

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 July 2020

Public Authority: Devon County Council
Address: County Hall
Topsham Road
Exeter
EX2 4QD

Decision (including any steps ordered)

1. The complainant has requested information from Devon County Council ("the Council") regarding the welfare of pupils and allegations of abuse at a specific school.
2. The Council considered that the scope of the request covered corporate reports; that is, reports written by the Council, as well as information that may be held on individual case files. The Council stated that it did not hold any corporate reports. It also stated that it was unable to determine, within the appropriate cost limit, whether any information was held on individual case files, and therefore refused that part of the request under section 12(2) of the FOIA.
3. The Commissioner's decision is that the Council interpreted the scope of the request correctly. She is satisfied that, on the balance of probabilities, it does not hold any corporate reports. She has also determined that the Council was entitled to refuse the remainder of the request under section 12(2) of the FOIA and that the Council complied with its duty to provide advice and assistance in accordance with section 16(1).
4. The Commissioner does not require the Council to take any steps.

Request and response

5. On 31 July 2019, the complainant wrote to the Council and requested information in the following terms:

"Please would you supply me copies of any reports relating to welfare concerns and/or allegations of sexual and/or physical abuse of pupils at Forde Park School, Newton Abbot from 1933 to now. These include and are not limited to a Home Office and police investigation in 1958, a police investigation in 1976 and a police investigation called Operation Lentisk from 1999 onwards."

6. The Council responded on 8 August 2019. It stated the following:

"We do not hold this information.

1933 and 1958 were before Forde Park School became the responsibility of Devon County Council.

For the Police investigations in 1976 and for Operation Lentisk from 1999 you would need to contact Devon and Cornwall Police."

7. The complainant wrote back to the Council on the same date, clarifying his request. The complainant stated the following:

"Thank you for your reply. Just to reiterate the scope of my request, it was not limited to police reports, but included any report held by Devon County Council relating to welfare at Forde Park School.

Are you suggesting there are no reports in the county council's records, for example by the county council social services department, relating to welfare at Forde Park, from before or during the time the county council was responsible for the school (1973-1985)?"

8. Following an internal review the Council wrote to the complainant on 31 August 2019. It stated that upon further consideration of the request, there was a possibility that it held recorded information which may fall within the scope of the request. However, it advised that to ascertain if the information were held, it would involve searching through manual files and this would exceed the appropriate time limit. As such, it refused the request under section 12 of the FOIA – cost of compliance exceeds the appropriate limit.

Scope of the case

9. The complainant contacted the Commissioner on 21 October 2019, to complain about the way his request for information had been handled.
10. He stated that he had not expected the Council to have needed to search through individual case files, and had expected it to hold corporate reports; that is, reports written by the Council.
11. During the course of the investigation, the Commissioner asked the Council to confirm whether or not it had been able to search for corporate reports, within the cost limit. It confirmed that it had, and that it had not located any reports.
12. This notice covers whether the Council correctly interpreted the scope of the request as encompassing information that may be held on individual case files, as well as any Council-generated 'corporate' reports. The Commissioner has considered whether the Council holds any corporate reports, and whether it was correct to state that identifying other, potentially relevant, information would exceed the appropriate costs limit (section 12(2) of the FOIA). She has also considered whether the Council discharged its duty under section 16(1) of the FOIA to provide advice and assistance.

Reasons for decision

Scope of the request

13. In this case, the complainant questioned whether the Council had interpreted the request correctly in covering information that may be held on individual case files as well as any Council-generated, corporate reports.
14. The Commissioner has considered the wording of the request dated 31 July 2019 and the further clarification provided by the complainant on 8 August 2019.
15. During the Commissioner's investigation, the Council located, and provided the complainant with a report conducted by the Independent Inquiry into Child Sexual Abuse (IICSA), in which the Council had provided witness statements. However, as the material provided specifically relates to the insurance/litigation process, the Council considers that it falls outside of the scope of the request.
16. In her view, the complainant's request was broad and not very specific as to the type of report he expected to receive. She considers that the Council was correct to take a broad approach in considering what information it may hold.

Section 1 – what information is held?

17. This part of the notice covers whether the Council holds any Council-generated, 'corporate' reports of the type envisaged by the complainant.
18. 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."
19. In scenarios such as this one, where there is some dispute between the public authority and the complainant about the amount of information that may be held, the Commissioner, following the lead of a number of First Tier Tribunal decisions, applies the civil standard of the balance of probabilities.
20. In deciding where the balance of probabilities lies, the Commissioner will consider the complainant's evidence and arguments. She will also consider the searches carried out by the public authority, in terms of the extent of the searches, the quality of the searches, their thoroughness and the results the searches yielded. In addition, she will consider any other information or explanation offered by the public authority which is relevant to her determinations.
21. For clarity, the Commissioner is not expected to prove categorically whether the information was held; she is only required to make a judgement on whether the information was held, on the civil standard of probability.
22. In this case, the Commissioner has sought to determine whether, on the balance of probabilities, the Council holds any corporate reports.
23. During the course of her investigation, the Commissioner asked the Council to describe the searches it carried out for this type of information and the search terms used. She also asked other questions, as is her usual practice, relating to how the Council established its position.
24. The Council responded, confirming that it had made further searches and found no records of reports written by council officers or third parties, that specifically relate to welfare concerns and/or allegations of sexual and/or physical abuse of pupils at the school in question.

25. The Council has described in detail, the searches that have been carried out to determine if any further information is held
26. The Council explained that it contacted various departments, which would be likely to hold information in relation to the scope of the request, and that the only information located, had been provided to the complainant as described previously.
27. The Council advised that it carried out searches using keywords, throughout various departments. It also explained that it has no record that any information, which may fall within the scope of the request, has been deleted.
28. It also explained that staff members, who have been in their roles for a significant amount of time, also confirmed that they are not aware of any reports, relating to the scope of the request, being presented to the Leadership Group.
29. From the information provided, the Commissioner is satisfied that, on the balance of probabilities, the Council does not hold any Council-generated, corporate reports relating to the relevant events.

Section 12 – cost of compliance exceeds the appropriate limit

30. Having previously established that it would fall within the scope of the request, this part of the notice covers whether the Council is correct to refuse to provide information relating to the relevant events at the schools, which may be held on individual case files, under section 12 of the FOIA.
31. Section 12(2) of the FOIA states that a public authority is exempted from its duty under section 1(1)(a) of the Act to confirm or deny whether it holds information which has been requested, in circumstances where the estimated cost of complying with that paragraph alone would exceed the appropriate limit.
32. The estimate must be reasonable in the circumstances of the case. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004¹ (the Fees Regulations). The appropriate limit is currently £600 for central government departments and £450 for all other public authorities. Public authorities can charge a maximum of £25 per hour to undertake work to

¹ <http://www.legislation.gov.uk/uksi/2004/3244/contents/made>

comply with a request; this equates to 18 hours' work in accordance with the appropriate limit of £450 set out above, which is the limit applicable to the Council. An authority may include the time taken to carry out the following processes in making its estimate:

- determine whether it holds the information
 - locate the information, or a document which may contain the information
 - retrieve the information, or a document which may contain the information, and;
 - extract the information from a document containing it.
33. Section 12 explicitly states that public authorities are only required to estimate the cost of compliance with a request (in this case, in confirming or denying whether information is held), and not to give a precise calculation. However, following the line taken by the First-tier Tribunal in *Randall V Information Commissioner and Medicines and Healthcare Products Regulatory Agency* (EA2007/0004)² the Commissioner considers that such an estimate must be one that is sensible, realistic and supported by cogent evidence.
34. In determining whether the Council has correctly applied section 12(2) of the FOIA in this case, the Commissioner asked the Council, with reference to determining whether it holds the requested information, to provide a detailed estimate of the time/cost it would take for it to determine this, to clarify whether a sampling exercise has been undertaken and confirm that the estimate has been based upon the quickest method for gathering the information.
35. The Commissioner also asked the Council, when providing these calculations, to include a description of the nature of work that would need to be undertaken, explaining that an estimate for the purposes of section 12 has to be 'reasonable'.
36. The Council had considered what might fall within the scope of the request. As covered previously in this notice, it considered that "*any reports... relating to... abuse*" covered a potentially wide range of recorded information.

² <http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i136/Randall.pdf>

37. As previously covered above, it explained to the Commissioner that it does not hold any specific reports written by the Council regarding abuse or welfare concerns at the school in question. However, as it had advised the complainant in its internal review response, it explained that recorded information may be held in the social care files of individuals who were placed by the Council at the school.
38. It went on to explain that the social care records for the children placed at the school between 1973 and 1985, are held on microfiche within the Council's childcare records archive.
39. The Council explained that it does not hold a complete list of precisely who was placed at the school and that it has no way of collating the information accurately, other than by individually reading each microfiche record.
40. The Council explained that it had carried out a sampling exercise to determine how long it would take an officer to read through a single social care record stored on microfiche. It advised that the exercise took one hour and 6 minutes to review a social care file, which consisted of 400 pages.
41. It went on to explain that it had carried out a further exercise to determine the average size of a social care file. This consisted of selecting 10 social care files at random, from the archive, and then reviewing their size. The Council said from completing the exercise, it found that the average size of a social care file was over 500 pages.
42. The Council explained to the Commissioner that there are over 21,000 files and that it estimates that it would take approximately 23100 hours or 962.5 days to read through them to determine if the requested information is held.
43. The Council also acknowledged that some social care files may take less time to read through, but explained that, from experience of reading through historic social care records, many take significantly longer than one hour.
44. The Council has also explained that, although the complainant did not ask for the information in a specific format, they consider it reasonable that disclosure should be in electronic format, as it would constitute the quickest and most cost-effective means.
45. It went on to explain that the Council has limited capacity to digitise microfiche files internally and as such, they would need to be transferred to a third party. The Council said that whilst it cannot give a definitive estimate for the time it would take to complete, it believes that it is an

additional time and cost burden that should be factored into the earlier time estimate.

46. In order to extract and compile the information requested by the complainant, the Commissioner accepts that the Council would need to individually examine a very large number of documents and that it estimated reasonably that the time required to do so would be far in excess of the 18 hours limit set by the Fees Regulations.
47. The Commissioner is satisfied 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(2) of the FOIA to refuse the request with regard to information that may be held on individual files.

Section 16 – advice and assistance

48. Section 16 of the FOIA states

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

(2) Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case.”

49. The Commissioner’s normal approach is that, where a public authority refuses a request under section 12(2) of the FOIA, section 16(1) creates an obligation to provide advice and assistance on how the scope of the request could be refined or reduced to avoid exceeding the appropriate limit.
50. The Commissioner notes that the Council has explained that it did not provide advice and assistance about refining the request, due to it being unable to identify a way in which the request could be reduced to fall within the permitted timeframe.
51. The Council did however explain that it had, in the past, provided evidence in the form of witness statements, to the Independent Inquiry into Child Sexual Abuse (IICSA). It explained that information it held relating to this process, which related only to the insurance/litigation process, fell outside the scope of the complainant’s request; however the Council provided this information to the complainant during the course of the investigation, in case it could be of assistance to them.

52. The Commissioner also notes that the Council carried out specific searches for corporate reports.
53. In the circumstances of this case, she is satisfied that the Council has discharged its duty to provide advice and assistance to the complainant.

Right of appeal

54. 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

55. 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.
56. 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
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