

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 October 2024

Public Authority: Suffolk County Council
Address: Endeavour House
8 Russell Road
Ipswich
Suffolk
IP1 2BX

Decision (including any steps ordered)

1. The complainant requested information about child and adult social care complaints, and monitoring related to specified complaints. Ultimately, Suffolk County Council (the 'Council') provided some information and said that it could not provide the remainder on the grounds of cost, citing section 12(1) of FOIA.
2. The Commissioner's decision is that the Council has properly relied on section 12(1) of FOIA for the reasons set out in this notice. He also finds that the Council complied with its advice and assistance obligations in accordance with section 16 of FOIA.
3. No steps are required as a result of this notice.

Background

4. During the Commissioner's investigation into the complainant's initial request, it became apparent that there were an additional two related requests which the complainant had submitted to the Council.
5. The original request that the complainant initially complained about was submitted to the Council on 9 April 2024. Subsequently, whilst her complaint about this request was awaiting allocation to a case officer to investigate, that request evolved.

6. The complainant had requested section 16 of FOIA advice and assistance from the Council on 28 June 2024, as to how she could reframe her original request with a view to bringing it below the cost limit. This led to the complainant being assisted by one of the Council's officers at a meeting in how to rephrase her three requests in order to best elicit the information she was seeking. The Commissioner understands that, following her meeting with the Council's officer, the requests were reworded with the complainant's agreement.
7. For simplicity, they are all being considered in this one notice.

Requests and responses

Request 1

8. On 9 April 2024, the complainant wrote to the Council and requested information in the following terms:

"With reference to Statutory guidance "Getting the Best from Complaints" point 3.8.7, please could you provide evidence of the monitoring, implementation and success of agreed outcomes from:

 1. Children's social care complaints
For complaint outcomes agreed within the last 2 years from today's [sic] date.
 2. Adults social care complaints
For complaint outcomes agreed within the last 2 years from today's [sic] date."
9. The Council responded on 24 April 2024. It said it was unable to respond to the request on the basis of section 12(1) (cost of compliance) of FOIA.
10. The complainant requested an internal review on 24 April 2024. This included :

"I have been advised by customer rights that they monitor the outcomes of all the complaints to ensure that they are followed and there is also Law that states "3.8.7 The Adjudicating Officer should ensure that any recommendations contained in the response are implemented. The Complaints Manager should monitor implementation and report to the Director on what action has been taken on a regular basis." - Getting the best out of

complaints Social Care Complaints and Representations for Children, Young People and Others.^{1'}

11. In addition, the complainant said:

"...I am not looking for a copy of every response but the data that customer rights records in its monitoring of the outcomes from the complaints and the analysis from that data eg successful/happening/completed/not on track etc. The format of this is likely to be however they record that data to ensure that action is being taken from the recommendation. I do not need to see the outcome from every complaint as I agree this would be too costly and not relevant to what I need".

12. Following its internal review the Council wrote to the complainant on 13 May 2024. Its explanation included:

"When the Customer Rights team spoke about tracking complaint outcomes, this does not refer to any actions agreed as part of a complaint response. The outcome refers to whether the complaint was upheld, partially upheld or not upheld. Whilst the Customer Rights Team may support services with implementation and learning, the responsibility for monitoring and implementing the outcome of any agreed actions sits with the team the complaint was raised against.

Our response stands as we would need to open every complaint case and read the response to identify any agreed actions. With 1150 cases this alone would exceed the 18 hour limit imposed on FOI response preparation. The service would then need to open each case record to assess what actions have been completed and any outcomes."

Request 2

13. The following re-worded request was submitted on or around 1 July 2024:

¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/273895/getting_the_best_from_complaints.pdf#:~:text=Getting%20the%20Best%20from%20Complaints%20provides%20guidance%20for%20local%20authorities#:~:text=Getting%20the%20Best%20from%20Complaints%20provides%20guidance%20for%20local%20authorities

“What procedures are in place to monitor the outcomes from complaints and what actions and monitoring is/has been carried out over the last 2 years (From April 9th 2024) to ensure that recommendations from complaints are implemented within:

- a. Childrens social care
- b. Adults social care

and how is this recorded to monitor success - please provide copies of that monitoring?”

Request 3

14. The following re-worded request was submitted on or around 1 July 2024:

“What actions and monitoring is/has been carried out over the last 2 years (From 9th April 2024) to ensure that recommendations from complaints raised through the corporate complaints policy to family services regarding SEND [Special Educational Needs and Disability] to ensure that recommendations made are implemented and how is this recorded to monitor success - please provide copies of that monitoring.”

15. The Council responded to Requests 2 and 3 on 1 August 2024. In relation to **Request 2**, the Council now provided some explanatory details about the complaints process and associated URLs for both parts (a) and (b) of the request. In regards to “**and how is this recorded to monitor success - please provide copies of that monitoring**”, the Council again provided some context detail, but maintained that section 12(1) applied, advising:

“Over the last two years there have been in excess of 1150 complaints made. To locate the monitoring information of these complaints would take us approximately 10 minutes per complaint. This is due to having to search the complaint file as well as identify the individuals involved and ask them to search their files and documents and then extract the relevant information that fell within the scope of your request. Based on these calculations it would take us in excess of 191 hours to fulfil this part of your request and exceed the cost limit of £450 (191 hours x £25 = £4775.00) allowed under the Freedom of Information Act 2000 and therefore be exempt from disclosure under Section 12.”

16. For **Request 3**, the Council provided some explanatory information about the complaints and monitoring process, together with the relevant URLs.

Scope of the case

17. The complainant originally contacted the Commissioner on 17 May 2024 to complain about the way her request for information had been handled.
18. The Commissioner invested some time in trying to resolve the complainant's concerns informally at the start of his investigation. During this time, it became apparent that the Council had provided a further response on 1 August 2024 to all three reworded requests, two of which the complainant told the Commissioner she still had concerns about. The relevant reworded requests under consideration in this notice are as above.
19. The Commissioner is not aware that any internal reviews have been carried out in relation to the reworded requests. As explained, the requests evolved after the original complaint made to him by the complainant and prior to the start of his investigation. The Commissioner has exercised discretion to consider these two requests without an internal review having been completed.
20. The complainant remained dissatisfied with the Council's handling of her **Requests 2** and **3**.
21. During August and September 2024, the Commissioner relayed the complainant's various concerns and queries about **Requests 2** and **3** to the Council, and responses were exchanged. He has not reproduced those exchanges here in order to confine this notice only to the remaining FOIA concerns, but is aware that both the Council and the complainant have complete written records of those further exchanges.
22. During the investigation, the complainant told the Commissioner that:

"It is important that complaints are learnt from and that outcomes that councils often spend alot [sic] of money reaching (through complaint investigations) are implemented and this is the information that I wish to see."
23. Given the exchanges and additional questions posed about the requests, it has not been straightforward to identify the remaining FOIA concerns over which the Commissioner has a remit to reach a decision. From his review of the case correspondence, the Commissioner recognises that

the complainant has expressed some concern over the Council's reliance on section 12 of FOIA cited for **Request 2**, although her main concern is about what she considers to be the Council's "poor record keeping" in relation to the statutory guidance 'Getting the Best from Complaints'.

24. The Council has explained that:

"'Getting the Best from Complaints' is statutory guidance, not law and does not apply to corporate complaints.

The Local Authority is content that it has the suitable mechanisms in place to fulfil its duties under the relevant statutory complaint guidance, and can evidence learning from individual complaints, when necessary but cannot do this for the volume of complaints captured in this request as the information is not stored centrally."

25. The Commissioner has no remit over this statutory guidance, which is guidance on local authority social care complaints and representations for children, young people and others. It follows that the Commissioner cannot make an FOIA finding about a matter over which he has no remit. He would suggest that the complainant considers contacting the Local Government Ombudsman should she consider that the Council is not complying with its statutory legal duties and obligations in regards to these complaints; however, he would caveat this by including his view that statutory guidance exists to assist local authorities by providing clear instructions on how specific legislation should be interpreted and applied.
26. The Commissioner is mindful of the Section 46 Code of Practice² on records management which governs information rights. He has commented further on this in the 'Other matters' part of this notice.
27. For clarity, irrespective of the legal status of the 'Getting the Best from Complaints' statutory guidance, the Commissioner cannot compel the Council to comply with it because he has no remit over this matter. He can only consider whether or not it is possible to obtain the requested monitoring information, contained within the complaints records held by the Council, within the cost limit proscribed by FOIA.

² <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/section-46-code-of-practice-records->

28. Therefore, in this case, the Commissioner has considered whether the Council was entitled to rely on section 12(1) of FOIA for part of **Request 2** (see paragraph 13 above).

Reasons for decision

Section 12 – Cost of compliance exceeds appropriate limit

29. Section 12(1) 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.
30. When considering whether section 12(1) applies, the authority can only take into account certain costs, as set out in The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Regulations'). These are:
- (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.
31. In accordance with the Regulations, the applicable cost limit in this case is £450. As the cost of complying with a request must be calculated at the rate of £25 per hour, section 12(1) effectively imposes a time limit of 18 hours for the Council. This represents the estimated cost of one person spending the equivalent of 2.5 working days locating, retrieving, and extracting the information.
32. Section 12 of FOIA makes it clear that a public authority only has to estimate whether the cost of complying would exceed the appropriate limit. It is not required to provide a precise calculation. The task for the Commissioner here is to reach a conclusion as to whether the cost estimate made by the Council was reasonable; in other words whether it estimated reasonably that the cost of compliance with the request would exceed the limit of £450, that section 12(1) therefore applied and that it was not obliged to comply with the request.
33. The Council advised that its actions learning from complaints but the monitoring of this is not recorded in one location. It explained that:

“When a complaint is received action points from the complaint outcome are provided to the relevant service area for them to implement to help prevent the issue from arising again. The service areas are then responsible for monitoring and ensuring that the action points are adhered to. In order for us to provide copies of the monitoring information, we would need to access each individual complaint file, alongside every individual who was involved in the complaint would have to be searched manually to identify any relevant information.”

34. The Council also explained that over the last two years more than 1150 complaints were made to Childrens Services. It said whilst reports on the number of complaints can be run, these do not include actions or outcomes of the actions made as a result of the complaint. It said that actions and outcomes are stored in free text areas of the complaints as well as in systems used by CYP [Children and Young People] and that it would require an employee to manually search information on each separate complaint.
35. The Council estimated that would take approximately 10 minutes per complaint to locate the requested monitoring information for these complaints. It explained that this is due to having to search the complaint file, as well as identifying the individuals involved and asking them to search their files and documents, and then extracting the relevant information in scope of the request.
36. The Council said, based on these calculations, it would take in excess of 191 hours to fulfil this part of the request and exceed the cost limit of £450 (191 hours x £25 = £4775.00) allowed under section 12 of FOIA.
37. The complainant did not submit any specific arguments as to why she believes section 12(1) of FOIA has been incorrectly applied to part of Request 2. Instead, her concerns centered on the whether the Council is keeping the monitoring records as she deems it should be.
38. Having considered the rationale provided, the Commissioner finds that this cost estimate is entirely reasonable. The Commissioner further notes that, the total time significantly exceeds the cost limit of 18 hours and £450 proscribed by FOIA.

Conclusion

39. In determining whether the Council has correctly applied section 12 of FOIA in this case, the Commissioner has considered the rationale provided.

40. The Commissioner accepts that the Council has reasonably estimated that the cost of complying with part of **Request 2** would exceed the appropriate limit. It follows that the Commissioner finds that section 12(1) has been correctly applied to part of **Request 2**.

Section 16 – advice and assistance

41. Section 16 of FOIA requires public authorities to provide reasonable advice and assistance to those making or wishing to make requests for information.
42. The Section 45 FOIA Code of Practice (the 'Code')³ states that, where a public authority is relying on section 12 to refuse a request, it should help the requester to refine their request within the cost limit.
43. In this case, the Council's original response to **Request 2** (on 24 April 2024) included:

"Whilst we are unable to provide you with the exact information you have requested if you are happy to accept broad examples of the kind of learning taken from each process we should be able to provide you with these."

44. The Commissioner also acknowledges the Council's efforts to assist the complainant in this case. It met with her in person and helped her reword her requests (with her agreement) to give her the best chance of securing the information she was seeking.
45. Having considered the available evidence, the Commissioner is satisfied that the Council offered reasonable advice and assistance. He therefore finds that it complied with its section 16 of FOIA obligations.

Other matters

46. The Commissioner acknowledges the Council's attempts and time invested to address the complainant's supplementary questions during his investigation.
 47. The Section 46 Code of Practice exists to help public authorities to establish and maintain a good standard of record keeping and
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³https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf

information management. This enables a public authority to act quickly in identifying and retrieving information that may be requested. It also helps it to comply with its duties under FOIA, the EIR and the UK General Data Protection Regulations (UK GDPR), amongst other legislation.

48. Poor records management can expose a public authority to the risk of complaints under FOIA when you it is unable to either locate the information it holds or provide it promptly.
49. In this case, the Commissioner has no reason to doubt that the requested actions/outcomes monitoring information is held by the Council. It is the fact that this information is not held in a central location that has resulted in the Council being unable to provide the requested information, as it exceeds the cost limit in section 12(1) of FOIA.
50. Whilst acknowledging the time it would take, the Commissioner would ask the Council to consider whether it is necessary and/or feasible to set up a central record of such outcomes moving forward.

Right of appeal

51. 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

52. 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.
53. 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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