

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 April 2022

Public Authority: The London Borough of Southwark
Address: 160 Tooley Street
London
SE1 2QH

Decision (including any steps ordered)

1. The complainant requested information from the London Borough of Southwark ("the Council") relating to strategy meetings that took place during a specific time period. The Council denied holding some information within the scope of the request and refused the remainder citing section 12(1) of the FOIA.
2. The Commissioner's decision is that the Council was entitled to refuse to comply with the request in accordance with section 12(1) of the FOIA.
3. However, he finds that the Council failed to provide reasonable advice and assistance and therefore failed to meet its obligations under section 16(1) of the FOIA.
4. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Provide the complainant with advice and assistance to help him submit a request falling within the appropriate limit.
5. The Council 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

6. On 19 July 2021, the complainant wrote to the Council and requested information in the following terms:

"Southwark council has said they follow the London Children Protection Procedures. One of which is the following:

3.4.11

The strategy meeting / discussion must involve LA children's social care, the police and relevant health professionals. The referring agency may need to be included, as may other agencies which are likely to include the child's nursery / school.

3.4.12

Professionals participating in strategy meetings / discussions must have all their agency's information relating to the child to be able to contribute it to the meeting / discussion, and must be sufficiently senior to make decisions on behalf of their agencies.

Through this request I am asking for particular statistics going back 1yr from 1st of July 2020 to 30th May 2021 on strategy discussions/meeting notes classed as the kind of meeting needed to determine whether there would be a Section 47 investigation, regardless of whether it was decided to have one or not. I would like the statistics as a numerical number as a tally of:

1.) The number of strategy meetings that took place in this time frame

2.) The number of strategy meetings that did not invite senior members of one of the following: police, social care and relevant health professionals (in this number please exclude mental health professionals and health visitors as the term used here is used such as designated safeguarding-leads doctors, paediatricians, hospital staff. As I don't know Southwark's position on this terminology, if you disagree, please add your disagreement as a disclaimer and still do not include mental health professionals and health visitors)

3.) The number of Child protection (CP) medicals that were decided for in the strategy discussion/meeting that did not write the timing of the CP medicals.

I would ask you not to give any contextual information. I am also asking you to read and verify the attendance record according to the above three requests and to read and verify the number of CP medicals only. I am not asking you to spend a number of hours puzzling over cases as I only want a statistic, not personal information included.

Furthermore, could you please confirm as part of this request whether the council's understanding of health professional as referred to in the London Children Protection Procedures 3.4.11 excluded or includes mental health professionals and health visitors [sic]."

7. On the same date, the complainant wrote to the Council again to ask for the following information:

"I am sorry to follow up. Could you please let me know in a separate tally, the number of strategy meetings where those who were invited, did not show, but were absent or gave apologies."

8. On 30 July 2021, the complainant wrote to the Council to clarify their request. They provided the Council with the following clarification:

"Thank you very much for letting me know you received my request. I wish to help specify that when I referred to this:

"I would ask you not to give any contextual information. I am also asking you to read and verify the attendance record according to the above three requests and to read and verify the number of CP medicals only. I am not asking you to spend a number of hours puzzling over cases as I only want a statistic, not personal information included."

That I was very clear I am asking you to determine my request from reading only the sections of documents that pertain to my request. Therefore obtaining information from Strategy Discussion/Meeting notes only. From those notes, only reading and checking attendance to compile the statistics (if you don't have it already) from the "Professionals involved in strategy discussion" box under sub-heading "Details of strategy discussion". And even then only verifying through reading the boxes "Designation"; "Agency" and "Attended?". This should total to reading less than 10 words per Strategy Discussion/Meeting Notes on attendance.

To determine and check off whether a CP medical had the timing written into the strategy discussion/meeting notes, you should only read where it would be found. That is at the very end of the

those notes in "Analysis and Conclusion". This should only be a few lines long to read, but of course I would expect a few variants."

9. The Council responded on 16 August 2021 and provided the complainant with some information within the scope of their request but refused to provide the remainder citing section 12(1) of the FOIA.
10. On 16 August 2021, the complainant wrote to the Council and refined their request for information. The complainant's requested information in the following terms:

"I can fully understand your position and there was always indication that it might be the case, although I could only make a guess as to what could be possible. I noticed you did not send recommendations on issues to think about, in order to change my request to better fit with the timings you have like most councils do. However I can try narrow my request. I can tell from your reply, that it might be better to narrow the period of time. I can request instead to narrow my request to be records from 1st July 2020 until October 31st 2020. That is 4 months, a reduction of two thirds of the time and documents.

Furthermore, to avoid doubt on the matter just in case of human error and misunderstanding, can you confirm that of these 2123, I am asking you to look at particular parts of one document for each case of these 2123 in order to compile the statistics and no other, the request now narrows in number to a great extent.

Normally, Southwark's process allows me to narrow the scope of my request first, before finishing. However it is not possible to tell from the email whether this has been factored in. If not, could you take this email as a request for an internal review that factors in my narrowing of the scope of the request."

11. The Council responded to the complainant's refined request on 1 September 2021. The Council denied holding information in relation to question 2 of the request and refused the remainder of the request citing section 12 of the FOIA.
12. On 1 September 2021 the complainant wrote to the Council to complain about its response to their refined request. The Council considered the complainant's correspondence to be a request for an internal review.
13. Following an internal review the Council wrote to the complainant on 28 October 2021. It stated that it had provided the complainant with information in response to questions 1 and 4 of the request but

maintained its reliance on section 12 of the FOIA to refuse questions 2, 3 and 5 of the request.

Scope of the case

14. The complainant contacted the Commissioner on 29 October 2021 to complain about the way their refined request for information had been handled.
15. The Commissioner considers the scope of this case to be to determine if the Council has correctly cited section 12(1) of the FOIA in response to the refined request.

Reasons for decision

Section 12 – cost of compliance

16. 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 cost limit.
17. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations') at £450 for public authorities such as the Council.
18. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 18 hours for the Council.
19. 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.

20. 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/20017/00041, 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.
21. 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 the FOIA to consider whether there is a public interest in the disclosure of the information.
22. Where a public authority claims that section 12 of the 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 the FOIA.

The Council's position

23. As is the practice in a case in which the public authority has cited the cost limit under section 12 of the FOIA, the Commissioner asked the Council to provide a detailed explanation of its estimate of the time and cost of responding to the request.
24. In its submissions to the Commissioner, the Council confirmed that it does not hold information relating to question 2 of the request. It maintained its reliance on section 12(1) of the FOIA to refuse the remainder of the request and offered an explanation for how it had calculated that the request exceeded the appropriate limit.
25. The Council explained to the Commissioner that it has not included the time it has taken to determine whether it held information within the scope of the request and locate that information when calculating the cost of complying with the request.
26. The Council explained that whilst the requested information is held electronically, its electronic filing system does not allow it to search for information in the level of detail the complainant has requested. The Council stated that only certain elements of the system can be searched quickly. Detailed information about meetings are captured in free text boxes which cannot be easily searched. Therefore, in order to retrieve and extract the requested information, the Council would have to manually review files.

27. The Council explained that in order to retrieve and extract the requested information, it would have to review the meeting files of 732 strategy meetings which took place during the time period specified in the request.
28. The Council calculated that if it were to take 2 minutes to review each meeting file it would take approximately 24 hours to retrieve and extract the requested information (732 files x 2 minutes = 24 hours). When calculating at a rate of £25 per hour, the Council estimated that the cost of complying with the request would be £610 and therefore exceed the appropriate limit (£25 x 24 hours = £610).
29. Whilst the Council has calculated the cost of complying with the request using an estimate of 2 minutes to review each file, the Council explained that this is a conservative estimate. The Council considers that it may take between 2 and 30 minutes to retrieve and extract the requested information from each file. Therefore, the actual cost of complying with the request may be much higher than estimated.

The Commissioner's position

30. The Commissioner considers the Council's estimate of 24 hours to retrieve and extract the requested information to be reasonable.
31. Whilst the Commissioner recognises that the Council's estimate of 24 hours to retrieve and extract the requested information is not considerably higher than the appropriate limit, the Commissioner accepts that the cost of complying with the request still exceeds the appropriate limit.
32. The Commissioner's decision is that the Council estimated reasonably that the cost of complying with the request would exceed the appropriate limit. Therefore, the Council was correct to apply section 12(1) of the FOIA to the request.

Section 16(1) – the duty to provide advice and assistance

33. Section 16(1) of the FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45

code of practice¹ in providing advice and assistance, it will have complied with section 16(1).

34. In both its initial response of 1 September 2021 and its internal review response of 28 October 2021, the Council did not advise the complainant that they could refine their request to bring it within the cost limit. Furthermore, the Council did not provide the complainant with suggestions on how to narrow the scope of their request.
35. In its submissions to the Commissioner, the Council stated that it considers that it provided the complainant with adequate advice and assistance in its response of 1 September 2021 to the request. The Council did not elaborate any further.
36. The Commissioner considers that the Council could have provided the complainant with advice on how to narrow the scope of this refined request. For example, the Council could have suggested to the complainant that they reduce the time period of their request even further from 4 months to 3 months or less.
37. The Commissioner's decision is that the Council did not provide the complainant with adequate advice and assistance and therefore breached section 16(1) of the FOIA.

¹ <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

Right of appeal

38. 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

39. 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.
40. 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

Michael Lea
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF