

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 February 2025

Public Authority: London Borough of Richmond upon Thames
Address: Civic Centre
44 York Street
Twickenham
TW1 3BZ

Decision (including any steps ordered)

1. The complainant has requested information relating to the London Community Equipment Consortium Framework Agreement. The London Borough of Richmond ("The Council") relied on section 12 of FOIA (cost of compliance) to refuse the request.
2. The Commissioner's decision is that the Council has not sufficiently demonstrated that section 12(1) is engaged.
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(1) of FOIA.
4. The public authority must take these steps within 30 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

5. On 30 April 2024, the complainant wrote to the Council and requested information in the following terms:

"It is clear from the paragraphs I quoted earlier that timely and full delivery was regarded at the time of the awarding of the contract as a Key Performance Indicator and that it needed to be closely monitored. I should be grateful, therefore, if you would provide me with an analysis of how far this and other Key Performance Indicators have been met so far during the contract's applicability, together with details of what penalties or other remedial actions have been taken "to ensure the provider is delivering on their commitments."

6. The Council responded on 3 June 2024. It refused to provide the requested information citing section 12(1) - cost of compliance.
7. Following an internal review the Council wrote to the complainant on 1 July 2024. It maintained its original position and refused to comply with the request on the basis of section 12(1) of FOIA.

Background information

8. The 'London Community Equipment Consortium Framework Agreement'¹ is a contract for the supply of community equipment to London-based health and social care services. The agreement was awarded to Nottingham Rehab Limited (trading as NRS Healthcare) (NRS) in April 2023 for a five-year period, with the option to extend for a further two years. The total value of the contract is estimated to be £360 million.
9. The contract covers several London Boroughs including the London Borough of Richmond, with Westminster City Council as the lead authority.

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<https://committees.westminster.gov.uk/documents/s48639/WCC%20Community%20Equipment%20Tender%20KDR.pdf>

Scope of the case

10. The complainant contacted the Commissioner on 30 July 2024 to complain about the way their request for information had been handled. The complainant explained that they disagree with the Council's position that the information cannot be provided at reasonable cost.
11. The Commissioner considers that the scope of his investigation is to determine whether the Council were entitled to refuse the request under section 12(1) - cost of compliance.

Reasons for decision

Section 12 - cost of compliance

12. 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').
13. Section 12(2) of the FOIA states that subsection (1) does not exempt the public authority from the obligation to comply with paragraph (a) of section 1(1) (the duty to inform an applicant whether it holds information of the description specified in the request) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit. The Council relied on section 12(1) in this case.
14. The appropriate limit is set in the Fees Regulations 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 is £450 which is based on one officer's time of 18 hours at a cost of £25 per hour.
15. 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:
 - determining whether the information is held;
 - locating the information, or a document containing it;
 - retrieving the information, or a document containing it; and
 - extracting the information from a document containing it.

16. 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 to determine whether the public authority made a reasonable estimate of the cost of complying with the request.
17. 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.
18. 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.

Would the cost of compliance exceed the appropriate limit?

19. As is the practice in a case in which the public authority has informed the complainant that it holds the information, the Commissioner asked the Council to provide a detailed estimate of the time/cost taken to provide the information falling within the scope of this request.
20. The Commissioner also asked if the Council had carried out a sampling exercise to determine the estimate.
21. In its submissions to the Commissioner the Council said:

"In order to answer (name redacted) request, Richmond Council's Adult Services department would need to do an analysis of monthly activity spreadsheets consisting of 4,000 lines of data each. For each sheet we could easily spend 2 hours trying to get the information x 12 months = 24 hours. Therefore, the Council considers the information being requested to be exempt from disclosure under Section 12 of the Freedom of Information Act 2000."
22. The Council further explained that the information is held electronically in excel spreadsheets.
23. Section 16 places a duty on a public authority to provide advice and assistance to someone making an information request, including helping an applicant refine a request so that it can be answered within the appropriate costs limit. Therefore, the Commissioner asked the Council clarify the nature of any advice and assistance given to the applicant in

this case and if no advice and assistance was provided please explain why not.

24. The Council explained that "the information requested is not publicly available nor is it held by the Council in larger documents, such as agendas or minutes, which could be disclosed." Therefore, "Unfortunately Adult Services are unable to advise / assist (name redacted) to refine his request."

25. In its response the Council asked the Commissioner to note that:

"data held was provided to the Council by one of our providers, NRS Healthcare, and we are currently in the process of trying to resolve issues with the accuracy and reliability of the data being provided to us by NRS."

26. In their request for an internal review the complainant said:

"I have good reason to believe that the information I am seeking will be found in the agenda's, supporting documents and minutes of the London community equipment consortium board meetings. It is my understanding that the consortium has been dealing with NRS healthcare only since 1 April 2022/3 and that meetings have occurred at roughly 2 monthly intervals, with Westminster acting as the lead authority. This implies that the amount of data is relatively very small, accessible through a single portal by a single search and thus easy to provide."

27. During the course of the investigation the Commissioner contacted the complainant to request clarification of a document referred to in correspondence with Westminster City Council. The document is a report² cited on Westminster City Council's website which details the contract terms.

28. In correspondence with the Council the complainant has referred to the report, specifically point 6.6 which says:

"Critical KPIs which trigger clearly defined remedial measures, performance indicators and commitments are being developed which are proportionate and SMART. Flexibility on KPI targets in year 1 will allow the market to adapt and settle and will be set from year 2 at the level we require the service to be delivered for the remainder of the contract. The remedial approach will be linked to the critical KPI's (no more than 4

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<https://committees.westminster.gov.uk/documents/s48639/WCC%20Community%20Equipment%20Tender%20KDR.pdf>

or 5). Failure to meet these will result in a ~Red RAG status, which will trigger the requirement for an action plan to rectify and improve along with defined timescales. If Red status remains for 2 quarters, then we would reserve the right to utilise the contingency measures in the contract."

29. The Commissioner has considered the Council's submissions and is of the opinion that the Council has provided cursory and insufficient arguments to support their position that the information requested cannot be provided at reasonable cost.
30. The Commissioner is not satisfied with the Council's response regarding the sampling exercise and is of the opinion that the Council's position is based on predictions rather than an actual sampling exercise that has been carried out.
31. Given how the requested information is held, the Commissioner also considers that the Council has failed to provide sufficient explanation as to why it would take the length of time the Council has suggested to retrieve the information.
32. Furthermore the Commissioner has considered the complainant's argument that it appears unreasonable for the Council to hold information which cannot be interpreted and cannot derive meaningful information from it. In view of the information cited on Westminster City Council's website, as referred to above. It appears reasonable to consider the Council's involved, including London Borough of Richmond Upon Thames, are collating this information for the purposes of assessing the performance of the contract. Therefore, it follows that the data would be held in a format that allows it to be accessed.
33. Therefore, for the reasons set out above, the Commissioner has decided that the Council has failed to provide sufficient "cogent evidence" to support its application of section 12(1). As the Commissioner is not persuaded by the Council's arguments, he finds that it is not entitled to rely on section 12(1) of FOIA as its basis for refusing to comply with the complainant's request.
34. The Council is now required to issue a fresh response to the complainant's request as per paragraph 3.

Other matters

35. Whilst the Commissioner has concluded that section 12(1) does not apply, the step specified at paragraph 4 above does not necessarily require it to disclose the requested information.

36. The Council is required to reconsider the request and issue a fresh response which does not rely on section 12(1) of FOIA. This fresh response could be in the form of a refusal notice, for example if exemptions contained in Part II of FOIA are considered to apply.

Right of appeal

37. 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

38. 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.
39. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Jonathan Slee
Senior Case Officer
Information Commissioner's Office
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