

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 January 2024

Public Authority: Southend-on-Sea City Council
Address: Civic Centre
Victoria Avenue
Southend-on-Sea
Essex
SS2 6ER

Decision (including any steps ordered)

1. The complainant requested information from Southend-on-Sea City Council ("the Council") relating to its Children's Services Department.
2. The Commissioner's decision is that the Council is entitled to rely on section 12(1) (cost limit) of FOIA to refuse to comply with part 1 of the request. However, he finds that the Council failed to provide reasonable advice and assistance and therefore failed to meet its obligations under section 16(1) of FOIA.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - The Council must provide the complainant with advice and assistance to help them submit a request falling within the appropriate limit.
4. The Council 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 7 June 2023, the complainant wrote to the Council and requested information in the following terms:

"I write to make a request under the Freedom of Information Act 2000,

- 1) Please can you provide a full index inclusive with all categories (and versions of documents) of the names of all the documents you hold relevant to the children's services department.

This is to include for example guidance documents issued that are internally available to employees from the children services department.

I have attached a copy of another Local Authority's response to the above FOI in order to provide greater clarification around what I am seeking. Please note, I am not seeking copies of any documents, I am seeking solely the index / intranet of your electronic system that lists all the documents from the Children's Services Department.

- 2) Please find document attached named "Protocol for Cafcass and Children's Rights Advocacy Service" — please provide Southend City Council's version or equivalent to this."

6. The Council provided the complainant with a link to where its Cafcass protocol document could be located within the public domain in response to part 2 of the request. However, it refused to provide the information requested in part 1 of the request citing section 12(1) (cost limit) of FOIA as its basis for doing so.

Reasons for decision

7. This reasoning covers whether the Council is entitled to rely on section 12(1) (cost limit) to refuse to comply with part 1 of the request.

Section 12(1) – cost of compliance

8. Section 12(1) of FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate cost limit. The appropriate limit for public authorities such as the Council is £450. As the cost of complying with a request must be calculated at the

rate of £25 per hour, section 12(1) effectively imposes a time limit of 18 hours for the Council.

9. A public authority can only take into account the cost it reasonably expects to incur in carrying out the following permitted activities in complying with the request:
- determining whether the information is held
 - locating the information, or a document containing it
 - retrieving the information, or a document containing it
 - and extracting the information from a document containing it

The Council's position

10. In its final response to the request and submissions to the Commissioner, the Council stated that it does not hold an index of all the documents held by its Children's Services Department. It explained that in order to collate such an index the Council would need to review all 2,245,435 files held by its Children's Services Department.
11. The Council provided the Commissioner with a breakdown of the Children's Services Department's filing structure which shows the number of files held by the Department totalling 2,246,435 files. The Council estimated that it would take approximately one minute to review each file and so it calculated that in total, it would take over 37 thousand hours to provide the information requested in part 1 of the request (2,246,435 files x 1 minute = 37,441 hours).

The Commissioner's position

12. The Commissioner notes that the Council does not hold an index of all documents held by its Children's Services Department. He therefore accepts that in order to provide the information requested in part 1 of the request, the Council would have to compile such an index.
13. The Commissioner considers that it would not be necessary for the Council to review all the documents held by its Children's Services Department in order to collate an index of those documents. However, he accepts that the Council would need to extract the name of each document. The Commissioner is satisfied that it would take over 18 hours to extract the names of all documents held by the Council's Children's Services Department due to the significant number of documents held.

14. The Commissioner has calculated that even if the Council was to take one second to extract the name of each document held by its Children's Services Department, the cost of complying with the request would still significantly exceed the appropriate limit (2,246,435 documents x 1 second = 624 hours).
15. The Commissioner's decision is that the Council estimated reasonably that the cost of complying with part 1 of the request would exceed the appropriate limit. Therefore, the Council is entitled to rely on section 12(1) of FOIA to refuse to comply with part 1 of the request.

Section 16 – advice and assistance

16. Section 16(1) of 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 practice¹ in providing advice and assistance, it will have complied with section 16(1).
17. In its final response to the request, the Council stated it is unable to offer any meaningful advice to help the complainant refine the scope of part 1 of the request so that it falls within the appropriate limit.
18. However, the Commissioner considers that the Council could have provided the complainant with advice and assistance to help them submit a new request which falls within the appropriate limit. For example, the complainant could narrow the scope of part 1 of their request by limiting their request to documents dating from a particular time period or to documents relating to a specific topic or area.
19. Therefore, the Commissioner's decision is that the Council did not provide the complainant with adequate advice and assistance and therefore breached section 16(1) of the FOIA.

¹ <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

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

Daniel Perry
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF