

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 November 2023

Public Authority: North Yorkshire Council
Address: County Hall
Northallerton
North Yorkshire
DL7 8AD

Decision (including any steps ordered)

1. The complainant has requested information on safeguarding. North Yorkshire Council (the council) refused the request under section 12 of the FOIA – cost exceeds the appropriate limit.
2. The Commissioner's decision is that section 12 of the FOIA is engaged, and that the council has provided appropriate advice and assistance as required by section 16 of FOIA.
3. The Commissioner does not require the council to any steps.

Request and response

4. On 23 March 2023, the complainant made the following information request to the council:

“I would like to request how many allegations in the last ten years have been sent in to North Yorkshire County Council safeguarding against Henshaw's specialist college, Bogs Lane, Harrogate, HG1 4ED. I would also like to know the outcomes of any case and who was the lead safeguarding officer involved.”

5. The council responded on 20 April 2023. It refused the request under section 12 of the FOIA – cost of compliance exceeds appropriate limit.
6. The complainant contacted the Commissioner on 26 April 2023 to complain that his request had been refused.
7. The Commissioner advised the complainant he would firstly need to request that the council carry out an internal review before his complaint could be considered further.
8. The council provided the outcome of its internal review on 25 May 2023, upholding its refusal of the request.

Scope of the case

9. The complainant contacted the Commissioner as they remained unhappy with the council's response to the request.
10. The Commissioner must therefore decide whether the council was correct to rely on section 12 of FOIA to refuse the request.

Reasons for decision

Section 12 of the FOIA – Cost of compliance

11. Section 12 of FOIA states that a public authority does not have to comply with a request for information if it estimates that the cost of complying with the request would exceed the appropriate limit.
12. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (“the Fees Regulations”) sets the appropriate limit at £450 for a local council. A public authority can take into account a supposed charge of £25 per hour of staff time for work undertaken to comply with a request when determining whether the appropriate limit would be exceeded, which equates to 18 hours work.
13. In estimating the time it will take to respond to a request, a public authority can take into account the time it will take to carry out the following tasks:
 - 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. In determining whether the council has correctly applied section 12 of the FOIA in this case, the Commissioner has considered the council’s rationale, provided to the Commissioner during his investigation.
15. The council has told the Commissioner that from April 2015, the information requested has been held in a database because of the way the information has been entered into it.
16. The council said that the database system would need to be searched by manually reading every record to find out whether or not it is related to Henshaws Specialist College. It would also have to determine the reason why the individual record has been made.
17. The council argues that it cannot simply extract all relevant information through a keyword search. It argued that the data has been entered into the database using many abbreviations/ alternative names, entry errors, alternative references (such as “college” or “place of education” rather than the colleges actual name) when records were entered.

18. The council therefore argued that a manual search would be the only way to ensure all the information it holds within the scope of the request is located.
19. The council also noted that, between the years 2015 to 2023, there are 19,200 records held on its database which would need to be manually reviewed. Based on previous experiences of checking records to determine similar information, it took into account that it would take approximately 5 minutes to review each record.
20. Based upon these figures, the council therefore calculated that the time it would take to complete the tasks and respond to the request would be approximately 1,600 hours of officer time; far exceeding the 18-hour limit.
21. The Commissioner is not able to take into account how efficient the recording system of a public authority is when it is calculating its estimate. It must look at the actual information and the actual time it would take, based upon the records system which it actually has in place.
22. The Commissioner has therefore considered the explanation, above, and accepts the reason why a manual search would be needed in order to ensure that the council located all of the relevant information it holds.
23. The Commissioner also notes that even if the council were able to reduce the review time of 5 minutes per record to 1 minute, it would still take it 320 hours of officer time to manually review each record.
24. The council would need to be able to review 17.7 records every minute in order to meet the cost limits. The Commissioner accepts this would not be possible.
25. The Commissioner has therefore decided that the council was correct to apply section 12 of FOIA to refuse the request in this case.

Section 16 of the FOIA – Advice and Assistance

26. Section 16(1) of the FOIA imposes an obligation for a public authority to provide advice and assistance to a person making a request, as far as it would be reasonable to do so.
27. Section 16(2) states that a public authority is to be taken to have complied with its section 16 duty in any particular case if it has

conformed with the provisions in the section 45 Code of Practice¹ in relation to the provision of advice and assistance in that case.

28. Paragraph 14 of the section 45 Code of Practice states that where a public authority is not obliged to comply with a request because it would exceed the appropriate limit to do so, then it:

“...should consider providing an indication of what, if any, information could be provided within the cost ceiling. The authority should also consider advising the applicant that by reforming or re-focusing their request, information may be able to be supplied for a lower, or no, fee.”

29. The council has told the Commissioner that it did not suggest how to narrow the request or reformulate it in its initial response because every record would still need to be manually reviewed in order to respond to it, and so a suggestion was difficult to recommend in order to bring it within the appropriate limit.
30. The council has advised the Commissioner that on 20 April 2023 it received an offer from the complainant to narrow the request to 18 to 25 year olds and that the complainant would also pay for the searches. The council responded stating that this would still be over the cost limit and it does not accept offers of payment to carry out searches for information withheld under section 12 of the FOIA.
31. The council has explained to the Commissioner that, instead, it suggested to the complainant that they limit the scope of the request to records of people who had lived at the college for over 10 years. The complainant did not narrow the scope to this suggestion, however.
32. The Commissioner notes that there is no requirement in the FOIA for a public authority to accept payment to carry out searches that are over the cost limit. He also considers that the council has given appropriate advice and assistance in this case, and therefore it is now for the complainant to refine the request if they so choose.

¹ <https://www.gov.uk/government/publications/code-of-practice-on-the-discharge-of-public-authorities-functions-under-part-1-of-the-freedom-of-information-act-2000>

Right of appeal

33. 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

34. 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.
35. 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

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