

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

### **Decision notice**

**Date:** 4 April 2025

**Public Authority:** London Borough of Waltham Forest  
**Address:** Waltham Forest Town Hall  
Forest Road  
Walthamstow  
E17 4JF

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

---

1. The complainant requested, from the London Borough of Waltham Forest (the council), information about the cost of sending children to secure children's homes, over five years. The council originally provided average weekly costs, for the years in question. During the Commissioner's investigation, the council disclosed further information, namely total costs for each year. However, the council is withholding other information, under section 40(2) of FOIA (personal information), and has said that the last part of the request "could not be answered".
2. The Commissioner's decision, based on the information available to him, is that the withheld 'small numbers' (ie the number of children sent to secure children's homes in 2019-2020, 2020-2021 and 2023-2024) don't constitute personal data, so section 40(2) of FOIA isn't engaged for that information; he also finds that the council has breached section 16 (duty to provide advice and assistance) because the last part of the request was capable of more than one objective reading and the council failed to seek clarification from the complainant.
3. He requires the council to take the following steps to ensure compliance with the legislation.

- For the years 2019-2020, 2020-2021 and 2023-2024, disclose the number of children sent to secure children's homes per year (based on the "source data" in 'Appendix 1' of the council's correspondence of 5 February 2025).
  - Seek clarification from the complainant regarding the last part of the request ("Please provide information to show variations in the costs per child as they varied according to the home they were sent to") and, once the complainant has provided clarification, issue a fresh response to that part of the request in accordance with the council's obligations under FOIA.
4. The council 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 FOIA and may be dealt with as a contempt of court.

### **Request and response**

---

5. On 2 April 2024, the complainant wrote to the council and requested information in the following terms:

"Cost of sending children to secure children's homes

Please provide information to show the cost to [the council] of sending children to secure children's homes over the past five years, giving figures for each year. Please provide information to show many children were sent to such homes per year over the past five years. Please provide information to show variations in the costs per child as they varied according to the home they were sent to".

6. The council responded on 1 May 2024. It provided average costs for 2019-2020, 2020-2021 and 2023-2024 (later explaining they were weekly averages). It stated '0' for number of children in 2021-2022 and 2022-2023, with no costs for those two years. However, for 2019-2020, 2020-2021 and 2023-2024 the council also said it was withholding the number of children and details of providers (secure children's homes) under section 40(2), and "costings at provider level" under section 43(2) (commercial interests).

7. Following an internal review the council wrote to the complainant on 13 May 2024. It upheld its original response to the complainant's request.

### **Scope of the case**

---

8. The complainant contacted the Commissioner on 20 May 2024 to complain about the way their request for information had been handled.
9. The Commissioner's understanding, based on the complainant's comments to the council (eg their internal review request of 2 May 2024) and their correspondence with the Commissioner, is that the complainant was disputing both of the exemptions cited by the council.
10. The Commissioner requested submissions from the council. In its response, the council stated that it was no longer relying on section 43(2), but continued to rely on section 40(2).
11. The Commissioner then requested further, more detailed reasoning from the council on section 40(2).
12. The council provided further submissions to the Commissioner, but also disclosed more information to the complainant (19 February 2025).
13. This comprised a table, showing total 'weeks' (ie placement durations) and costs per financial year since 2019-2020 as well as 'adjusted' totals (both 'weeks' and costs), where the placements and costs spanned more than one financial year.
14. The table appeared to address the information requested in the first part of the request.
15. However the council maintained its reliance on section 40(2) to withhold other information. The council has also indicated to the Commissioner that its position regarding the last part of the request ("Please provide information to show variations in the costs per child as they varied according to the home they were sent to") is that it can't be answered.
16. The Commissioner asked the complainant whether they were satisfied with the council's further disclosure.
17. The complainant remains unhappy. They don't think the council's revised response of 19 February 2025 answers their request. They said

“there is no useful information about costs per child, which is what I was trying to discover”, and they don’t see how disclosure of numbers of children “would breach confidentiality”. They said “I cannot see there is actually any threat to the confidentiality of any children in this request”.

18. Those comments indicate that the complainant’s ICO complaint focuses on the last two parts of the request.
19. The Commissioner has considered whether the last part of the request was clear, and comments that both parties have since made about it.
20. The Commissioner considers that the scope of this case is to decide whether the council is correct to rely on section 40(2) to refuse to disclose the number of children sent to secure children’s homes in the years 2019-2020, 2020-2021 and 2023-2024; and to assess the council’s handling of the last part of the request and whether the council complied with section 16.

## **Reasons for decision**

---

### **Number of children per year and section 40(2)**

21. Section 40(2) of FOIA provides that information is exempt from disclosure if it’s the personal data of an individual other than the requester and disclosure would contravene any of the data protection principles.
22. The Commissioner directs readers to his ‘decision notice support materials’ on section 40<sup>1</sup>, rather than repeat his guidance in detail here.
23. As that guidance explains, the first step for the Commissioner is to determine whether the withheld information constitutes personal data.
24. In this instance, the withheld information comprises the number of children sent to secure children’s homes in 2019-2020, 2020-2021 and 2023-2024.

---

<sup>1</sup> <https://ico.org.uk/action-weve-taken/decision-notice-support-materials/>

25. The council has already told the complainant that no children were sent to secure children's homes in 2021-2022 and 2022-2023 (although it's worth noting that, as the council's further disclosure of 19 February 2025 shows, some placements spanned more than one financial year).
26. The council has explained to the complainant that "For each of the years requested, the numbers were less than five", and that the children "could become identifiable" if such small numbers were disclosed.
27. In its submissions to the Commissioner, the council said "children could become identifiable due to the small numbers involved and in consideration of information already in the public domain", although the council didn't elaborate in detail on the "information already in the public domain".
28. It also said:

"... Disclosing such specific low numbers can inadvertently lead to the identification of these vulnerable children, exposing them to potential risks such as stigmatization, bullying ... There is information available in the wider community such as newspaper articles, social media postings or prior knowledge of incarceration dates ... any individual with malicious intent ... can combine these factors and through process of deduction, identify certain individuals ...".
29. As noted in paragraph 17, the complainant doesn't consider that disclosure of the numbers of children, although small, would make the children identifiable.
30. The Commissioner, conscious of his role as regulator of data protection law as well as FOIA, has considered the matter carefully.
31. He considers that the council's submissions on this issue are relatively generic – the council hasn't sufficiently explained how disclosure of the numbers of children sent to secure children's homes in 2019-2020, 2020-2021 and 2023-2024 would identify the children in question, with a degree of certainty.
32. The Commissioner considers that, if a person were able to identify the child or children involved, it would be because they already knew that the child or children in question had been sent to a secure children's home. Such a person would learn nothing from the withheld information that they didn't already know.

33. Based on the information available to him, the Commissioner has concluded that the withheld small numbers for 2019-2020, 2020-2021 and 2023-2024 don't constitute personal data, and that section 40(2) of FOIA isn't engaged for that information.

### **Cost per child and section 16**

34. Section 16 of FOIA provides that a public authority has a duty to give advice and assistance, so far as it would be reasonable to expect the public authority to do so, to persons who propose to make or have made requests for information.
35. As the Commissioner's guidance<sup>2</sup> explains, when a public authority receives an unclear or ambiguous FOIA request, its section 16 duty to provide advice and assistance will be triggered, and it should ask the requester for clarification. It should do so as soon as possible, but within 20 working days of the request.
36. The last part of the request of 2 April 2024 was "Please provide information to show variations in the costs per child as they varied according to the home they were sent to". The Commissioner has considered whether that part of the request was clear; as part of that, he's had regard to comments made by both parties concerning that part of the request.
37. The Commissioner considers that it wasn't clear what the complainant meant by "variations". For example it could refer to variations between children at the same home, variations between children at different homes, variations in the cost between financial years or even within a financial year.
38. Furthermore, the complainant requested information to show variations in the costs per child as they varied "according to the home they were sent to". The council (perhaps understandably, in view of those particular words) thought the complainant was seeking information about the homes too. It withheld "costings at provider level" under section 43(2), in its original response. The complainant, in the complaint

---

<sup>2</sup> <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/interpreting-and-clarifying-requests/#FOIA>

of 20 May 2024, indicated that they weren't seeking any information about the homes themselves. However, this additional clarification wasn't available at the time of the request and still doesn't definitively identify the information being sought.

39. The complainant has told the Commissioner "My intention was to discover the annual cost of sending children to secure children's homes per child".
40. However the council, in its submissions to the Commissioner, has explained that "costs vary according to the child's needs"; that cost "depends on the basic rate which is different for each provider along with the needs of the child"; and that this part of the request "could not be answered as the fee is not determined solely on reserving a place for the child".
41. The council and complainant appear to have different interpretations of the last part of the request. This only emphasises to the Commissioner that this part of the request was capable of more than one objective reading. Even at this stage, the Commissioner is still not clear what the correct objective reading of this part of the request is.
42. The Commissioner considers that the last part of the request was capable of more than one objective reading, and that the council had a duty to seek clarification.
43. Given the subject of the request (the cost of sending children to secure children's homes) and the potential sensitivity of information within its scope, it was particularly important for the council to ensure that it had an accurate understanding of the information that it was being asked to disclose.
44. As the council failed to establish the correct objective reading of the last part of the request, the Commissioner finds that it breached section 16.

## Right of appeal

---

45. 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)

46. 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.
47. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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