

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 September 2020

Public Authority: London Borough of Hammersmith & Fulham
Address: Hammersmith Town Hall
King Street
London
W6 9JU

Decision (including any steps ordered)

1. The complainant has requested information about meetings related to him and demographic information about children taken into care. The London Borough of Hammersmith & Fulham ("the London Borough") provided information in respect of one element of the request, stated that it did not hold information in respect of two other elements and refused the remaining element which it estimated would exceed the appropriate limit to comply with.
2. The Commissioner's decision is that the London Borough has reasonably estimated that the cost of complying with the request would exceed the appropriate limit and was therefore entitled to rely on section 12 of the FOIA to refuse it. However, she considers that the London Borough failed to provide the complainant with reasonable advice and assistance to help him refine his request within the cost limit and thus breached its section 16 duty. She also finds that, in failing to issue a refusal notice or comply with its section 1(1) duty within 20 working days, the London Borough breached sections 17(5) and 10 of the FOIA respectively.
3. The Commissioner requires the London Borough to take the following steps to ensure compliance with the legislation.
 - Provide the complainant with reasonable advice and assistance to help him bring his request within the cost limit.
4. The London Borough must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 14 May 2019 the complainant requested information of the following description:

- "1. the record of our meeting of 6 September 2018*
- 2. the transcript of the strategic phone call that [redacted] made on 12 July 2016*
- 3. You revealed during the meeting of 6 September 2018 that:*
 - Children's Services receive 5000 case per year*
 - From this 5000 case Children's Services took only 100 child*

Could you please provide me with information about:

- a - the breakdown of the background, the religion, the sector, the financial position (class), the ethnicity, the reasons , etc of those 5000 case since 2014???*

And,

- b - the breakdown of the background , the religion ,the sector, the financial position (class), the ethnicity ,the reasons ,etc of those 100 Children taken each single year since 2014 ???*
- 4. You mentioned during the meeting a mechanism and engineering plan to make a decision for removing children from their families. Could you please explain this explicitly and who makes this decision with the reasons of those decisions."*

6. On 23 August 2019, the London Borough responded. It denied holding information within the scope of elements 1 and 2 of the request. In respect of element 3, it provided some information but refused the remainder of the request and relied on section 12 of the FOIA to do so. In respect of element 4, it provided some information.
7. The complainant sought an internal review on 12 September 2019. He contested the London Borough's claim that it held no information within the scope of elements [1] and [2], whilst he did not dispute that the London Borough had provided him with its procedure in respect of element [4], he argued that it had not been followed. In respect of element [3], he argued that, if the London Borough was unable to comply with both parts, it should only respond to element [3b].

8. The London Borough had not completed its internal review at the point the Commissioner began her investigation.

Scope of the case

9. The complainant contacted the Commissioner on 2 December 2019 to complain about the failure, by the London Borough, to complete its internal review. Given the delays that had already occurred, despite her earlier intervention to prompt the London Borough to complete its internal review, the Commissioner agreed to accept the case without waiting for internal review to be completed.
10. As the Commissioner does not consider that the complainant has disputed the amount of information held within the scope of element [4], she has not investigated this element further – although she considers it is likely that the London Borough has provided the only information it holds.
11. In respect of element [2], the complainant explained that an earlier complaint investigation had indicated that a senior officer at the London Borough had telephoned a police officer in 2016 in relation to the care of the complainant's daughter and her relationship with him. The Commissioner therefore considers that any information the London Borough did hold within the scope of either element [1] or [2] would be the complainant's own personal data and thus exempt from disclosure under section 40(1) of the FOIA. As any relevant information would be exempt from disclosure, the Commissioner has therefore not investigated whether the London Borough does in fact hold further information within the scope of these elements. However, she notes that the London Borough has maintained its position that it holds no records within the scope of either element.
12. The scope of the following analysis is therefore to consider whether the London Borough has reasonably estimated that the cost of complying with the request would exceed the appropriate limit.

Reasons for decision

Section 12 – Cost of Compliance Exceeds Appropriate Limit

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

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.*

14. Section 12 of the FOIA states that:

- (1) 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.*
- (2) Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.*

15. The "Appropriate Limit" is defined in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Regulations") and is set at £450 for a public authority such as the Council. The Regulations also state that staff time should be notionally charged at a flat rate of £25 per hour, giving an effective time limit of 18 hours.

16. When estimating the cost of complying with a request, a public authority is entitled to take account of time or cost spent in:

- (a) determining whether it holds the information,
- (b) locating the information, or a document which may contain the information,
- (c) retrieving the information, or a document which may contain the information, and
- (d) extracting the information from a document containing it.

17. 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 in the case of *Randall v Information Commissioner & Medicines and Healthcare Products Regulatory Agency* EA/2007/0004, the Commissioner considers that any estimate must be "sensible,

realistic and supported by cogent evidence”.¹ The task for the Commissioner in a section 12 matter is to determine whether the public authority made a reasonable estimate of the cost of complying with the request.

The London Borough's position

18. When asked to provide a detailed estimate of the cost of complying with the request, the London Borough explained that:

“The data required to meet this information request is not readily available and from our preliminary assessment, we estimate extracting the breakdown of the religion, ethnicity etc. of the children would exceed the appropriate cost limit under section 12 of the FOIA.

“If were to embark on the exercise, H&F will need to procure the services of a SQL (Structured Query Language) developer to interrogate the backend of the IT System because we do not directly employ such a person. The estimated cost for this type of work is £1,200.00 based on a minimum of 3 days' work at a cost of £400 per day.

“We will need to determine if we hold the information at the flat rate (i.e. £25.00) allowed by the Fees Regulations. It is estimated that it will take 4 hours (£100.00), and the extraction is approximately 22.5 hours (£562.00). We will then employ, the expertise of the SQL developer for a minimum of 3 days to locate and retrieve the required information from the volumes of electronic files stored at the backend. This will bring the total cost to £1862.00, which is in excess of the £450.00- or 18-hours threshold as set out in the Fees Regulations.”

19. The London Borough noted that this was its estimate of the cost of complying with element [3b] only.

The Commissioner's view

20. The Commissioner considers that complying with the request would exceed the cost limit.
21. The Commissioner notes that the London Borough has included, in its estimate, the cost of hiring external contractors run Structured Query

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

Language (SQL) interrogations of its IT systems. Whilst she does not doubt that the figure the London Borough has included is a reasonable estimate of the price it would actually incur to hire such a contractor, she also notes that her guidance is that the Regulations do not permit such a cost to be included.² The Regulations set out that staff time must be calculated at a flat rate of £25 per hour, regardless of the notional or actual cost that would be incurred. Whilst a public authority may include the cost of hiring or acquiring specialist software in its estimate, it is only permitted to include staff time (regardless of whether the staff are internal or external) at the rate of £25 per hour worked.

22. In addition, it is not clear exactly how the London Borough has arrived at its estimate of the time needed for individual tasks and what each task involved. A sampling exercise would have assisted in clarifying matters but, if the London Borough did carry one out, it provided no details.
23. That being said, the Commissioner recognises that the London Borough would need to carry out a record-by-record search in order to locate and extract all the requested information.
24. At the time the request was made, the London Borough would have been obliged to have provided six year's worth of data. As it has already informed the complainant that it takes around 100 children into care each year, it would need to consider around 600 individual records to extract all the relevant information. In order to complete that task, it would need to retrieve each individual record, locate and extract the relevant information in under two minutes per record. The Commissioner considers that two minutes per record is an unrealistic estimate of the time that would be required.
25. The Commissioner therefore considers that the request could not be complied with without exceeding the appropriate limit. The London Borough was thus entitled to rely on section 12 of the FOIA to refuse the request.

Section 16 – advice and assistance

26. Section 16 of the FOIA requires a public authority to provide “reasonable advice and assistance” to those making or wishing to make a request.

² https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

27. In cases where a public authority considers that a request could not be answered within the cost limit, the FOIA section 45 Code of Practice requires advice and assistance to be provided to help the requestor bring their request within the cost limit.
28. The Commissioner notes that the London Borough failed to provide any advice and assistance to the complainant when it first responded to the request. Had the London Borough carried out an internal review, it would have had the opportunity to address this deficiency, but it did not carry out any review.
29. Despite being asked explicitly to either outline any advice and assistance provided or explain why it was not reasonable to provide any, the London Borough failed to address this point during the Commissioner's investigation.
30. As the London Borough has provided no explanation as to why it was not reasonable to provide advice and assistance, the Commissioner therefore considers that the section 45 Code of Practice has not been complied with. She therefore finds that the London Borough breached its section 16 duty to provide reasonable advice and assistance.

Procedural Matters

31. Section 17(5) of the FOIA states that:

A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.

32. The London Borough failed to issue its refusal notice with 20 working days and therefore breached section 17(5) of the FOIA.
33. As the London Borough also failed to comply with its section 1(1) duty, to provide information or state that the information is not held, within 20 working days, it also breached section 10 of the FOIA.

Other matters

Internal Review

34. Whilst there is no statutory time limit, within the FOIA, for carrying out an internal review, the Commissioner considers that internal reviews should normally take no longer than 20 working days and never longer than 40 working days.
35. The London Borough failed to complete its internal review. The Commissioner considers this to be extremely poor practice.

Right of appeal

36. 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

37. 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.
38. 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
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