

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 August 2019

Public Authority: City of Bradford Metropolitan District Council
Address: 4th Floor Britannia House
Hall Ings
Bradford
West Yorkshire
BD1 1HX

Decision (including any steps ordered)

1. The complainant has requested information about attempted suicides in care homes. The City of Bradford Metropolitan District Council ("the Council") refused the request because it estimated that the cost of compliance would exceed the appropriate limit.
2. The Commissioner's decision is that the Council has correctly applied section 12 of the FOIA to refuse the request and that the advice and assistance it provided was reasonable in the circumstances.
3. The Commissioner does not require any further steps.

Request and response

4. On 9 April 2018 the complainant requested information of the following description:

"Can you tell me how many care homes from 2002 to present had severe accidents when patients tried to commit suicide list numbers year by year and reasons for such events in a care setting finally what was the outcome of these inquiries for eg fines criminal charges to the homes did any result in deaths or permanent disablement."
5. On 12 June 2018, the Council responded. It refused to provide the requested information because it considered that the cost of compliance would exceed the appropriate limit. It advised the complainant to

contact the Care Quality Commissioner (CQC) who would be more likely to have the information collated.

6. The complainant requested an internal review on 29 September 2018. The Council sent the outcome of its internal review on 3 October 2018. It stated that the information was “not reportable” and therefore could not be provided.

Scope of the case

7. The complainant contacted the Commissioner on 1 March 2019 to complain about the way his request for information had been handled.
8. Following her investigation, the Commissioner contacted the complainant to give her view that it was highly likely that complying with the request would exceed the cost limit. The complainant accepted this but asked the Commissioner to set out her reasoning in a decision notice as he claimed there was a public interest in understanding how the Council collated data on attempted suicides.
9. The scope of the analysis that follows therefore considers whether the Council estimated reasonably that complying with the request would exceed the cost limit.

Reasons for decision

10. 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.*

11. 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.*
12. 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.
13. 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.
14. 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 IC & 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.
15. The Council explained that, as the care homes themselves were independently-owned, it would only become aware of an incident when a care home reported the case notes of a safeguarding incident.
16. The Council noted that a care home could report a safeguarding incident for a wide variety of reasons (including attempted suicide) and that these reports could not be easily searched in the way that the complainant was seeking. It estimated that it received in the region of

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

six thousand safeguarding reports per year, of which around 2250 would be from care homes.

17. The Council therefore explained that the only way it could identify and extract the requested information was to check the case notes for each report manually. Its central estimate was that it would take an average of 15 minutes per case note to identify and extract information within the scope of the request. On that basis, it estimated that it would need 562 hours to supply just a year's worth of data.
18. The Commissioner notes that the Council did not supply details of any sampling activity it had carried out and that its central estimate of 15 minutes per case note seems high. Nevertheless, she notes the extremely broad time parameters of the request and the quantity of data to be searched. The Council would have to review each case note within 2 minutes in order to supply just a year's worth of data without breaching the 18 hour limit. The request seeks data for 16 years and the Council would therefore have to review two thousand records per hour for the request to fit within the cost limit. The Commissioner does not consider this to be realistic.
19. The Commissioner therefore considers that the Council estimated reasonably that the request could not be answered within the cost limit and thus the Council is entitled to rely on section 12 to refuse the request.

Advice and Assistance

20. Section 16 of the FOIA requires a public authority to provide reasonable advice and assistance to those making or wishing to make a request.
21. In cases where a public authority considers that a request could not be answered within the cost limit, the Commissioner would normally expect advice and assistance to be provided to help the requestor bring their request within the cost limit.
22. In this particular case, the Council did not offer the complainant advice to help him make a request that would fall within the cost limit but did advise him to contact the CQC.
23. In the circumstances and given the analysis above, the Commissioner considers that it was unlikely that the request could have been refined sufficiently to fall within the cost limit whilst still providing meaningful data to the complainant. Therefore signposting the complainant to the CQC was reasonable and thus the Council met its obligations under section 16 of the FOIA.

Right of appeal

24. 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

25. 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.
26. 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

Ben Tomes
Team Manager
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Wycliffe House
Water Lane
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SK9 5AF