ico. Information Commissioner's Office

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: **20 September 2019**

Public Authority: **Durham County Council**
Address: **County Hall**
Durham
DH1 5UL

Decision (including any steps ordered)

1. The complainant requested from Durham County Council (the Council) information in relation to its child social care, including statistics, policies and procedures in place. The Council refused the request, relying on section 12(1) of the FOIA, because it estimated that the cost of compliance would exceed the appropriate limit.

2. The Commissioner's decision is that the Council was correct to aggregate the requests submitted by the complainant for the purpose of its cost estimate. The Commissioner also found that the Council was entitled to refuse the requests under section 12(1) of the FOIA and that the advice and assistance it provided was reasonable in the circumstances.

3. The Commissioner does not require any further steps.

Background information

4. The complainant had previously submitted a related request to the Council, comprised of 14 parts.[1] The Council registered this request

[1] The wording of this request has been reproduced and attached to this decision notice – see Annex 1

under reference number FOI20187575RD. Some parts of this request included a number of queries.

5. The Council refused to comply with the complainant's request stating that the cost of complying would exceed the appropriate limit. The Council cited section 12 as the basis for its refusal.

6. The Council advised the complainant to consider refining her request by narrowing down the scope of the request.

Request and response

7. On 3 December 2018, the complainant wrote to the Council and submitted five information requests. These requests effectively replicated the information request that was previously refused, but divided it into five separate requests.[2]

8. The Council responded on 5 December 2018 refusing to comply with the requests for information. It cited section 12(1) of the FOIA as a basis for this refusal, claiming that responding to these requests would exceed the appropriate limit of costs.

9. Remaining dissatisfied with the response received, the complainant wrote back to the Council on 5 December 2015, presenting arguments why she believed that the Council should have complied with the requests.

10. The Council treated the complainant's correspondence of 5 December 2018 as a request for an internal review and provided the complainant with its outcome on 7 January 2019. The Council did not change its original position.

Scope of the case

11. The complainant initially contacted the Commissioner on 8 January 2019 to complain about the way her request for information had been handled.

12. The Commissioner considers the scope of this investigation to be whether the Council was entitled to aggregate the requests for the purpose of its cost estimate and whether it was entitled to rely on section 12(1) to refuse to comply with the requests.

[2] The wording of these requests have been reproduced and attached to this decision notice – see Annex 2

13. She will also consider whether the Council has fulfilled its obligations under section 16 of the Act.

Reasons for decision

Aggregation of related requests

14. Section 12(4) of the Act states:

    "The Secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority –

    (a) by one person, or

    (b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,

    the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them."

15. Regulation 5 of The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the Fees Regulations) states:

    "(1) In circumstances in which this regulation applies, where two or more requests for information to which section 1(1) of the 2000 Act would, apart from the appropriate limit, to any extent apply, are made to a public authority –

    (a) by one person, or

    (b) by different persons who appear to the public authority to be acting in concern or in pursuance of a campaign,

    the estimated cost of complying with any of the requests is to be taken to be the total costs which may be taken into account by the authority, under regulation 4, of complying with all of them.

    (2) This regulation applies in circumstances in which –

    (a) the two or more requests referred to in paragraph (1) relate, to any extent, to the same or similar information, and

    (b) those requests are received by the public authority within any period of sixty consecutive working days.

(3) In this regulation, "working day" means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom."

16. In this case, the requests under consideration were submitted by the same person on the same date, fulfilling the criteria at regulations 5(1)(a) and 5(2)(b).

17. The Commissioner must now consider whether the five requests relate to the same or similar information. The Commissioner's guidance on requests where the cost of compliance exceeds the appropriate limit[3], in paragraphs 44 and45, in relation to aggregating requests states:

    "Regulation 5(2) of the Fees Regulations requires that the requests which are to be aggregated relate "to any extent" to the same or similar information. This is quite a wide test but public authorities should still ensure that the requests meet this requirement.

    A public authority needs to consider each case on its own facts but requests are likely to relate to the same or similar information where, for example, the requestor has expressly linked the requests, or where there is an overarching theme or common thread running between the requests in terms of the nature of the information that has been requested."

18. The Council stated that it consulted the Commissioner's guidance when it decided to aggregate the requests and explained how it considered the criteria for aggregation provided in that guidance were fulfilled. The Council argued that "*the complainant had split the original request into what was described as five manageable chunks."*

19. The Commissioner also notes that in one of her items of correspondence, the complainant admitted that following the refusal of the previous request *"I went and split the requests and submitted 5 different requests hoping that at least one of them would qualify."*

20. Therefore, the Commissioner is satisfied that there is an overarching theme to the three requests in that they are all requesting information regarding statistics, policies and procedures in place in relation to the Council's child social care. Consequently, the Commissioner finds that the Council was entitled under the Fees Regulations to aggregate the five requests.

[3] https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

Section 12(1) – cost of compliance exceeds the appropriate limit

21. Section 1(1) of the FOIA states that:

    "(1) Any person making a request for information to a public authority is entitled –

    (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

    (b) if that is the case, to have that information communicated to him."

22. Section 12(1) of the FOIA provides that:

    "*Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit."*

23. The appropriate limit in this case is £450, as laid out in section 3(2) of the Fees Regulations. This must be calculated at the rate of £25 per hour, providing an effective time limit of 18 hours' work.

24. In estimating whether complying with a request would exceed the appropriate limit, regulation 4(3) states that an authority can only take into account the costs it reasonably expects to incur in:

    - determining whether it holds the information;
    - 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.

25. 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 decision in the case of *Randall v IC & Medicines and Healthcare Products Regulatory Agency EA/20017/0004*[4], the Commissioner considers that any estimate must be "*sensible, realistic and supported by cogent evidence".*

26. In this case, the Council has presented its arguments which focus on the broadness of the requests and the associated difficulty in locating, retrieving and extracting relevant information.

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[4] http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i136/Randall.pdf Paragraph 12

27. As part of its response to the Commissioner's investigation letter, the Council provided the Commissioner with a table setting out the activities it would have to undertake in order to respond to all five requests that the complainant submitted.

28. In relation to whether a sampling exercise had been undertaken to determine the time estimates the Council stated that it had done so in relation to Request 1 and Request 2. The Council also argued that based on the way they were formulated Request 1 and Request 2 would have to be considered in conjunction with each other.

29. The Council reiterated that the complainant's Request 1 and Request 2 of 3 December 2018 asked for a list of all Policy and Procedure documents followed by the Council's Children and Young People's Services and Safeguarding functions including supporting functions such as performance monitoring and personnel recruitment. The complainant also asked that the list should contain details in relation to month and year of implementation and the version number for each document.

30. The Council explained that it does not hold a comprehensive list of policies and procedures requested. It stated that *"There are known to be 453 policies and procedures for the service however this figure does not include Corporate documents or fringe/supporting documents."*

31. The Council maintained that from the reading of Request 1 in its entirety, it is considered to cover the period between 1997 and 2018. The Council asserted that *"To answer this request, a search of all systems, including paper records, would need to be carried out to locate the documents. Each document need then to be checked to answer the request to detail whether the policy is the current version and date it came into force."*

32. The Council stated that the total number of documents to be considered *"is expected to be in excess of 500 policies, each one would need to be checked to see when it became operational."*

33. As part of its exercise in order to calculate the time necessary to comply with the requests, the Council examined a number of documents which included different manuals, such as: *Manual on Accessing the Supported Lodgings Service*, *Manual on Application by Foster Carers, Manual on Case File Administration and Quality Check Procedure (Children), Manual on Children's Homes Financial Procedures and Manual on Daily Living for Young People.* The Council also examined *Early Permanence Planning Strategy* and *One Point Operating Procedures & Practitioners Handbook.* Copies of the above documents were provided to the Commissioner, attached to the Council's response.

34. The Council stated that it took approximately 30 minutes for each document to be identified, located, retrieved and to extract the requested details. Based on this, it would take the Council around 226.5 hours to comply with Request 1 and Request 2, which would clearly exceed the appropriate limit as provided by the Fee Regulations.

The Commissioner's conclusion

35. The Commissioner considers the Council's position to be both plausible and persuasive. The Commissioner notes that the complexity of the requests made by the complainant, which are made up of numerous individual enquiries, strongly suggests that they would be extremely time consuming to comply with.

36. In order to extract and compile the information requested by the complainant, the Commissioner accepts that the Council would need to individually examine a very large number of documents and that it estimated reasonably that the time required to do so would be far in excess of the 18 hours limit set by the Fees Regulations.

37. Therefore, it is the Commissioner's view that the Council was entitled to rely on section 12(1) of the FOIA to refuse to comply with the complainant's requests.

Section 16 – advice and assistance

38. The Commissioner asked the Council if it had considered its responsibilities under section 16(1) of the FOIA. Section 16(1) 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.

39. The Council explained that on a number of occasions, in the course of considering the request and in the outcome of its internal review, it advised the complainant to consider reviewing and limiting the scope of her requests in order to bring them within the costs limit.

40. The Commissioner notes that, as explained in paragraphs 4-6 of this decision notice, the information requests followed advice from the Council included in the refusal notice of a previous request.

41. The Commissioner also notes that in its refusal notice of the five requests submitted on 3 December 2018, the complainant was advice by the Council which stated:

"To help you focus your request, we recommend that you reconsider your requests to decide what specific information you want as you are asking for large amounts of documents of different types across a

service. If you have an issue you want to address you may wish to consider the recorded information that will support your case."

42. In light of the above, the Commissioner has concluded that the Council complied with section 16 of the FOIA in its response to this request for information.

Right of appeal

43. 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@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

44. 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.

45. 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 ……

Ben Tomes
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
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SK9 5AF

Annex 1 – Information Request FOI20187575RD of 24 October 2018

"All the Operating Procedures of Durham County Council Children's Services Social Care.

A Durham County Council Organogram (all the top structures of the hierarchy) that shows the governing structure highlighting the branch that Children's Services Social Care reports to.

A detailed hierarchy of the DCC Children's Services Social Care (Social Workers, Family Workers, etc) right up to the top.

The On-the-Job Training Programme that a newly recruited Social Worker undergoes.

The job adverts that were placed when DCC was seeking to recruit an incumbent for each position.

Copies of all the procedures that detail the process followed by DCC from the point a Social Services referral is received, all the way through the Multiagency Decision Process, Strategy Meeting, Child Protection Conference, and court proceedings. Any flowcharts (or other diagrammatic representations) of the process would be appreciated.

A copy of Durham County Council Safeguarding Procedures.

DCC Procedures that describe how and why a Section 47 Enquiry is initiated.

A statement of the Key Result Areas of DCC Children's Services Social Care.

Procedures that describe how the performance of DCC Children's Services Social Care monitored.

Statistics that show performance of DCC Children's Services Social Care has been monitored of the past 20 years (January 1998 to date).

To cover the past 20 years (January 1998 to date), Yearly Statistics that show the following:

> *** The total number of referrals expressing concerns around the care of children that have been received by DCC Children's Services Social Care*
>
> *** How the referrals have been distributed among the categories that are used to classify the ways that children can be at risk of harm (year-on-year statistics)*

*** The stage at which each one of the referrals got resolved/terminated (year-on-year statistics, statistics to be separated by category)*

*** How many of the referrals [under the category "Neglect"] were classified as 'Medical Neglect' (i.e. cases where it was said that children's medical needs were not being met). Specific statistics of the stages at which the 'Medical Neglect' cases were resolved. How many made it to court? How many court cases did DCC win, how many of the cases did the DCC lose?*

How much money does the DCC typically spend on a court case where the child was being neglected?

How many manhours does the DCC spend attending to a court case?

DCC means Durham County Council."

Annex 2 – Five Information Requests of 3 December 2018

Information Request 1

I hereby request a list of the Policy and Procedure documents followed by Durham County Council's Children and Young People's Service (CYPS) and Safeguarding functions.

I would request that the list include all the Policy and Operating Procedure documents to cover the operations of all Workers, (including Managers and Directors) in the CYPS hierarchy.

I also request that documents that cover fringe functions and supporting functions (such as Performance Monitoring and Personnel Recruitment - these are just examples) be included in the list.

May the list please indicate which version number is the current one for each Policy and Procedure document, and the date (even just stated as month & year) at which that version came into effect.

Information Request 2

I hereby request electronic copies of the Policy and Procedure documents followed by Durham County Council's Children and Young People's Service (CYPS) and Safeguarding functions.

I would request that the Policy and Operating Procedure documents supplied cover the operations of all Workers, (including Managers and Directors) in the CYPS hierarchy.

I also request that documents that cover fringe functions and supporting functions (such as performance monitoring and personnel recruitment - these are just examples) be included in the list.

For document versions which came into effect in 2018, I request that the previous version to the current one also be included in the request. If a list that clearly identifies which procedures these are would be provided, that would be very helpful.

Templates of all forms, checklists and reports associated with each procedure document used should please be included.

Information Request 3

I hereby request a copy of the Job Descriptions of all persons employed by Durham County Council Children's Services Social Care (to please include Managers and Directors).

Where a Job Description has been revised (i.e. to come up with a different version) in 2018, please supply me a copy of the superseded Job Description.

May you please also supply me with a copy of the latest job advert that was placed to recruit a person for each position (i.e. just one advert for each job title).

Where a Job Description has been revised (i.e. to come up with a different version) in 2018, please supply me a copy of the superseded Job Description.

May I request a statement of the On-the-job Training Programme that a newly-recruited Family worker undergoes.

I also request a statement of the On-the-job Training Programme that a newly-recruited Social worker undergoes.

Where any On-the-Job Training Programme has been revised (i.e. to come up with a different version) in 2018, please supply me a copy of the superseded Job Description.

Information Request 4

I hereby request that you please supply me with all statistical data generated, reported and presented by Durham County Council's Social Care and Safeguarding functions to cover the period January 2007 to date.

[I understand that the reports may be structured according to the financial year rather than the calendar year, so I will allow for the period covered to be adjusted accordingly... maybe to start in April 2007?]

I also request that you please specifically state (for each year), how many referrals were (or could have been) classified as 'Medical Neglect', and how many of these resulted in Child Protection Plans.

For this second part of my information request, I understand that you may not necessarily have been separating out 'Medical Neglect' cases from the larger 'Neglect' category each year, and if that is the case, I would request 'Medical Neglect' detail for just one year, just one: 2016 (or as adjusted according to the financial year).

Information Request 5

I hereby request that you please supply me with statistical data generated, reported and presented by Durham County Council's Social Care and Safeguarding functions to cover the period January 1997 to December 2006.

[I understand that the reports may be structured according to the financial year rather than the calendar year, so I will allow for the period covered to be adjusted so that period would likely end up being "from April 1997 to March 2007"

I also request that you please specifically state (for each year), how many referrals were (or could have been) classified as 'Medical Neglect', and how many of these resulted in Child Protection Plans.

For this second part of my information request, I understand that you may not necessarily have been separating out 'Medical Neglect' cases from the larger 'Neglect' category each year, and if that is the case, I would request 'Medical Neglect' detail for just one year, just one: 2005 (or as adjusted according to the financial year).