



**Strategy and Partnerships
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Contact: Judith Gower
My ref: JG/KH 136
Your ref:
Date: 10th September 2010

(by email only)

Dear Mr Paulley

Reference Number: FOI/ACS/06/10/2227

I have been informed that you have requested a review of the above Freedom of Information request made by you on 25 June 2010. Hertfordshire County Council did not respond to the request until you requested the review.

I am a solicitor employed by Hertfordshire County Council and I have reviewed your request under our internal review procedures. In carrying out such a review I have had sight of your original request and our response.

Review Request 1:

I understand your original request was as follows:

“1) Please supply information relating to the incidence of attempts by care providers to evict residents in care homes - that is, care providers giving residents notice to leave or otherwise attempting to get them to leave without their involvement in the decision or against their wishes.

Please indicate the number of cases you are aware of for the last 3 years, also indicating if and how your council responded to the situation, and what was the ultimate result of the situation, i.e. if and how the situation was resolved.



2) Please provide me with the number of instances your council is aware of where either CQC or local authority safeguarding procedures have substantiated allegations of institutional abuse of a Leonard Cheshire social care service user over the past 3 years.

Further, please provide anonymised information on the alleged behaviour by Leonard Cheshire resulting in the conclusion.”

Under Section 1 of the Freedom of Information Act 2000 (FOI) a public authority has the duty to inform an applicant whether or not they hold the information requested. This is known as the duty to confirm or deny.

Under Section 10(1) a public authority must inform the applicant in writing whether it holds the information requested and if so, communicate that information to the applicant, promptly, but not later than 20 working days after receipt of the request.

This was not done.

Your request was received by the Customer Services Centre and forwarded to the appropriate person. However due to the availability of staff the matter was not dealt with in the appropriate time frame.

The procedure for handling Adult Care Services Freedom of Information requests will be reviewed.

Conclusion for Review Request 1

On reviewing your request for information under the Freedom of Information Act I consider that Hertfordshire County Council did not comply with the requirements of the Act.

Hertfordshire County Council apologise for not responding within the specified time frame.

I understand that you were supplied with an answer to your request on 3 September 2010.

Review Request 2:

On 5 September you wrote again

“I wish to appeal the first part, where you say that providing information on people in care homes given notice or subjected to attempted eviction without their will over the last 3 years would be too expensive to provide.

I dispute this on two grounds.



1) The request has been refused on the basis that it would take too long to extract information from records. I dispute that this would be necessary.

Where attempts are made to evict residents in care homes against their will, it is an event that is likely to escalate and to stick in peoples' minds. Indeed it tends to make the news, for example: <http://news.bbc.co.uk/1/hi/6599155.stm>

A simple query to the head of adult social services for each area would therefore likely yield the required results without a manual search. For the avoidance of doubt, the results of such an informal information gathering exercise would be more than satisfactory to me in answering my question.

To assist in narrowing down my request, I am not interested in cases where homes have closed or changed registration, or where residents are moved on with their agreement or with support of family due to increased needs that the home can't meet. I'm much more interested in "unreasonable" evictions or termination attempts.

2) I have made the same Freedom of Information Request to every council in the country. Whilst not all results are yet in, lots of councils have provided the same information for their area very promptly and without any apparent difficulty."

1) I have spoken to those concerned in responding to your request.

Section 84 of the Freedom of Information Act defines information as information recorded in any form.

The County Council can not use local news stories to supply information under a Freedom of Information Request nor can it use informal "word of mouth" responses from managers within each area as that would not be information that is recorded in any form.

As there is no centralised record holding such information the only reliable method of obtaining the requested information is to look through every file, of which there are approximately 5,000, to find the requested information.

Section 12 of the Freedom of Information Act provides an exemption from a public authority's obligation to comply with a request for information where the cost of compliance is estimated to exceed the appropriate limit.

The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 state that this cost limit is £450 for Hertfordshire County Council (Part 1 of Schedule 1 of the FOIA).

A public authority must still confirm or deny whether it holds the information requested unless the cost of this alone would exceed the appropriate limit.



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.

The four activities are sequential, covering the retrieval process of the information from the County Council's information store, in this case individual files of service users.

An authority can take into account the costs attributable to the time that authority's staff are expected to spend on these activities. Such costs are calculated at £25 per hour per person for all authorities regardless of the actual cost or rate of pay, which means that in the case of Hertfordshire County Council the limit will be exceeded if these activities exceed 18 hours.

Section 12 makes it clear that a public authority does not have to make a precise calculation of the costs of complying with a request. Only an estimate is required. The estimate must, though, be reasonable and can only be based on the four activities listed above.

What amounts to a reasonable estimate can only be considered on a case by case basis. Where a reasonable estimate has been made that the appropriate limit would be exceeded, there is no requirement for a public authority to undertake work up to the limit.

2) I am only able to respond on behalf of Hertfordshire County Council and am unable to comment on freedom of information requests to other councils.

Conclusion for Review Request 2

On reviewing your original request 25 June 2010 and the Council's response on 3 September 2010 fully I am satisfied that Hertfordshire County Council has appropriately applied the Freedom of Information Act 2000.

This now brings the County Council's internal review into the handling of your request for information to an end. However, if you remain dissatisfied you are entitled to ask the Information Commissioner to investigate your complaint. You can write to him at **FOI/EIR Complaints Resolution**, Information Commissioners Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.



Yours sincerely,

Judith Gower
Solicitor