

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 September 2023

Public Authority: Gwynedd Council
Address: Shirehall Street, Caernarfon
LL55 1SH

Decision (including any steps ordered)

1. The complainant has requested data relating to child protection cases. Gwynedd Council ("the Council") provided some of the information requested but withheld the rest under Section 40(2) (personal data) and 12(1) (cost of compliance exceeds the appropriate limit) of the FOIA.
2. The Commissioner's decision is that Gwynedd Council has correctly relied on section 12(1) and 40(2) of the FOIA.
3. The Commissioner does not require further steps.

Request and response

4. On 22 February 2023, the complainant made the following request for information under FOIA:

"Please can you provide all data on number of child protection cases undertaken by social services over the past 10 years. Please provide data separated into number of cases for each of those years and clearly indicate the number of cases undertaken by the integrated disability team, now known as derwen. The total number of mobile phones bought as gifts for children subject to care intervention. Please separate into total expenditure for each of those years, clearly separating the expenditure of derwen and the child protection teams.

Please also clearly identify in each year / team any single purchase above £30 with the total cost for the item.”

5. Gwynedd Council responded on 24 March 2023. It provided a response to the first part of the request and refused the rest, citing Section 12 (cost of compliance) and 40(2) (personal data) of the FOIA.
6. The Council upheld its position at internal review.

Reasons for decision

Section 12(1) – Cost of compliance exceeds appropriate limit

7. This reasoning covers whether the Council is correct to apply section 12(1) (appropriate limit) of the FOIA to the request.
8. The applicable cost limit in this case is £450, which is equivalent to 18 hours of work.
9. The Council have stated there is no specific database that records the purchase of mobile phones for children in care intervention. If a phone is purchased, this is usually done by an individual case worker when appropriate, and while this information may be recorded within a child's case file, it would be necessary to search each file manually to determine this.
10. The Council have advised there would be approximately 2,100 case files in scope, each with up to a thousand attachments and case notes of variable length and detail. To extrapolate this information, an officer would have to manually review these case files and create a spreadsheet to contain the information. The Council has advised that individual case files could take up to a full working day to properly process.
11. The Commissioner has considered the Council's argument and is satisfied that compliance with the request would exceed the appropriate limit of £450. Therefore, the Commissioner's decision is that the Council was correct to apply section 12(1) of FOIA to the request.

Section 40- Personal information

12. Section 40(2) of FOIA states that information is exempt information if it is the personal data of another individual and disclosure would contravene a data protection principle.
13. The Council stated in its response that Derwen works with children with disabilities, some of whom are placed on the Child Protection Register. These numbers are relatively small, and the Council has advised there is

a “real risk” that disclosure of those numbers could lead to identification of individuals.

14. However, small numbers do not automatically mean individuals can be identified. Whether individuals can be identified will depend on the particular facts, such as the size of the overall dataset, the number of data points that have been requested and the information, already in the public domain, that could potentially be cross-referenced with the disclosed information. It is not sufficient for there to be only a hypothetical risk of identification. If there is no realistic route to identification, the information is not personal data, regardless of its sensitivity.
15. When considering the possibility of identification, the Commissioner applies the “Motivated Intruder Test.” This test starts with a hypothesis that there exists a person who wishes to identify the individuals covered by the disputed information. The person is willing to devote a considerable amount of time and resources to the process of identification. They may have some inside knowledge (i.e. information not already in the public domain) but will not resort to illegality – they are determined but not reckless. The Commissioner looks to see how such a person would go about identifying the individuals involved.
16. In this case, the Council have stated there is a high likelihood that individuals and families involved in working with Derwen will be known to each other. Given this factor, the specificity of the information requested, and the small numbers of people identified, the Commissioner considers that it is likely that a motivated intruder could identify an individual and therefore the withheld information constitutes personal data.
17. In the case of a FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.
18. When considering whether the disclosure of personal information would be lawful, the Commissioner must consider whether there is a legitimate interest in disclosing the information, whether disclosure of the information is necessary and whether these interests override the rights and freedoms of the individuals whose personal information it is.
19. The Commissioner considers that the complainant is pursuing a legitimate interest and that disclosure of the requested information is necessary to meet that legitimate interest.

20. It is necessary to balance the legitimate interests in disclosure against the fundamental rights and freedoms of the data subjects. In doing so, it is necessary to consider the impact of disclosure.
21. In the Commissioner's view, a key issue when considering the balancing test is whether the individuals concerned have a reasonable expectation that their information will not be disclosed. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to the individuals, taking into account whether or not they have consented to its disclosure.
22. In this case, the Commissioner considers that disclosing the withheld information may lead to the indirect identification of individuals. Given the highly sensitive nature of the information, which relates to the Child Protection Register and vulnerable families, the Commissioner considers that those individuals would not expect the data to be disclosed to the public at large, and disclosure could result in damage or distress.
23. Based on the above factors, the Commissioner has determined that the fundamental rights and freedoms of the individuals outweigh the legitimate interest identified above. The Commissioner therefore considers that disclosing the requested information would be unlawful as it would contravene a data protection principle; that set out under Article 5(1)(a) of the UK General Data Protection Regulation.
24. As the Commissioner has determined it would not be lawful to disclose the requested information, it has not been necessary for him to consider whether disclosure is necessary. Therefore, it follows that the Council was correct to apply section 40(2) of FOIA to this request.

Other matters

25. The Commissioner notes that in this case, the Council provided some of the requested information before refusing the other parts of the request under section 12.
26. The Commissioner wishes to remind the Council that as a matter of good practice, public authorities should avoid providing the information found as a result of its searching and claiming section 12 for the remainder of the information. It is understood that this may be done with the intention of being helpful but it ultimately denies the requestor the right to express a preference as to which part or parts of the request they may wish to receive which can be provided within the appropriate limit. The Commissioner draws the Council's attention to its

responsibilities under section 16 of the Act (advice and assistance) and the related section 45 Code of Practice¹.

¹ [CoP FOI Code of Practice - Minor Amendments 20180926 .pdf \(publishing.service.gov.uk\)](#)

Right of appeal

27. 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

28. 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.
29. 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

Joanna Marshall
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Wycliffe House
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SK9 5AF