

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

### **Decision notice**

**Date:** 28 October 2014

**Public Authority:** Liverpool City Council

**Address:** Municipal Buildings  
Dale Street  
Liverpool  
Merseyside  
L2 2DH

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

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1. The complainant has requested information about the procedures and policies followed by Liverpool City Council for placing children for adoption during the period of 1944 onwards. The complainant has also requested the procedures and policies the Council followed in respect of the child's religion at birth and those followed where the child's adoption placement broke down.
2. The Commissioner's decision is that Liverpool City Council is entitled to rely on section 12 of the FOIA. It is likely, on the balance of probabilities, that complying with the request would exceed the appropriate limit.
3. The Commissioner also finds that the Council is under no obligation under section 13 of the FOIA to offer the complainant the opportunity to pay for the information he seeks, having determined to apply section 12.
4. The Commissioner does not require the Council to take any further action in this matter.
5. 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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6. On 18 March 2014, the complainant wrote to Liverpool City Council ("the Council") and requested information in the following terms:
  - "1. Copies of the Adoption Law from the time of 1944, also local authority procedures and policy for placing children for adoption for the same time period.
  2. What were the policies and procedures for reconnecting siblings placed under the care of the local authority, when an adoption placement broke down and that child placed back under the care of the local authority?
  3. When a child was adopted, what policies and procedures had to be adhered to regarding that child's religion?"
7. The Council responded to the complainant's request on 11 April. The Council issued a refusal notice under section 17 of the FOIA which advised the complainant that his request for information was refused in reliance of section 12 of the FOIA.
8. The Council informed the complainant that it would have to search its records dating back 75 years to locate and collate the information he had requested. The Council stated that, 'a sample search would be required to identify if there were any references to the specific policies and procedures of the time and decisions made in relation to siblings and religion on these records as the actual policies are not available'. The Council advised the complainant that the time likely to be needed to undertake the sampling exercise would be around 30 hours. This estimate was based on a sample size of 60 files which would require 30 minutes per file of officer time to locate and retrieve any relevant information.
9. On 6 May the complainant asked the Council to conduct an internal review of its response to his request for information. In the complainant's letter he asserted that the Council should be able to narrow down its search for the requested information by focussing on its files dating from around 1944. The complainant asked why the Council had chosen a sample size of 60 files and why the Council had failed to explain why the policies and procedures are not available, other than by searching for references to them in the actual files.
10. The Council concluded its internal review and wrote to the complainant on 2 June. The Council upheld its decision in respect of its application of section 12 and advised the complainant that it held relevant information in its adoption files. It confirmed that the relevant files were filed

alphabetically and not by date. Since the focus of the complainant's request was the procedures and policies for placing children for adoption, and having examined a selection of files to determine whether they contained the information being sought, the Council advised the complainant that it would need to check files from the specified timeframe and this would potentially involve checking files which were not relevant to the terms of his request.

## **Scope of the case**

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11. The complainant contacted the Commissioner on 17 June 2014 to complain about the way his request for information had been handled. He was specifically concerned about the failure of the Council to provide the information he seeks.
12. The complainant also complained about the Council's internal review. He pointed out that this review was conducted by the same officer of the Council who had made the Council's initial response to his request.
13. During a telephone conversation with the Commissioner about his complaint, the complainant advised the Commissioner that he would be prepared to pay for the information to be provided, providing that any fee was reasonable.
14. The scope of this notice is whether the Council is entitled to rely on the provisions of section 12 of the FOIA to refuse to supply the information sought by the complainant and whether the Council should have invited the complainant to pay for the information, under section 13(1), having determined the complying with his request would exceed the appropriate limit.
15. The complaints raised by complainant about the Council's internal review is dealt with in the 'other matters' section of this notice.

## **Reasons for decision**

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16. The Council has relied on the provisions of section 12 of the FOIA to refuse to provide information the information sought by the complainant.
17. Section 12 of the FOIA states that a public authority is not obliged to comply with a request for information if it estimates that the cost of complying would exceed the appropriate cost limit. The cost limit is set out in section 3(2) of the Freedom of Information and Data Protection

(Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations") and is currently set at £450.

18. The £450 limit must be calculated at the rate of £25 per hour. This effectively provides a time limit of 18 work hours. Additionally regulation 4(3) the Fees Regulations only allow for four activities which can be considered in relation to complying with the requests. These activities are:
  - Determining whether the public authority holds the information requested;
  - Locating the information or documents containing the information;
  - Retrieving such information or documents; and
  - Extracting the information from a document or other information source.
19. The cost of redacting relevant but exempt information may not be taken into consideration for the purpose of calculating the appropriate limit.
20. The Council concedes that there is a small possibility that it may hold some recorded information which is relevant to the complainant's request. This information, if held, would be in the Council's archive stores where individual adoption files are stored alphabetically. The Council has not been able to identify any other sources where the information sought by the complainant might be found.
21. Notwithstanding the above, the Council believes that there is a greater likelihood that no information is in fact held.
22. The Council has pointed out the complainant's request covers a significantly long period of time – approximately 70 years, and consequently it would need to search through a very large number of files to find the information he seeks.
23. The Council determined that the likelihood of finding relevant information was too slight to justify it undertaking a sampling exercise, but it did provide the Commissioner with a hypothetical estimate of how long such a sampling exercise would take. The Council estimates that it would take in excess of 30 hours to sample just 60 of its files. This is based on the known complexity of its adoption files and their variation in size.
24. Over and above the 30 hours needed to search through its files, the Council has also highlighted the additional time needed to retrieve them from its archived store.

25. The Council has not provided the Commissioner with a compelling breakdown of the time it would take to provide the complainant with the information he seeks. It has based its representation on a hypothetical sample but has not undertaken even a partial sampling exercise.
26. Nevertheless the Commissioner has considered the information provided by the Council in response to his enquiry and in respect of the information it provided to the complainant by way of its internal review.
27. The Commissioner considers that the information is plausible to the extent that he can accept, on the balance of probabilities, that to comply with the complainant's request the Council would exceed the appropriate limit.
28. Allowing for only 15 minutes to search each sampled file would require the Council to spend 15 hours to locate any relevant information. Bearing in mind that this is merely to search a sample of its files and that still further time can be added in respect of the files' retrieval, the Commissioner considers that the Council's estimate is reasonable and would result in the appropriate limit being exceeded. Consequently the Commissioner has determined that the Council has appropriately relied on section 12 of the FOIA to refuse to provide any information it may hold in respect of the complainant's request.

### **Section 13**

29. Under section 13(1) of the FOIA a public authority is able to charge an applicant for communicating information to him in circumstances where complying with his request would exceed the appropriate limit.
30. In this case the complainant informed the Commissioner of his willingness to pay for the information if the charge was reasonable.
31. The Commissioner reflected the complainant's offer to the Council
32. The Council confirmed to the Commissioner that it did not consider issuing a fees notice to the complainant. It advised the Commissioner that the timeframes and amount of work needed to search through its records over the timeframe of the request, for any references to specific policies and procedures, would exceed the appropriate limit.
33. The provisions of section 13(1) are both permissive and discretionary. Section 31(1) permits the Council to make a charge and gives the Council discretion to do so.
34. Here, the Commissioner finds that Council is entitled to exercise its discretion and determine not to offer the complainant the opportunity to pay for the information, had the Council be willing to search for it.

## **Other matters**

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### **The Council's internal review**

35. Paragraph 40 of the Code of Practice issued under section 45 of the FOIA states;

"Where the complaint concerns a request for information under the general rights of access, the review should be undertaken by someone senior to the person who took the original decision, where this is reasonably practicable. The public authority should in any event undertake a full re-evaluation of the case, taking into account the matters raised by the investigation of the complaint."

36. In this case the Council has conceded that the internal review was carried out by the same person who initially responded to the complainant's request.
37. The Commissioner has raised his concern about this matter with the Council. He accepts that, at the time of the complainant made his request, the Council had only one officer with sufficient experience to deal with the complainant's request for an internal review.
38. Since raising his concerns with the Council, it has advised the Commissioner that two members of staff have now completed external training courses so that they might undertake internal reviews of cases in the future.
39. The Commissioner is reassured by the actions taken by the Council to prevent or reduce the occurrence of this situation in the future.

## Right of appeal

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40. 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: 0300 1234504

Fax: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

41. 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.
42. 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 .....**

**Andrew White**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**