

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 March 2023

Public Authority: London Borough of Hackney

Address: 49 Ainsworth Road

London

E9 7JE

Decision (including any steps ordered)

1. The complainant requested information from the London Borough of Hackney ("the Council") relating to the borough's employment of social workers. The Council refused to comply with the request citing section 12 (cost limit) of 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 FOIA.
 - The Commissioner also finds that the Council did not comply with its obligations under section 16 to offer advice and assistance.
 - The Council failed to respond within 20 working days and therefore breached section 10(1) of FOIA.
3. The Commissioner now requires the Council to provide the complainant with advice and assistance to help them submit a request falling within the appropriate limit, or state that it is not possible to refine the request in such a way as to fall within the appropriate limit.
4. 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 FOIA and may be dealt with as a contempt of court.

Request and response

5. On 16 January 2022, the complainant made the following request for information to the Council:

"I require the following information:

1. Information about ethnicity and about countries of origin of those successful candidates who mainly obtained their expertise outside the UK and in other areas Social Work than Adult Social Care. In case for any reason, you are unable to name the candidates ethnic group or their country of origin, please be as specific as possible about their race and about the region of their origin, such as Northern of Europe, South of Asia etc. Please provide the relevant Information for the time period between 01/01/2020 and 31/05/2021.

2. Please provide me with the information whether there is a requirement at the council to video and audio record interviews carried out via MS Teams and to audio record telephone conversations which members of staff carried out during their working time. In case this requirement does not exist, please tell me whether there is a possibility that some of these interviews and telephone conversations are video/ audio recorded."

6. The Council responded on 28 February 2022. It initially stated it did not hold the information requested in part one, advising:

"We do not have the breakdown of stats, specifically for candidates who gained their experience outside of the UK. When a candidate applies for a role, we do not have a tick box system to see if the candidate had gained their experience outside of the UK. However, we do require candidates to state if they have the right to work in the UK. Additionally, it is not mandatory for candidates to complete the diversity and equality questionnaire."

7. At internal review, the Council revised its initial application of Section 1 of FOIA, stating if the information was held, this would be exempt under Section 40(2) of FOIA.

During the course of the Commissioner's investigation the Council confirmed that it was now seeking to rely on Section 12 in respect of part of the request.

10. The Commissioner considers the scope of this case to be to determine if the Council has correctly cited section 12(1) of FOIA in response to the request. The Commissioner has also considered whether the Council met its obligation to offer advice and assistance under section 16 of FOIA.

Reasons for decision

Section 12 – cost of compliance

11. This reasoning covers whether the Council holds the information the complainant has requested and whether section 12 of FOIA applies.
12. Under section 1(1) of FOIA a public authority must confirm whether or not it holds information an applicant has requested. If it is held and is not exempt information, the authority must communicate the information to the applicant.
13. However, under section 12(1) of FOIA a public authority can refuse to comply with section 1(1) if the cost of complying would exceed the appropriate limit of £450 (18 hours work at £25 per hour). Section 16(1) obliges a public authority relying on section 12 to offer an applicant advice and assistance to refine their request if it is possible to do so.
14. The Council considers that the cost of complying with this request would exceed the appropriate limit under FOIA. In its submissions to the ICO, it has stated:

“...57 roles were offered that potentially fall within the scope of the applicant's request... To determine if a candidate has recorded whether or not they had obtained their experience, partly or wholly outside of the UK, the Council would first have to undertake a manual exercise to identify each candidate who was offered the role during the period relating to the applicant's request. Following this, it would have to review the entire application form in an attempt to locate this specific piece of information.

A further manual exercise to determine whether it could match, in some way, the ethnicity information it holds for each candidate identified as having gained their experience mainly outside of the UK would also be required.

As a conservative estimate, it would take 35 minutes to identify, locate, retrieve and interrogate each form in this manner. Additionally, the attempt to match the ethnicity forms with the applicants is a significant undertaking for which the Council has no proven method and is unable to determine the additional time that this exercise would take.”

15. The Commissioner considers that the Council estimated reasonably that it would take more than the 18 hours limit to respond to the request.

The Council was therefore correct to apply section 12(1) of FOIA to the complainant's request.

Section 16 – advice and assistance

16. The Commissioner notes that the Council did not provide advice and assistance to the complainant. The Commissioner is therefore satisfied that the Council did not meet its obligations under section 16 of FOIA. The Council must now provide appropriate advice and assistance to the requester.

Procedural matters

17. Section 10 of FOIA requires that a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.
18. The complainant made their request for information on 16 January 2022. The Council provided the complainant with its response on 28 February 2022. The Commissioner finds that the Council has breached section 10(1) by failing to respond to the request within 20 working days.

Right of appeal

19. 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

20. 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.
21. 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

Joanna Marshall
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF