

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

### **Decision notice**

**Date:** 15 November 2024

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

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

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1. The complainant has requested a copy of the Council's SEND good practice guide. Suffolk County Council ("the Council") refused the request, citing section 12 of the FOIA.
2. The Commissioner's decision is that the Council is not entitled to rely on section 12 of the FOIA to refuse the request.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
  - Issue a fresh response to the request that does not rely on section 12.
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 19 April 2024, the complainant wrote to the Council and requested information in the following terms:

"Please provide a copy of your 'SEND Good Practice Guide' (as mentioned on the Suffolk Local Offer website under 'you said, we did, 2023')"

6. The Council responded on 24 April 2024. It stated that it was not able to provide the information within the 18 hour limit provided in the FOIA, but provided a table listing the various subject areas covered by the guide.
7. The Council maintained this position at internal review and cited section 12 (cost limits) of the FOIA, although it did provide screenshots of each chapter's overview.

### **Reasons for decision**

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8. 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 doing so would exceed the appropriate limit.
9. 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 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.
10. 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.
11. 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. 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 the cost of complying with the request.

12. Section 12 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 the disclosure of the information.
13. 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.
14. The Council has explained to the Commissioner that the requested information is not in the form of a single document. It is a series of internal webpages, documents, videos, and links to external pages. The information is not stored in any other form, and the only way to extract the information would be through manually saving each page and downloading the content of links and videos.
15. The Council confirmed it undertook a sampling exercise to determine a fair estimate of the time needed. It stated taking a screenshot of the homepage and saving it took approximately one minute, while the links, videos and documents took 20 minutes to extract and save. It advised there were a further 25 pages, each containing an average of an additional ten links, videos or documents. It estimated it would take approximately 25 hours to complete this, therefore exceeding the limit set by FOIA.
16. The Commissioner queried these figures and asked the Council to provide further details, as based on his understanding, these figures would mean it would take approximately 20 minutes per page, for a total of approximately ten hours and 25 minutes.
17. The Council stated this is not the total of all the pages in the guide. It could not provide an estimate of the number of pages in the guide or a site map to indicate how much information is held.

18. The Upper Tribunal has previously found public authorities must produce an estimate to rely on section 12.<sup>1</sup> This estimate must be “sensible, realistic, and supported by cogent evidence.”<sup>2</sup>
19. The Commissioner acknowledges the Council has attempted to provide an estimate in its response to this request. However, he is not persuaded this estimate is supported by cogent evidence, and therefore finds the Council is not entitled to rely on section 12 as a basis for refusing the request.

## **Other matters**

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20. Section one of the Section 46 Code of Practice states:

“Information can become a liability if it is not properly managed. Authorities should know what information they hold, why they hold it, how sensitive it is, and how it should be managed.”

21. The Commissioner wishes to note his concern in this case that the Council couldn't identify how much information it held in scope of the request, despite the request naming a guide that the Council stated it had produced.
22. He refers the Council to the Section 46 Code of Practice and reminds it of its obligations under the Code.

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<sup>1</sup> [Reuben Kirkham v Information Commissioner \[2018\] UKUT 126 \(AAC\) 11 April 2018](#)

<sup>2</sup> [Randall v Information Commissioner and Medicines and Healthcare Products Regulatory Agency | \[2007\] UKIT EA 2007 0004 | United Kingdom Information Tribunal including the National Security Appeals Panel | Judgment | Law | CaseMine](#)

## Right of appeal

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23. 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)

24. 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.
25. 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**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**