



**First-tier Tribunal
(General Regulatory Chamber)
Information Rights**

Appeal Reference: EA/2019/0085

**Decided without a hearing on
10 September 2019**

Before

**SOPHIE BUCKLEY
JEAN NELSON
PAUL TAYLOR**

Between

JOSEPH MICHAELS

and

THE INFORMATION COMMISSIONER

Appellant

Respondent

DECISION

1. For the reasons set out below the appeal is dismissed.

REASONS

Introduction

1. This is an appeal against the Commissioner's decision notice FS50770168 of 5 March 2019 which held that Derby City Council ('the Council') correctly applied s 12 and

that the Council was not required to provide advice and assistance under s 16 because the request could not be sufficiently refined.

2. We have read and taken account of an open bundle of documents.

The request and response

3. The Appellant made the following request on 1 May 2018:

The information request (emails, faxes, letters etc) that I am making referencing to will be anything about the CSE and grooming gangs over the last 10 years in Derby between Derby Council and the Home Office, Derby Council and the local social services, Derby Council and Derbyshire Police, Derby Council and local public schools, Derby Council and Barnado's (charity) also the NSPCC, finally - Derby Council and Chris Williamson MP, Dame Margaret Beckett, Lee Rowley, Pauline Ratham, Heather Wheeler, Partrick McLoughlin plus members of parliament before 2015.

4. The Council asked for clarification of the request on 3 May 2018, and the Appellant provided the following clarification by email dated 3 May (the Council's request for clarification is set out in italics):

1. What do you mean by grooming? For example, is it about 'sexual' grooming?

Instead of looking for 'grooming' or 'grooming gangs' - both of these fall under Child Sexual Exploitation, this involves grooming young girls, giving them alcohol/drugs in some cases, then sexually assaulting them or even rape, also results in passing girls over to another individual or group which results in sexual assault and/or rape. (RE: [name redacted] case in Rotherham and this case in Derby, which I'm sure you are already aware of ([web link redacted]))

2. Does the grooming relate to children under 16 years old?

Correct - referring to cases under the age of 16

3. By grooming gang, do you mean 'Adults' or 'Children'. For example a gang made up of adults (aged 18+) grooming children (under 16 years old).

Correct - adults grooming children based on age (adults 18+).

4. Does it relate to a specific area of the city? If yes, please state the specific area of the city.

No - it relates to the City of Derby

5. What specific year does the request cover - 2016 only? Please note that Section Twelve: Exceeds appropriate limit exemption could apply if we need to search through thousands of records/emails going back over the last 10 years.

Considering the time issue - I would like it to cover only from 2008 to 2012.

5. The Council replied to the request on 1 June 2018. It identified two cases in 2016 and stated that the information held by the local authority concerned these two cases. It then addressed each numbered clarification set out above and indicated that it did not hold the information, other than '5' where it referred to the two cases. The Council did not provide copies of any communications.

6. The Appellant requested an internal review on 1 June 2018, asking for clarification because:
 - 1) His request covered the period 2008-2012 and the cases referred to were in 2016, and
 - 2) No communications (emails/letters/faxes) had been provided.
7. The Council upheld its decision on internal review on 12 July 2018:
 - 1) It apologised that the original request had not been properly dealt with and provided a new response;
 - 2) It confirmed that the Council did hold other information within the scope of the request.
 - 3) Answering the request would require the Council to search through thousands of individual records, including handwritten case notes, typed case notes, minutes, reports, strategy meeting emails, newspaper cuttings etc.
 - 4) Section 12 was applied because it would take over 18 hours of staff time to search through and retrieve the information. For example, 1000 records at 5-20 minutes per records = 83 hours – 333 hours.
 - 5) The Council could not advise the Appellant how to refine his request because it would still involve searching through the records as stated above.
8. The Appellant complained to the Information Commissioner on 25 July 2018.
9. The Council provided the following further information to the Commissioner on 12 and 21 February 2019:
 - 1) A sampling exercise was carried out by the relevant department, in which they searched through an electronic and paper record to find out how long it would take.
 - 2) There are 105 files spanning the period 2008-2016. The files are individual person/victim files and/or case investigation files.
 - 3) The records are not saved in years but collectively in one folder. It is not easy to identify which years the files span.
 - 4) Within each file there are up to 280 individual records.
 - 5) The records were paper records at the time of the request but had since been scanned electronically. The paper records are no longer held.
 - 6) It is not possible to perform key word searches. The Council searched on the key word 'grooming gang' which showed no results although the Council knows that grooming information is in the records. They searched for the key word 'CSE' which showed only 3 records which the Council knows is inaccurate. Each record identified would contain up to 280 individual records.
 - 7) All electronic records would have to be manually opened and searched.

- 8) Once the search has been made it would take approximately 5 minutes to extract the information from each record.

The Decision Notice

10. The Information Commissioner issued Decision Notice FS50770168 on 5 March 2019, confirming that the Council had correctly applied s 12 FOIA to the request and had complied with s 16 and requiring no steps to be taken.

The Appeal to the Tribunal

11. The grounds of appeal are:
 - 1) The Council are using delaying tactics;
 - 2) The Council were incompetent in not knowing what his original request was;
 - 3) The Council should provide a large sample.
 - 4) The Council should provide whatever they find within the time limit.

Legal framework

S 12 Cost of Compliance

12. Under s 12(1) a public authority is not obliged to comply with a request for information where:
 - the authority estimates that the costs of complying with the request would exceed the appropriate limit.
13. The relevant appropriate limit, prescribed by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Regulations') is £450.
14. In making its estimate, a public authority may only take account the costs it reasonably expects to incur in relation to the request in-
 - (a) determining whether it holds the information,
 - (b) locating it, or a document which may contain the information,
 - (c) retrieving it, or a document which may contain the information, and
 - (d) extracting it from a document containing it. (See regulation 3).
15. The Regulations specify that where costs are attributable to the time which persons are expected to spend on the above activities the costs are to be estimated at a rate of £25 per person per hour.
16. The estimate must be sensible, realistic and supported by cogent evidence (McInnery v IC and Department for Education [2015] UKUT 0047 (AAT) para 39-41).
17. A public authority cannot comply with FOIA by providing such information as it can find before section 12 applies (**Reuben Kirkham v Information Commissioner** [2018] UKUT 126 (AAC) ('**Reuben Kirkham'**)).

Section 16 – Advice and Assistance

18. Section 16 provides:

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

The Task of the Tribunal

19. The tribunal's remit is governed by s.58 FOIA. This requires the tribunal to consider whether the decision made by the Commissioner is in accordance with the law or, where the Commissioner's decision involved exercising discretion, whether she should have exercised it differently. The tribunal may receive evidence that was not before the Commissioner, and may make different findings of fact from the Commissioner.

Discussion and Conclusions

20. The Council has provided information about the number of files and the approximate number of documents per file. It has provided information on the way in which the information is arranged and the fact that files are not sorted into years. The Council has carried out a sampling exercise to estimate how much time it would take to search and to extract the information. All this amounts to cogent and reasonable evidence to support its estimate.

21. It is not clear when the paper documents were scanned, but this does not reduce the amount of time that needs to be spent: we accept that it is not possible to search using key words because it does not produce accurate or useful results.

22. Based on the information about the way in which the information is stored, the amount of information and the fact that the files are not sorted by years but each span a number of years we conclude that the estimate is reasonable, that it is not exaggerated and that it is based on cogent and reasonable evidence.

23. Given the lack of indexing, the unavailability of effective key word searches and the fact that the files are not organised by year, there is no realistic prospect of redefining the request such that s 12 would not come into play. We find therefore that the Council would have been unable to provide advice and assistance to the Appellant in redefining the request and therefore there is no breach of the Council's obligations under s 16.

24. We do not accept the Appellant's argument that the Council should have provided what they could find up to the 18-hour limit. The Council's duty is not limited in this way. If a requester wants to limit the extent of a public authority's duty, the way to do it is through the terms of the request, if need be with the advice of the

authority. As the Upper Tribunal stated in **Reuben Kirkham**: 'The terms of the legislation do not allow for a half-way house between complying with a request and relying on an exemption. A public authority cannot comply with FOIA by providing such information as it can find before section 12 applies.'

25. For these reasons the appeal is dismissed.

Signed Sophie Buckley

Judge of the First-tier Tribunal

Date: 28 September 2019

Promulgated Date: 30 September 2019