

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 August 2024

Public Authority: Rochdale Borough Council
Address: Number One Riverside
Smith Street
Rochdale
OL16 1XU

Decision (including any steps ordered)

1. The complainant has requested information regarding the number of children that were sexually exploited while in the care of Rochdale Borough Council (the Council). The Council has relied on section 12(2) of FOIA (cost of compliance) to refuse to confirm or deny whether it held information within the scope of the request.
2. The Commissioner's decision is that the Council was entitled to rely on section 12(2) of FOIA to refuse to confirm or deny whether it held information within the scope of the request. The Commissioner also finds that the Council has complied with its section 16 obligation by explaining why it was unable to offer advice and assistance.
3. The Commissioner does not require further steps to be taken.

Request and response

4. On 19 January 2024, the complainant wrote to the Council and requested information in the following terms:

"Please could you provide the following information:

How many of the 111 children referenced in Greater Manchester Police's January 2024 report entitled 'Part Three: The review into Operation Span and the investigation of non-recent child sexual

exploitation in Rochdale', were in the care of Rochester Borough Council at all time of their exploitation from 2004 to 2013?"

5. On 15 February 2024, the Council responded. It relied on section 40(2) of FOIA to refuse the request. This position was not upheld during the Council's internal review, with it advising the complainant that it would not be possible to provide the requested information.

Scope of the case

6. The complainant contacted the Commissioner on 9 April 2024 to complainant about the way their request had been handled.
7. During the Commissioner's investigation, the Council wrote to him and advised that it was now relying on section 12(2) to refuse the request.
8. Although the Commissioner has seen no evidence that this change in position has been outlined to the complainant, having a vast knowledge in complaints of a similar nature, he is satisfied that this change in position is unlikely to resolve the complainant's concerns.
9. For the above reason, the Commissioner considers that the scope of his investigation is to determine whether the Council was entitled to rely on section 12(2) to refuse this request.

Reasons for decision

Section 12 – cost of compliance

10. The following analysis covers whether complying with the request would have exceeded the appropriate limit.
11. Section 12(1) of the 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" as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations").
12. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 at £600 for central government, legislative bodies and the armed forces and at £450 for all other public authorities. The appropriate limit for the Council £450.

13. 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 for the public authority.
14. Where a public authority is relying on section 12(1) to refuse a request it must still confirm whether or not it holds the information. However, a public authority may rely on section 12(2) if the cost of determining whether the information is held would, on its own, exceed the appropriate limit.
15. If section 12(2) applies, the public authority does not need to confirm or deny that it holds the information.
16. A public authority does not have to make a precise calculation of the cost of establishing whether information is held; instead only an estimate is required. However, it must be a reasonable estimate. 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 to determine whether the public authority made a reasonable estimate of determining what, if any, information is held.
17. Section 12(2) is not subject to a public interest test; if complying with the request would exceed the cost limit then there is no requirement under FOIA to consider whether there is a public interest in determining whether it holds information within the scope of the request. Where a public authority claims that section 12(2) of FOIA is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it may be dealt with under the appropriate limit, if possible, in line with section 16 of FOIA.

The Council's position

18. The Council explained to the Commissioner that the information regarding 111 children, referenced within the report, are sourced from records held by a number of different agencies, one of which is the Council.
19. The Council confirmed that, whilst it is aware of the names of the children outlined in the report, it does not know the full details of the exploitation, including the dates of when any incidents took place. The Council confirmed the only way to determine whether it held such information would be for it to access all the records held by agencies, and review the details of the incidents against its own records.
20. The Council clarified that some of the children who were exploited at some point in their childhood received social care interventions from the Council, which for some meant being in care of the Council between the

dates specified in the request. Whereas other children within the report would have been in the care of other local authorities and placed within the borough of Rochdale.

21. In order for the Council to ascertain if it held the requested information, it would be required to check multiple different records. It confirmed information could be held in the LiquidLogic Social Care System (LCS) records, case notes, strategy meeting minutes, cared for children review minutes, Child Sexual exploitation (CSE) files, referrals relating to CSE whilst the child was in care and any additional document such as police intelligence reports, multiple abuse meeting records.
22. The Council advised that it conducted a sampling exercise on one of the individuals within the report. This allowed it to determine how long it would take the review each child's records and see if the requested information was held.
23. The Council stated that the first step required was to check its records and confirm whether the individual was in its care during the requested period. This took the Council approximately 5 minutes.
24. The Council explained it would then need to review the electronic 'Forms' section of the child's record. This section could include information such as; what led to the child coming into care, the child's care review records, whether there were any child protection strategy meeting and whether there were any referrals regarding exploitation. For the child used in the Council sampling exercise, there were 13 documents which required review and this work took a total of 10 minutes.
25. The Council informed the Commissioner it would then be required to conduct a review on the 'documents' section of the child's record and make notes of any potentially relevant entries which referenced 'abuse'. The Council advised that once it marked any relevant entries it would need to conduct a more in-depth review to outline what form of abuse is being referenced, for the purposes of this request, the Council would need to determine if the abuse was sexual exploitation. The Council advised that in its sampling exercise it located 11 records which would need reviewing for any indication of abuse. This review this took the Council 15 minutes to undertake.
26. The next step would be for the Council to review the 'Case notes' section of the child's record. It advised that it would only be required to review what appeared to be relevant to the request, but this could involve any records regarding police involvement, referrals to senior management or supervision records. The Council advised that there were 120 entries for this child, which took 30 minutes for the Council to review.

27. The final step would be for the Council to review any multiagency intelligence reports. The Council advised for this particular child, there was a reference in two other children's entries, but the Council advised that involvement in exploitation was not explicit. Due to this, it would be required to cross reference the information located to determine if the requested information were held. The Council confirmed that this final step would take approximately 20 minutes.
28. The Council informed the Commissioner that the above sampling exercise took a total of approximately 80 minutes. If the Council were required to do this for each of 111 children referred to in the report it would vastly exceed the appropriate cost and time limit.
29. The Council added that the child it used in its sampling exercise had a relatively shorter period in care compared to many others. It explained that this meant the record it reviewed was a smaller file compared to some of the other children who had been in care for a longer period.
30. The Council also advised that, despite conducting the above sampling exercise and reviewing the relevant information it held, it was still unclear whether the requested information was held and further investigation would need to take place for confirmation.
31. The Council concluded that further documentation could even be held in one of three locations: the local authority archive, the document data base (Onbase) or Fiche. To locate these records, it would take a further 30 minutes and, if any documents were archived, there would be a cost to access these documents. It explained it would of course then need additional time to retrieve and review any additional records located.

The Commissioner's view

32. The Commissioner is satisfied that determining whether the information is held would exceed the appropriate limit.
33. The Commissioner is satisfied that even if it took the Council 80 minutes to review each of the 111 children records, to determine whether the information is held, this would still greatly exceed the appropriate cost and time limit.
34. The Council has clearly demonstrated to the Commissioner that it would be required to review a large amount of information and even doing this still may not confirm definitively whether the requested information is held.
35. The Commissioner has therefore concluded that determining whether any of the requested information was held would exceed the cost limit and so the Council was entitled to rely on section 12(2) of FOIA to

refuse to confirm or deny whether it held information within the scope of the request.

Procedural matters

Section 16 – advice and assistance

36. Section 16 of FOIA requires public authorities to provide reasonable advice and assistance to those making, or wishing to make, information requests.
37. When a public authority refuses a request because the cost of compliance exceeds the appropriate limit, it should explain, to the requester, how they could refine their request such that it would fall within that limit. In rare cases, it will be appropriate for the public authority to explain to the requester why their request cannot be meaningfully refined.
38. In this case, the Council does not appear to have provided any advice and assistance to the complainant – or explained why it is unable to do so.
39. However, in response to the Commissioner's investigation, the Council advised that due to the specific nature of the request and the report in question, even if the scope was refined, the work required to determine if the information was held would still likely exceed the cost limit. For this reason, the Council advised it was unable to provide any meaningful advice and assistance to support the complainant.
40. The Commissioner is therefore satisfied that, although the Council did not provide any advice and assistances to the complainant, it has now met its section 16 obligations by explaining why providing meaningful advice and assistance was not possible.

Other matters

41. The Commissioner would like to take this opportunity to remind the Council that when it is conducting an internal review and determines it needs to change its position on a matter, it needs to clearly state whether it is seeking to rely on an exemption, or confirm it does not hold the requested information.
42. In this case, the Council advised it was no longer seeking to rely on section 40(2), but failed to outline the further exemption of section

12(2), simply stating that "it is not possible" to provide the requested information.

Right of appeal

43. 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

44. 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.
45. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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