request would require the manual review of individual electronic and hardcopy records.
20. The Council has provided the estimated total time and cost that it considers compliance with the request would take. Although the Commissioner has noted the estimates that the Council has provided, it is noted that these are not based on a sampling exercise.
21. However, it remains evident that compliance with the request would require the manual review of individual records, of which there are 2496 electronic documents, and 498 separate hardcopy files. The Commissioner recognises that even disregarding the Council's estimate,

and applying a modest allowance of 1 minute per electronic document and hardcopy file, this would result in total time of over 49 hours, which is significantly in excess of the 18 hour limit provided by the FOIA. On this basis the Commissioner is satisfied that section 12(1) applies to the request.

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

22. Section 16(1) of the FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the Section 45 Code of Practice² (“the Code”) issued by the Secretary of State, it will have complied with section 16(1).
23. The Code advises that, where an authority is not obliged to comply with a request for information because, under section 12(1) and the Regulations made for that section, the cost of complying would exceed the appropriate limit, it should provide the requestor with reasonable advice and assistance.
24. The Commissioner’s guidance³ states that the minimum a public authority should do in order to satisfy section 16(1) is indicate if it is able to provide any information at all within the appropriate limit. Communicating this to a complainant may avoid further and futile attempts to refine the request to bring it under the appropriate limit. If the requestor understands the way in which the estimate has been calculated to exceed the appropriate limit, it should help them decide what to do next.
25. In this case the Council advised the complainant (in its internal review outcome of 19 September 2016) that a wide range of support would fall under the umbrella term of ‘adoption support’, and that compliance with the request would exceed the appropriate limit. The Council also advised that if the complainant was able to limit the request to a specific area of adoption support, this may potentially allow the request to be complied with through other means without engaging section 12(1). The Council has clarified to the Commissioner that considering only a specific aspect

² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/235286/0033.pdf

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

of adoption support may be possible through a search of payments made to specific providers.

26. In the circumstances of this case, the Commissioner recognises that the information sought by the request is not held in a manner that allows it to be directly retrieved. The Commissioner also recognises that there may potentially be some means by which the request could be refined (such as by limiting it to only a specific type of adoption support), and that the Council has informed the complainant of this option. Having considered the nature of the requested information and the way that it is held, this appears to be a proportionate attempt to provide of advice and assistance. On this basis the Commissioner finds that the Council has complied with section 16(1).

Right of appeal

27. 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

28. 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.
29. 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
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