

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 15 February 2024

**Public Authority:** West Sussex County Council  
**Address:** County Hall  
Chichester  
West Sussex  
PO19 1RQ

#### **Decision (including any steps ordered)**

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1. The complainant has requested information relating to funding for autism and learning disability advocacy services. West Sussex County Council (the Council) refused to comply with the request citing section 12 of FOIA (cost of compliance exceeds appropriate limit).
2. The Commissioner's decision is that the Council was not entitled to rely on section 12 of FOIA when refusing this request.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Provide a fresh response to the request that does not rely on section 12 of FOIA.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Request and response

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5. On 9 July 2023, the complainant wrote to the Council and requested information in the following terms:

“Under the Freedom of Information Act 2000, please provide me with copies of all documents, internal and external correspondence (including emails, attachments, letters, notes/records of phone calls, texts or instant messages, minutes of meetings, briefings or otherwise), notes (handwritten and otherwise), and information otherwise held by you, referencing, discussing, or otherwise relating to:

Funding for autism and learning disability advocacy services, including (but not limited to) support for self-advocacy groups.

Any decision related to funding for autism and learning disability advocacy services, including (but not limited to) support for self-advocacy groups.

Please limit the above to anything created or amended since the 1st of January 2021.

I understand that under the Act I am entitled to a response within 20 working days of your receipt of this request. Some parts of the request may be easier to answer than others. Should this be the case, I request that you release information as soon as possible.

If my request is denied in whole or in part, I ask that you justify all deletions by reference to specific exemptions of the act. I will also expect you to release all non-exempt material. I reserve the right to appeal your decision to withhold any information or to charge excessive fees. I would prefer to receive the information electronically.

If you require any clarification, I expect you to contact me under your section 16 duty to provide advice and assistance if you find any aspect of this FOI request problematic.

Please acknowledge receipt of this request, and I look forward to receiving the information in the near future”.

6. The Council responded to the complainant’s information request on 4 August 2023 and originally refused to disclose the information citing section 36 of FOIA (effective conduct of public affairs) as its basis for doing so.

7. Following an internal review, the Council wrote to the complainant on 12 September 2023 and explained that it had identified a significant amount of information and correspondence that would be relevant to the complainant's information request. It stated that the cost of obtaining and analysing this information would exceed the appropriate cost limit and hence revised its original position to refuse to comply with the information request on the basis of section 12 of FOIA.

## **Scope of the case**

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8. The complainant contacted the Commissioner on 9 October 2023 to complain about the way their request for information had been handled.
9. The Commissioner considers that the scope of his investigation is to be to determine whether the Council was correct to rely on section 12 of FOIA to refuse the complainant's request.

## **Reasons for decision**

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### **Section 12- cost of compliance exceeds the appropriate limit**

10. Section 12(1) of FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.
11. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations') at £600 for central government, legislative bodies and the armed forces and at £450 for all other public authorities such as the Council. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 18 hours of staff time for the Council.
12. 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 permitted activities in complying with the request:
  - (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.
13. 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 Information Commissioner & Medicines and Healthcare Products Regulatory Agency EA/2007/0004*, the Commissioner considers that any estimate must be “sensible, realistic and supported by cogent evidence”. The task for the Commissioner in a section 12 matter is therefore to determine whether the public authority made a reasonable estimate of the cost of complying with the request.
  14. Section 12 is not subject to a public interest test; if complying with the request would exceed the cost limit, there is no requirement under FOIA to consider whether there is a public interest in the disclosure of the information.
  15. Where a public authority claims that section 12 of FOIA is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit, in line with section 16 of FOIA.

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

16. In this case, the Council considers that determining whether it holds the information requested by the complainant, would itself exceed the appropriate limit and has therefore relied on section 12(1) to refuse to disclose the relevant information. During his investigations, the Commissioner requested further explanation as well as an estimate of the time and cost it will take to provide the information falling within the scope of the request.
17. The Council explained that it conducted a sample exercise where the Head of Commissioning for Older People undertook a search using the words ‘impact initiatives’ (which is the provider for advocacy services) as a first step to identifying correspondence regarding funding for autism and learning disability services, was carried out. It identified 134 emails from May 2022. The Council states that, it estimates an average of five minutes per email to check the content and determine its relevance, which, it says, would take 11 hours to do so.
18. The Council contends that it would take longer than 18 hours to locate, retrieve and extract the content of every email, note, letter, instant message, meeting minutes and other places where relevant information could be held. Following a scoping exercise, it estimated at least an additional 11 personnel within the areas of procurement, legal services,

finance, Commissioning, Children's Commissioning, the Budget holder and the Directors of Adult Services who are involved in discussions around the information requested by the complainant would be required to carry out searches. It estimates that each individual would require 2.5 hours to conduct the searches spanning the areas covered by the complainant's request. The Council contends that this will take a total of 27.5 hours which exceeds the £450 limit.

19. In its submission to the Commissioner, the Council stated that an estimate of 11 people would also undertake a manual search of folders and subfolders as well as documents held to locate the relevant information. It estimates that each person would spend on average of eight hours which totals 88 hours. It also says that a further estimate of 10 minutes would be required to open and examine the document which would lead to only 48 documents skimmed in 8 hours.
20. In respect of locating emails, the Council says that it would involve a wider pool, estimated as 20 people undertaking two hours of search which would total 40 hours. It also estimates that 10 people would manually search for handwritten notes, spending two hours each which totals 20 hours. In all the Council argues that it would take a total of 156 hours to locate the information requested.

### **The Commissioner's position**

21. The Commissioner has considered the request submitted by the complainant which specifically states that they require information surrounding:

"Funding for autism and learning disability services, including (but not limited to) support for self-advocacy groups. Any decision related to funding for autism and learning disability advocacy services, including (but not limited to) support for self-advocacy groups".

22. In the Commissioner's view the keyword in the complainant's request is "funding". Therefore, any searches that only includes the term 'impact initiatives' is likely to provide excessive information which may not be directly related to the scope of the information sought by the complainant. Whilst the Commissioner is not familiar with the Council's records management practices, it would be reasonable to assume that information related to funding to be stored independently from other information relating to the Council's engagement with Impact Initiatives and hence any searches would not necessarily require the Council to look further than where the information about funding is stored.

23. The Council has alluded to manual and electronic searches in folders and sub folders, notebooks and emails. However, the Commissioner notes that the Council has not provided any explanation of how the information that falls within the scope of the complainant's request is held or the volume of information that may be considered to fall within the scope of the complainant's request.
24. While the Commissioner has noted the estimates provided by the Council, he is not convinced that they are reasonable, realistic or backed by cogent evidence. In relation to the sampling exercise conducted by the Head of Commissioning-Older People, the Commissioner considers that five minutes to review an email is excessive. The Council has not provided any explanation why it will take five minutes and in the absence of any explanation about the content of the emails used in the sampling exercise, the Commissioner is not convinced that the estimate provided is reasonable or realistic.
25. The Commissioner is also not persuaded by the estimates provided by the Council for determining whether the information is held and locating the information. Whilst the Council states that the searches would be carried out by 11 people within the named departments, the Commissioner is not aware of the volume of information that the Council has considered to reach its estimates. In relation to the manual searches, the Commissioner is not persuaded that it would take 156 hours in total for 11 people to carry out those searches. The Council has neither provided any additional information about the volume and/or the content of the information that would require manual searching nor has it justified how it has reached any of the estimates provided to support its position that the cost limit will be exceeded.
26. The Commissioner therefore requires the Council to disclose the information to the complainant or to provide an appropriate refusal notice which does not rely on section 12 of FOIA.

### **Section 16(1)- The duty to provide advice and assistance**

27. Section 16(1) of FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45 code of practice<sup>1</sup> in providing advice and assistance, it will have complied with section 16(1).
28. Whilst the Commissioner appreciates that the Council's decision to invoke the section 12(1) exemption was made at the internal review stage, he is of the view that it could have provided the complainant with

advice and assistance of how they could potentially bring their request within the appropriate cost limit.

29. Therefore, the Commissioner's decision is that the Council did not provide the complainant with adequate advice and assistance and therefore breached section 16(1) of the FOIA.

## Right of appeal

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30. 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)

31. 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.
32. 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 .....**

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