

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 August 2013

Public Authority: Suffolk County Council
Address: Endeavour House
8 Russell Road
Ipswich
IP1 2BX

Decision (including any steps ordered)

1. The complainant has requested information from Suffolk County Council (the council) regarding its expenditure on augmentative and alternative communication devices (AAC devices). The council's initial response stated that the information was not held in such a way as to provide the requested information. It also later relied on section 12 as it determined that it would exceed the cost limit to provide the information. During the Commissioner's investigation the council was able to confirm that the requested information was not held.
2. However, in responding outside the time for compliance, the Commissioner's decision is that the council failed to comply with section 10 of the FOIA. He also finds that the council failed to provide appropriate advice and assistance to the complainant at the time of the request, and has therefore recorded a breach of section 16. As the council has now provided a satisfactory response to the complainant's request, the Commissioner does not require the council to take any further steps in this case.

Request and response

3. On 5 August 2012 the complainant made the following request for information under the FOIA:

"Could you please send me a list of augmentative and alternative communication devices purchased by or within your authority between 31st March 2006 and 1st April 2012? (So we are including both for

children and adults, and both educational and social reasons) We would like the information broken down by both product name (So for example Dynavox Xpress, iPod touch with TapToTalk, BigMack) and by year. Ideally you would include the price paid, but we can deduce that from the products if necessary. This is a follow up study - the first one consisted of several hundred freedom of information requests to NHS Trusts in England, Scotland, and Wales to find the provision of AAC. Our consolidated data is in the following format [...]

As a supplemental question, we are separately investigating if the LEA has, or had, a policy that requires children who use electronic devices to leave the devices at school overnight and/or over weekends and/or during school holidays and/or when the child leaves school."

4. The council responded on 28 August 2012 and explained that the information was not held in a way that would allow it to determine which devices had been purchased as they would be contained within personal and individual budgets. However, it did not state what exemption under the FOIA it was relying on in relation to this position. By way of advice and assistance the council suggested that the information may be held by the NHS. Further to this, the response did not address the additional part of the request regarding the policies in place for the use of AAC devices.
5. The complainant responded to the council on 11 and 12 September 2012. He explained that he had already made requests to NHS trusts regarding the use of AAC devices and now required information about council and local education authority expenditure on and use of AAC devices. He also chased a response to the policy part of his request.
6. On 12 September 2012 the council informed the complainant that it was treating his correspondence as a new request and gave him a new reference number. The complainant disputed that this was a new request as it had been included in his original request of 5 August 2012. On 4 October 2012 the council then provided the information it held in respect of the policies in place for the use of electronic devices at schools by children.
7. On 4 October 2012 the complainant again chased the council for a response to the substantive part of his request relating to the use of AAC devices. He specifically stated "*how are you getting on with the devices purchased by the council?*". The council again took this to be a new request and gave the complainant a further reference number.
8. The council responded on 30 October 2012 giving the complainant a review of how the council had found the AAC devices it had used. The complainant responded on 31 October 2012 and explained that his email

of 4 October 2012 was not a request for information about how the council was enjoying the AAC devices, but that it was a further chaser in relation to his original request for the expenditure on AAC devices which he considered had still not been answered as the council had only directed him the NHS, which he maintained would not answer his request as he needed to know what the council had spent on such devices, not what the NHS had spent.

9. On 31 October 2012 the council responded summarising its position in relation to the various reference numbers and stating that it considered it had responded appropriately to each request. In further correspondence with the complainant on 1 November 2012, the council confirmed that it considered its email of 31 October 2012 to be an internal review response.

Scope of the case

10. The complainant contacted the Commissioner on 9 November 2012 to complain about the way his request for information had been handled. He was concerned about the way the council had treated the request and that he had not yet been provided with the requested information.
11. During the course of the investigation, the Commissioner was able to clarify the nature of the complainant's request and the council then relied on section 12. The council's explanation of why it considered section 12 applied allowed the complainant to clarify his request. The council subsequently withdrew its reliance on section 12 and was able to confirm to the complainant that it did not hold any information within the scope of the request.
12. However, due to the time it had taken to reach this point and the confusing manner in which his request had initially been handled the complainant asked the Commissioner to formally record any procedural breaches in relation to the way the council handled the request.

Reasons for decision

Section 10

13. Section 10(1) of the FOIA provides that a public authority should comply with section 1(1) within 20 working days. Section 1(1) requires a public authority in receipt of a request to confirm whether it holds the requested information, and if so, disclose it to the applicant.

14. In this case the Commissioner does not consider that the complainant's request was in anyway ambiguous. If the council had found it to be so, it should have taken steps to ask the complainant to clarify his request. The Commissioner finds that the council's initial response of 28 August 2012 did not represent a full response, particularly given that the information regarding the policies for children's use of electronic devices outside school was not provided until 4 October 2012. In addition to this, confirmation that the requested information was not in fact held was not provided until July 2013, almost 1 year after the original request.
15. The Commissioner has therefore found that the council failed to comply with section 10 of the FOIA as a full response was not provided within the prescribed 20 working day time frame.

Section 16

16. Section 16(1) imposes an obligation on a public authority to provide advice and assistance to a person making a request, so far as it would be reasonable to do so. Section 16(2) states that a public authority is to be taken to have complied with its section 16 duty in any particular case if it has conformed with the provisions in the Section 45 Code of Practice in relation to the provision of advice and assistance.
17. The complainant was not satisfied with the council's response of 28 August 2012 as it did not specifically state that the information was not held, nor did it rely on any specific exemption to withhold the information. The Commissioner acknowledges that the council attempted to provide advice and assistance in directing the complainant to request the information from the NHS. However, the complainant had clearly stated in his original request that he had previously asked for this information from NHS trusts and his research now required the same information for councils and local education authorities. The Commissioner therefore finds that this was not appropriate advice and assistance in the circumstances.
18. During the Commissioner's investigation, the council provided a detailed description of the searches it would have to undertake in order to establish whether the requested information was held. This enabled the complainant to understand that the nature of the information held and determine that in all likelihood, the council did not hold any of the information he required. On this basis the Commissioner finds that there was the potential for refinement or clarification of the request at various stages of the council's interaction with the complainant which it failed to take before the Commissioner's involvement in this case.

19. The Commissioner therefore finds that the council failed to provide the complainant with appropriate advice and assistance until during the course of the Commissioner's investigation.

Right of appeal

20. 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

21. 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.
22. 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
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
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