

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 21 December 2022

**Public Authority:** Warwickshire County Council  
**Address:** Shire Hall  
Northgate Street  
Warwick  
CV34 4RL

#### Decision (including any steps ordered)

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1. The complainant has requested statistics relating to 'Prevent' referrals.
2. The Council refused to comply with the request, citing section 12(2) (cost of compliance exceeds appropriate limit) of FOIA.
3. The Commissioner's decision is:
  - The Council is entitled to neither confirm nor deny that it holds the requested information under section 12(2).
  - The Council has complied with its obligations under section 16(1) (advice and assistance).
4. The Commissioner does not require the public authority to take any steps.

#### Request and response

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5. On 25 November 2021 the complainant requested the following information:

"Following the advice in your response, I would like to reframe this request in order to avoid any national security concerns as follows:

  - 1) Without sharing the actual numbers of referrals under the Prevent duty, please provide the percentage of referrals to police by WCC under this duty relating to individuals known to have a diagnosis of an autism spectrum disorder in each of the last 5 years.

- 2) Without sharing the actual numbers of referrals under the Prevent duty, please provide the percentage of referrals to police by WCC under this duty relating to individuals known to have a diagnosed mental illness in each of the last 5 years.
  - 3) Without sharing the actual numbers of referrals under the Prevent duty, please provide the percentage of referrals to police by WCC under this duty relating to individuals categorised as 'MUU' (mixed, unclear, uncertain) ideology in each of the last 5 years.
  - 4) Without sharing the actual numbers of referrals under the Prevent duty, please provide the percentage of referrals by WCC which ultimately were triaged and sent by police to the Channel Panel as a fraction of the number referred to the police gateway by WCC in each of the last 5 years."
6. The Counterterrorism and Security Act 2015 contains a duty on specified authorities, including Councils, to have due regard to the need to prevent people from being drawn into terrorism. This is also known as the Prevent duty and referrals are made, from the Council to the Police, known as Prevent referrals.
  7. On 24 February 2022, the Council provided its response to the request. It confirmed holding the relevant information in relation to parts 1-3 of the request but refused to provide it, citing section 24(1) (National Security). It confirmed it did not hold information in relation to part 4 of the request.
  8. The complainant requested an internal review on 16 March 2022. They did not raise any concerns regarding part 4 of the request but they did not accept that disclosure of the statistics requested in parts 1-3 would compromise national security.
  9. The Council provided the outcome to its internal review on 6 April 2022. It upheld its previous position.
  10. During this investigation the Council changed its position. It confirmed that it was relying on section 12 in relation to parts 1-3 of the request.

## **Reasons for decision**

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11. The Council hasn't confirmed which subsection of section 12 it is relying upon, section 12(1) or section 12(2). These are two distinct, separate exemptions; section 12(1) exempts a public authority from communicating requested information if to do so would exceed the appropriate limit and section 12(2) exempts a public authority from

confirming or denying that it holds the requested information if to do so would exceed the appropriate limit.

12. Even though it hasn't specified, the Council appears to be relying upon section 12(2) and the Commissioner's investigation will consider whether it is entitled to do so.
13. Where section 12(2) is relied upon, Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the cost it reasonably expects to incur in carrying out the following activity:
  - determining whether the information is held.

The above activity must be carried out at a flat rate of £25 per hour and the limit for a public authority such as the Council is £450. This means that, if it would take the Council over 18 hours to confirm or deny whether information is held in relation to the request, it can rely upon section 12(2).

### **The Council's position**

14. The Council has confirmed that 'there is no single pathway for referrals to be made from within the Council to the Police. Individual employees, teams and services across the entire Council are able to make referrals to Prevent but the Council does not have a central record of the referrals.'
15. It has explained 'To locate and retrieve any information relating to the Prevent referrals made from the Council to the Police over the past 5 years would involve searching all the Council's electronic and hard copy databases along with the email accounts of every employee. As of 31 March 2020, Warwickshire County Council had 4569 employees but, as the search would also have to include email accounts of employees who had left the Council's employment within the past 5 years, the total number of employees to be considered would be significantly higher.'
16. Furthermore, the Council has explained that there is no requirement for a referral to Prevent to include details of whether the individual concerned has a mental illness or autism spectrum disorder diagnosis or is categorised as having MUU ideology. Therefore, the Council is concerned that, even if it was able to locate and retrieve information to determine the number of referrals made to Prevent, 'it would not include the information requested in relation to categorisation of the individuals involved. Where Prevent referrals were found, the Council would need to further search through those records to determine whether it held any information about that individual having a mental illness, autism spectrum disorder or being categorised as having MUU ideology.'

17. When relying upon section 12(2), a public authority must provide an estimate of the cost of confirmation or denial, rather than formulating an exact calculation. The Council has explained 'I am unable to provide a realistic calculation of how long such a hugely extensive search would take but I am satisfied that it would significantly exceed 18 hours.'

### **The complainant's position**

18. The complainant is concerned that the Council is required, under the Equality Act 2010, 'to ensure that the services it offers to residents do not discriminate on the grounds of protected characteristics, in this case disability,' The complainant is concerned that any referrals made to Prevent must contain equality information in order to be compliant. However, in making any such referrals the Council is not offering a service but complying with a legal duty and the Council has confirmed there is no requirement for referrals to include details of any mental illness or autism spectre diagnosis.
19. The complainant is also concerned that the Council has already confirmed in writing that they hold the data requested and therefore it must do so. When a public authority receives a request under FOIA it must do two things: first it must ascertain whether it holds the requested information and second, whether an exemption applies. Clearly, in its original handling of the request, the Council failed to carry out these two tasks in the correct order. However, this doesn't mean that the Council definitely holds the requested information and whether it does is not the subject of this notice.
20. Finally, the complainant is concerned that their Councillor has received 'statistics directly relating to this matter' but these cannot be shared 'due to strict non-disclosure commitments relating to national security.' The Commissioner isn't in a position to verify whether these are the same statistics referred to within the request. Furthermore, the Commissioner notes that section 12(2) applies when a public authority cannot confirm or deny, within the appropriate limit, whether the information is held. It is not confirmation that the information is not held.

### **The Commissioner's view**

21. The Commissioner is satisfied that it would take the Council over 18 hours to determine whether the requested information was held and, therefore, it is entitled to reply upon section 12(2).
22. The Commissioner notes the Council hasn't provided an estimate in relation to the request, let alone one based on cogent evidence. However, he accepts that the cost limit is met due to the volume of records needed to be reviewed, and the fact that a manual review is required.

23. Even though it hasn't said so, the quickest method of ascertaining how many Prevent referrals were made would be to ask all staff members to search their own inboxes, presumably using the key words 'Prevent' and 'referral' as search terms. Considering that the Council has identified a conservative figure of 4569 staff, if each staff member took one minute to do so, these searches would take 76 hours. Even if these searches became doubly efficient, it would still take 38 hours just to identify the number of referrals made. This exceeds the appropriate limit of 18 hours for the Council. The Council has also explained that there are likely to be further referrals made and therefore, further searches would be required.
24. Furthermore, the Council has explained that, once those referrals had been identified, they would be 'unlikely' to contain the information that the complainant has requested relating to mental illness or autism spectrum diagnosis. The Commissioner agrees; as there doesn't appear to be a specific referral form to provide to Prevent (so the referrals are likely to be made via free text) and this information isn't required by the Prevent service, this information might not be contained within the referral itself. Therefore, further searches would then need to be carried out to determine whether the Council holds this information.
25. The Commissioner is therefore satisfied that the Council is entitled to rely on section 12(2) of FOIA to refuse the complainant's request.

### **Section 16 – advice and assistance**

26. When refusing a request under section 12, a public authority needs to offer meaningful advice and assistance to the complainant where reasonable. The aim of this advice and assistance is to help the complainant refine their request to one that might be able to be dealt with within the appropriate limit.
27. However, looking at the nature of the request and the time it would take to search and manually review each record, the Commissioner doesn't see how the request could be meaningfully refined to allow the information to be provided within the cost limit. Therefore, the Commissioner is satisfied that there's no section 16(1) breach in this instance.

## Right of appeal

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28. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

29. 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.
30. 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

**Alice Gradwell**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**