

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 27 July 2009

Public Authority: Wakefield Metropolitan District Council
Address: Town Hall
Wood Street
Wakefield
WF1 2HQ

Summary

The complainant requested two reports undertaken in response to allegations made by whistleblowers into the care practices in certain children's homes in the Wakefield area. Wakefield Metropolitan District Council refused to supply the reports claiming reliance on section 30(2)(a)(iii) with reference to 31(2)(a) to (d) and (j). The Council also indicated that in the alternative it would seek to rely on section 31(1)(g) with respect to 31(2)(a) to (d) and (j). The Commissioner has decided that the neither of the two reports are exempt under section 30(2)(a)(iii) and 31(2)(a). The Commissioner is content that section 31(1)(g) can be applied to both the management investigation report and the NSPCC report with reference to 31(2)(b). The Commissioner finds that the public interest in maintaining the exemption does not outweigh the public interest in disclosure of the information in certain sections of both the NSPCC report and the management investigation report. The Commissioner found that this information should be disclosed with some details of staff names redacted under section 40(2) of the Act. The Council also breached section 17 by issuing an inadequate refusal notice.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. On 30 January 2006, the complainant emailed Wakefield Metropolitan District Council (the "Council") to request the following information:

- “Please provide a copy of a report compiled by the NSPCC last autumn into problems with the running of children’s homes by Wakefield Council...;
 - “Please provide a copy of the report drawn up by Wakefield Council following an internal investigation into concerns raised by whistleblowers on the same issue...;
 - Please provide a copy of any reports produced by West Yorkshire Police on the same issue...; and
 - I would be grateful if Wakefield Council could also say how many times police have been called in to investigate allegations of sexual assault or inappropriate sexual behaviour at children’s homes since the start of 2004.”
3. On 24 February 2006, the Council responded by email and informed the complainant that the information requested in the first two parts of the request was held. However, the complainant was told that the Council was considering the application of two exemptions, which required the application of the public interest test. The Council explained that section 10(3)(a) and (b) of the Act allowed it to extend the 20 working day time limit in order to consider the public interest test and a response could be expected on 11 March 2006. In respect of the police report requested, the Council confirmed to the complainant that the information was not held. In response to the fourth part of the request, the Council claimed that the information was not held in a readily accessible format and that in order to locate, retrieve and extract the information the Council would have to search through many files. It stated that this would result in the request exceeding the appropriate limit and therefore, by virtue of section 12(1) of the Act, the Council was able to refuse this part of the request.
4. The Council emailed the complainant again on 10 March 2006. In relation to the first part of the request, the Council confirmed that it held the NSPCC report. It stated that the NSPCC carried out an investigation on behalf of the Council under section 47 of the Children Act 1989. The Council claimed reliance on the exemption set out in section 30(2)(a)(iii) and (b) of the Act, investigations and proceedings conducted by public authorities. It further explained that information is exempt if it is obtained or recorded by the authority for the purposes of its functions relating to investigations. The investigations must be conducted by the authority for any of the purposes specified in section 31(2) and either by virtue of Her Majesty’s prerogative or by virtue of powers conferred by or under any enactment, and relate to the obtaining of information from confidential sources. The Council claimed that the NSPCC’s investigation was conducted by virtue of section 47 of the Children Act 1989 and that various purposes set out in section 31(2) of the Act applied, namely those in section 31(2)(a) to (d) and (j). In addition, the Council stated the information used to compile the report was obtained from confidential sources.
5. As section 30 is a qualified exemption, the Council considered the public interest test and informed the complainant that the public interest in disclosing the information was outweighed by the public interest in maintaining the exemption.
6. In relation to the second part of the request, the Council informed the complainant that it does hold an internal management investigation report into a whistleblowing letter and that it too was exempt under section 30(2)(a)(iii) and (b)

- of the Act. The Council told the complainant that the report followed an investigation carried out by an investigating officer and was undertaken under the Council's whistleblowing policy which implements the Council's Code of Conduct and ensures adherence to the Public Interest Disclosure Act 1998. As with the NSPCC report the Council claimed that various purposes set out in section 31(2)(a) to (d) and (j) applied and that the report also contained information obtained from confidential sources.
7. The Council again set out its reasoning in respect of the public interest test and again informed the complainant that the public interest in disclosing the information was outweighed by the public interest in maintaining the exemption.
 8. The Council then went on to state that in respect of both reports, it placed alternative reliance on the exemption set out in section 31(1)(g) of the Act, law enforcement. The Council explained that information that is not exempt under section 30 is exempt if its disclosure would, or would be likely to, prejudice the exercise of and of the public authority's functions for any of the purposes specified in section 31(2) and that as stated previously, the Council believed that the purposes as set out in section 31(2)(a) to (d) and (j) apply. In particular they said that the withheld information had been obtained for and used in disciplinary proceedings. It also stated that the same public interest test considerations would apply.
 9. The complainant responded by email on 14 March 2006, questioning whether the reports had actually been used in the disciplinary proceedings and asked the Council to verify what part they took in those proceedings. The Council was also asked to confirm whether the NSPCC report was made available to those staff concerned. The complainant requested that the Council confirm the exact terms of reference and time period covered by the NSPCC report. The complainant also pointed out that the Council had relied on the NSPCC report as evidence that there are no problems at its children's homes and therefore, refusing to disclose the report would be more likely to reduce confidence in the Council's ability to manage its homes. The complainant questioned whether sources were in fact confidential, stating the belief that much of the information was obtained through staff interviews, and informed the Council that redactions to protect the individuals concerned, would be acceptable.
 10. The Council responded in an email (date unknown) further clarifying its position. The Council informed the complainant of the terms of reference of the NSPCC report and said that it formed part of the case against individuals who have been disciplined. It went on to say that although the document had not been released in the disciplinary proceedings it is a related document, the disclosure of which, might impact on those ongoing proceedings. It stated that the conclusions of the investigation had been fed back to the individuals concerned by the NSPCC.
 11. In terms of the management report, the Council informed the complainant that the report fed directly into the case against the individuals and that information regarding the investigation is referred to in detail. Although a separate document, it formed a material part of the disciplinary proceedings. The Council also said that a detailed summary and the conclusions had been disclosed to the

individuals. The Council continued to assert that disclosure of such management reports may prejudice future investigations and the Council's whistleblowing procedure, that such investigations rely on not only the cooperation of those that blow the whistle but also other staff members interviewed as part of the process.

The Investigation

Scope of the case

12. On 7 April 2006, the complainant contacted the Commissioner to complain about the way the request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
 - That the exemptions have been applied too broadly and that the Council should have released more information.
 - The identity of the children should be protected, and information relating to the children should rightfully be withheld through redaction.
 - Information relating to the employees of the home should not be withheld.
 - That publication is clearly in the public interest. It is clearly wrong that a public authority can publicly state that a national and well-respected charity has cleared it of wrongdoing and yet refuse to disclose the content of the report.
 - That the whistleblowers claim that they were sacked because they blew the whistle and for the Council to claim that disclosing the contents of the report would stop others coming forward does not make sense. On the contrary, it is clearly in the public interest to show that the allegations were properly investigated.
13. The Commissioner's investigation has focused on the Council's refusal to disclose the documents requested in parts 1 and 2 of the complainant's request. The complainant has not asked the Commissioner to investigate the Council's response in relation to parts 3 and 4 of his request.

Chronology

14. Regrettably there was a delay of a year before the Commissioner's investigation began. The Commissioner wrote to the Council on 23 April 2007. The Commissioner requested that the Council provide the Commissioner with copies of the information it had exempted, namely the NSPCC report and the management investigation report.
15. The Council replied to the Commissioner's letter on 3 May 2007. The Council supplied the Commissioner with the information he had requested.
16. The Commissioner wrote to the Council on 20 June 2007. The Commissioner asked the Council to provide further arguments to support its reliance on the exemptions claimed to withhold both the Management Investigation Report and the NSPCC report. The Commissioner also asked the Council to provide further

arguments considered both for and against maintaining the exemptions under the public interest test.

17. The Council replied on 15 August 2007 providing the Commissioner with further arguments to support its reliance on the exemption in relation to both reports and provided further arguments in relation to the public interest test.
18. The Commissioner telephoned the Council on 12 September 2007 and asked why he had not been sent copies of the appendices as he had asked for all the relevant information to be sent to him. The Council apologised and promised to send copies straight away. The Commissioner received copies of the appendices on 15 September 2007.

Analysis

Procedural matters

19. The Council first responded to the request in an email dated 24 February 2006. As it did not supply all the information requested, this response constitutes the refusal notice that the Council is obliged to issue to the complainant within 20 working days pursuant to section 17 of the Act. As it was considering qualified exemptions, which would allow it to withhold the information, the Council wished to have more time to consider the public interest test. Section 10(3) of the Act permits an authority a reasonable amount of time in which to do this, but does not absolve the authority of its obligations under section 17.
20. Section 17 requires that when refusing to supply information, a refusal notice should state the exemption(s) that the authority is choosing to rely upon and explain why the exemption applies to the information requested. The Council did not explain which exemptions it was considering, it therefore, issued an inadequate refusal notice in breach of section 17.

Findings of Fact

21. The Council withheld two reports held in relation to allegations made by whistleblowers into the care practices in certain children's homes in the Wakefield area. Both reports were commissioned following concerns raised by six whistleblowers about the management of children's residential units in the Wakefield District:
 - "Report of a management investigation into a whistleblowing letter" along with its appendices (the Management Report);
 - An NSPCC Specialist Investigation Service report and annexes (the NSPCC report)
22. Both reports are being withheld by the Council in their entirety under section 30(2) and in the alternative 31(1).

Exemptions: Section 30 'Investigations and proceedings conducted by public authorities'.

23. Section 30(2)(a)(iii) and (b) of the Act states, that information is exempt if it was obtained or recorded by the authority for the purposes of its functions relating to investigations which are conducted by the authority for any of the purposes specified in section 31(2) and either by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under any enactment, and it relates to the obtaining of information from confidential sources. The purposes specified in section 31(2) which are relevant are (a) to (d) and (j).
24. To engage the exemption the Commissioner must first consider if the information was obtained or recorded for the purposes of an investigation conducted by the Council by or under any enactment and if the information relates to the obtaining of information from confidential sources.

Management investigation report

25. The Council informed the Commissioner that the management investigation report was undertaken under the Council's whistleblowing policy which implements the Council's Code of Conduct and ensures adherence to the Public Interest Disclosure Act 1998. The Council further explained that the Public Interest Disclosure Act 1998 inserts part IV A of the Employment Rights Act 1996 which contains various provisions relation to whistleblowing procedures.
26. When challenged by the Commissioner as to whether the Public Interest Disclosure Act does confer the power to conduct an investigation, the Council replied that it implied an obligation to investigate. The Commissioner agrees with the Council that a sensible and reasonable course of action when disclosures are made under the Public Interest Disclosure Act would be to follow up the allegations and verify their validity. However, to specifically engage the section 30 exemption, the enactment relied upon must explicitly confer the power to conduct an investigation. He cannot therefore, accept that section 30 applies to the management report.

NSPCC report

27. The NSPCC report was undertaken by virtue of the powers conferred on the authority under section 47 of the Children Act 1989. This provision places a duty on a local authority to conduct a formal investigation when a serious child protection incident comes to light. The NSPCC provide a specialist national team to undertake independent investigations into child protection. Where child abuse has been alleged in any institutional setting, it is important for the investigation to be impartial and independent of the organisation's management. Working Together to Safeguard Children (Department of Health, 1999), identifies the NSPCC as an independent investigatory agency that can fulfil this role in partnership with the police.
28. However, the Commissioner does not accept that children can be considered as confidential courses. For the exemption to apply there must be a covert element

to the collection of information that has been provided. In this case the allegations had already been reported and as part of the subsequent investigation the children in question were interviewed. For these reasons the Commissioner does not consider that the information has been obtained from confidential sources and that therefore the exemption is not engaged.

Section 31 'Law enforcement'

29. Section 31 provides that information, which is not exempt by virtue of section 30, is exempt information if its disclosure under this Act would, or would be likely to prejudice (g) the exercise by any public authority of its functions for any of the purposes specified in (2). The Council have specified 31(2)(a) to (d) and (j):
- (a) the purpose of ascertaining whether any person has failed to comply with the law;
 - (b) the purpose of ascertaining whether any person is responsible for any conduct which is improper
 - (c) the purpose of ascertaining whether in circumstances which would justify regulatory action in pursuance of any enactment exist or may arise.
 - (d) the purpose of ascertaining a person's fitness or competence in relation to the management of bodies corporate or in relation to any profession or other activity which he is, or seeks to become, authorised to carry on,
 - (j) the purpose of protecting persons other than persons at work against risk to health or safety arising out of or in connection with the actions of persons at work.
30. The Commissioner accepts that both the NSPCC report and the Management reports fall within the definition of information held by the public authority in relation to one of its functions.
31. Having thoroughly examined the terms of reference for the management report, the Commissioner is content to accept that the Council was exercising its function in order to ascertain whether any person is responsible for any conduct which is improper, which is the purpose set out in section 31(2)(b). The Commissioner is aware that the Council claimed more than one purpose to rely on this exemption. However, he believes that the purpose in section 31(2)(b) is the most appropriate considering the terms of reference, although other purposes claimed may also apply.
32. Similarly the NSPCC report is information held by the Council in the exercise of its functions to ascertain whether any person is responsible for improper conduct, although other purposes claimed under section 31(2) may also apply.
33. The Council have argued, in respect of both reports that disclosure would be likely to prejudice its functions. They state that the reports fed into an ongoing disciplinary process and that disclosure of the reports would have prejudiced the outcome of the proceedings. They also stated that it would be likely to affect both service users and the wider public's confidence in the Council being able to effectively carry out any future investigations.

34. With specific reference to the NSPCC report the Council stated that children need to be confident that the disclosures they make are wholly confidential and that if they thought the information might be disclosed they might not be so candid in future. The Council argue that service users involved in such investigations do not expect the detailed results of the investigation will be made public.
35. In relation to the management report the Council stated that it was concerned about the potential detrimental effect its disclosure would have on the (then) current disciplinary proceedings.
36. The Commissioner has viewed the information and considered the likelihood of prejudice being caused if it were to be released. In reaching his decision the Commissioner has applied the test for 'would or would be likely to prejudice' as set out in the Tribunal decision *EA/2005/005 John Connor Press Associates vs. the Information Commissioner*. The Tribunal confirmed that "the chance of prejudice being suffered should be more than a hypothetical possibility; there must have been a real and significant risk." (Para 15). This was further expanded in the Tribunal decisions *Hogan vs. the Information Commissioner EA/2005/0026* and *Bexley vs. the Information Commissioner EA/2006/0060*.
37. In these cases the Tribunal considered what was meant by "would be likely to prejudice" and when a prejudice-based exemption might apply. The Tribunal found that 'prejudice must be real, actual and of substance'. It went on to explain that there are two alternative ways in which disclosure can be said to prejudice and that one of these must be shown. Where prejudice 'would be likely to' occur the likelihood need not be more probable than not, though it should be real and significant; where prejudice 'would' occur, the chance should be greater – more probable than not.
38. The Commissioner accepts that release of the NSPCC report would be likely to prejudice the Council's future investigations and its whistleblowing procedure. Much of the report discusses specific children's experiences and even with redaction would clearly identify the children. The Commissioner considers that disclosing this information would be likely to prejudice the Council's future ability to conduct such investigations and is therefore exempt.
39. The Commissioner also accepts that release of the management report would be likely to prejudice the Council's ability to conduct future management investigations, as individuals would be reluctant to provide information if they believed such disclosure would be made publicly available.
40. The Commissioner accepts that section 31(1)(g) is engaged in respect of both the management report and the NSPCC report. Section 31 is a qualified exemption and the Commissioner must therefore go on to consider if the public interest in maintaining the exemption is outweighed by the public interest in disclosure of the information.

The public interest test

NSPCC Report

41. The Council considers that the public interest favours maintaining the exemption as it would not be in the public interest to make a report available which may prejudice future investigations. The Council stated that disclosure of this report would affect both the confidence of services users and the public. The Council further argued that it is in the public interest to protect the identity of the children concerned.
42. The Commissioner considers that there is a public interest in releasing the report as it would provide the public with further information in relation to these investigations and could have the effect of increasing public confidence that matters such as child protection are taken seriously. The public would have the ability to scrutinise the Council's actions in respect of the children in its care. There is also a wider public interest in ensuring that any failings in the Council's duty of care are recognised and learnt from and are prevented from reoccurring.
43. The Commissioner also notes that the Council has relied upon the NSPCC report as evidence that there are no problems at its children's homes. The Council actually risk undermining the public's confidence by refusing to disclose. The Council has informed the Commissioner that the conclusions of the report have been fed back to those involved and so there is no need to release the report publicly.
44. Specifically in relation to this case, whistleblowers called into question whether the Council was fulfilling its duty of care towards children in care. Whether children were at risk, or suffered any mental or physical harm, how the Council responded to the allegations, the thoroughness of the investigation and the conclusions of the investigation are important public interest considerations. Swift identification of failings, quickly removing children from situations where they are at risk, a speedy response, and a thorough investigation would all reassure the public that the Council is capable of satisfying its obligations and responsibilities in relation to vulnerable young people. Child protection issues have a high public profile precisely because they are of great public interest and import.
45. However, the Commissioner agrees that there is a very strong public interest in protecting the identities of the children involved. Having viewed the withheld information the Commissioner considers that the public interest in favour of maintaining the exemption is outweighed by the public interest in disclosure of the information in relation to the following sections of the NSPCC report, these sections do not identify individual children:
 - Summary
 - Introduction
 - Background history
 - Allegations and Concerns
 - Strategic planning overview
 - Methodology

- Additional Information Accessed
- Conclusion
- Recommendation

46. However, the Commissioner considers that the remainder of the report and the Annexes should be withheld as the information there relates to specific allegations and details incidents in relation to individual children. Even with redactions the Commissioner considers that the individual children could be identified from that information and he considers the public interest in protecting the identities of vulnerable children, and therefore in maintaining the exemption with respect to this information, outweighs the public interest in disclosure of the information.

The Management Report

47. The Council expressed its apprehension that routine disclosure of such management reports would adversely affect its ability to conduct future management investigations, as individuals would be reluctant to provide information if they believed such disclosures would be made publicly available. The Council argued that this is not in the public interest.

48. The Commissioner also considers the following public interest factors favour maintaining the exemption in this case:

- further investigations should not be prejudiced
- the full and frank flow of information for the purpose of investigations should not be hindered
- the identification of the children involved should be protected.

49. However, as with the NSPCC report the Commissioner considers that there is a public interest in releasing the report as it would provide the public with further information in relation to these investigations and could have the effect of increasing public confidence that matters such as child protection are taken seriously. The public would have the ability to scrutinise the Council's actions in respect of children in its care. There is also a wider public interest to ensure that any failings in the Council's duty of care are recognised and learnt from and are prevented from reoccurring.

50. As with the NSPCC report, the Commissioner has also taken into account the Council's reluctance to release information to other organisations when requested, thereby hindering their ability to carry out effective investigations. He believes the Council's general reluctance to disclose information on these matters would be likely to damage public confidence in its ability to deal with such occurrences in the future. He also considers that many of the public interest arguments in favour of disclosure raised in relation to the NSPCC report have relevance to the management report.

51. The Commissioner has viewed the information and considers that the public interest in maintaining the exemption is outweighed by the public interest in disclosure of the information for the majority of the report. He does not accept that

disclosure of this information would hinder the Council's ability to conduct effective investigations and contrary to the Council's assertions he believes disclosure would increase transparency and enhance public confidence. The information that the Commissioner finds should not be withheld under 31(1)(g) in relation to the management report is:

- Management Investigation Report terms of reference
- Formal complaint document
- Management report itself

52. However, the Commissioner considers that where individual children who were the subject of the allegations and investigations can be identified, this information should be withheld. He considers that whilst there is a public interest in understanding the basis for the investigation and a public interest in increasing accountability he does not believe this outweighs the public interest in protecting the identities of the children. The information which the Commissioner has found should be withheld under section 31(1)(g) in relation to the management report is that contained in the section entitled "Chronology sections given to Management Inquiry".

Section 40 'Personal Data'

53. Section 40(2) provides that information is exempt if the information is the personal data of someone other than the applicant, 'third party data', and disclosure of the information would breach any of the data protection principles. The term 'personal data' includes information about a living individual from which that individual can be identified.

54. In order for the Commissioner to reach a decision as to whether section 40(2) has been applied correctly the Commissioner must first consider if the information is personal data and then decide if disclosure would breach any of the data protection principles. The Commissioner has considered the definition of personal data as defined in the Data Protection Act 1998:

'...data which relate to a living individual who can be identified

a) from those data, or

b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the intention of the data controller or any other person in respect of the individual.'

55. The Commissioner has found that some of the NSPCC report and the majority of the management report should be disclosed. However, he has gone on to consider whether the names of staff and the names of the whistleblowers should be withheld under section 40(2) in the remaining information. The Commissioner accepts that the names of the staff and the names of the whistleblowers is personal data.

56. The Council have argued that disclosure of the staff member's names and the whistleblowers names would breach the first data protection principle. The first data protection principle has two components:
1. Personal data shall be processed fairly and lawfully and
 2. Personal data shall not be processed unless at least one of the conditions in DPA schedule 2 is met.
57. In considering whether disclosure of the names would be unfair and therefore contravene the requirements of the first data protection principle, the Commissioner has taken into consideration the following factors:
- The reasonable expectations of the individual as to what would happen to their personal data;
 - Whether disclosure would cause any unnecessary or unjustified damage or distress; and
 - Whether the individual consents to the disclosure of the requested information.
58. In relation to the whistleblowers the Commissioner notes that they have already been identified in the press and have spoken with the press allowing them to be publicly identified. He therefore does not consider that they would have a reasonable expectation that their involvement in the investigation would remain anonymous. He further does not consider that disclosure would cause the whistleblowers any unnecessary or unjustified damage or distress and that therefore disclosure of their names would not be unfair.
59. In relation to the names of staff contained within the information to be disclosed the Commissioner has considered his guidance on the section 40 exemption which suggests that when considering what information third parties should expect to have disclosed about them, a distinction should be drawn as to whether the information relates to the third party's public or private lives. Although the guidance acknowledges that there are no hard and fast rules it states that:
- 'Information which is about the home or family life of an individual, his or her personal finances, or consists of personal references, is likely to deserve protection. By contrast, information which is about someone acting in an official or work capacity should normally be provided on request unless there is some risk to the individual concerned.'*
60. On the basis of this guidance the Commissioner considers that public sector employees should expect some information about their roles and the decisions they take to be disclosed under the Act.
61. This approach is supported by the Information Tribunal decision (*House of Commons v Information Commissioner and Norman Baker MP* EA2006/0015 and 0016). This decision involved a request for information about the details of the travel allowances claimed by MPs. In its decision the Tribunal noted that:

'where data subjects carry out public functions, hold elective office or spend public funds they must have the expectation that their public actions will be subject to greater scrutiny than would be the case in respect of their private lives'.

62. The Commissioner also believes that there is a distinction between the levels of information which junior staff should expect to have disclosed about them and that which senior staff should expect to have disclosed about them. This is because the more senior a member of staff are; the more likely it is that they will be responsible for making influential policy decisions and/or decisions related to the expenditure of significant amounts of public funds.
63. The Commissioner recognises that ultimately, all public sector employees are accountable to the public. The Commissioner notes that the names of staff within the management report and NSPCC are report were members of staff involved in a high profile investigation. However, the names do not relate to particularly senior members of staff aside from the name of the Head of Children's Services. As many of the staff are relatively junior and in light of the sensitivities of the investigation, the Commissioner does not consider it would be fair to disclose all their names. However, he considers that it would be fair to disclose the name of the Head of Children's Service as, because of the seniority of the post; she would have a greater expectation that her name would be disclosed in connection with reports of this nature.
64. The Commissioner must therefore consider if disclosure of the whistleblowers names and the name of the Head of Children's Services meets one of the condition in schedule 2. The most relevant condition is condition 6 which states "the processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject"
65. The Commissioner considers that the disclosure of the names as above is necessary for the purpose of increasing transparency and accountability in the process undertaken in the two reports. He does not consider that disclosure of the names would prejudice the right or freedoms of the individuals. As noted above the names and existence of the whistleblowers are already known and there would be an expectation that the Head of Children's Services would have had involvement with the reports.
66. The Commissioner finds that section 40(2) is engaged with regard to the names of staff within the report, with the exception of the Head of Children's Services. However, he finds that the names of the whistleblowers are not exempt under section 40(2) because they themselves have effectively agreed to their names being in the public domain in connection with this matter. The Commissioner wishes to stress that the identity of whistleblowers will not usually be considered disclosable under the Freedom of Information Act. Each case must be considered on its own facts.

The Decision

67. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:
- The Council correctly applied the exemption set out in section 31(1)(g) with reference to the purposes set out in 31(2)(b) in respect of the following parts of the NSPCC report as the public interest in favour of maintaining the exemption outweighs the public interest in disclosure of the information:
 - Enquiry Subjects
 - Assessment of significant information obtained
 - All of the Appendices
 - The Council correctly applied the exemption set out in section 31(1)(g) with reference to the purposes set out in 31(2)(b) in respect of the "Chronology Sections" of the management report as the public interest in favour of maintaining the exemption outweighs the public interest in disclosure of the information
 - The Council correctly applied section 40(2) to withhold the names of staff from within the two reports (excluding the Head of Children's Services)
68. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
- The Council issued an inadequate refusal notice in breach of section 17(1).
 - The Council incorrectly applied the exemption set out in section 31(1)(g) with reference to the purposes set out in 31(2)(b) in respect of the following sections of the NSPCC report as the public interest in favour of maintaining the exemption does not outweigh the public interest in disclosure of the information:
 - Summary
 - Introduction
 - Background history
 - Allegations and concerns
 - Strategic planning overview
 - Methodology
 - Additional information Accessed
 - Recommendations
 - Conclusions
 - The Council incorrectly applied the exemption set out in section 31(1)(g) with reference to the purposes set out in 31(2)(b) in respect of

the management report (excluding the section entitled chronology sections) as the public interest in favour of maintaining the exemption does not outweigh the public interest in disclosure of the information

- The Council incorrectly applied section 40(2) to withhold the names of the whistleblowers and the name of the Head of Children's Services.

Steps Required

69. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:

- Disclosure to the complainant the following sections of the NSPCC report with the names of staff redacted under section 40(2) (excluding the name of the Head of Children's Services)
 - Summary
 - Introduction
 - Background history
 - Allegations and concerns
 - Strategic planning overview
 - Methodology
 - Additional information Accessed
 - Recommendations
 - Conclusions
- Disclose to the complainant the management investigation report (excluding the Chronology Sections) with the names of staff redacted under section 40(2) (excluding the name of the Head of Children's Services)

70. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

71. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Other Matters

72. The Commissioner regrets the delay that has occurred in issuing his final decision in this case. This was due to the volume of casework at the Commissioner's office and relevant changes in personnel while the matter was under consideration.

Right of Appeal

73. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

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.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 27th day of July 2009

Signed

**Graham Smith
Deputy Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Refusal of Request

Section 17(1) provides that -

“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.”

Section 17(2) states –

“Where–

- (a) in relation to any request for information, a public authority is, as respects any information, relying on a claim-
 - (i) that any provision of part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or
 - (ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and
- (b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2, the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached.”

Section 17(3) provides that -

“A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming -

- (a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or

(b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.”

Section 17(4) provides that -

“A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.

Section 17(5) provides that –

“A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.”

Section 17(6) provides that –

“Subsection (5) does not apply where –

- (a) the public authority is relying on a claim that section 14 applies,
- (b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and
- (c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.”

Section 17(7) provides that –

“A notice under section (1), (3) or (5) must –

- (a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and
- (b) contain particulars of the right conferred by section 50.”

Investigations and proceedings conducted by public authorities.

Section 30(1) provides that –

“Information held by a public authority is exempt information if it has at any time been held by the authority for the purposes of-

- (a) any investigation which the public authority has a duty to conduct with a view to it being ascertained-
 - (i) whether a person should be charged with an offence, or

- (ii) whether a person charged with an offence is guilty of it,
- (b) any investigation which is conducted by the authority and in the circumstances may lead to a decision by the authority to institute criminal proceedings which the authority has power to conduct, or
- (c) any criminal proceedings which the authority has power to conduct.”

Section 30(2) provides that –

“Information held by a public authority is exempt information if-

- (a) it was obtained or recorded by the authority for the purposes of its functions relating to-
 - (i) investigations falling within subsection (1)(a) or (b),
 - (ii) criminal proceedings which the authority has power to conduct,
 - (iii) investigations (other than investigations falling within subsection (1)(a) or (b)) which are conducted by the authority for any of the purposes specified in section 31(2) and either by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under any enactment, or
 - (iv) civil proceedings which are brought by or on behalf of the authority and arise out of such investigations, and
- (b) it relates to the obtaining of information from confidential sources.”

Section 30(3) provides that –

“The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1) or (2).”

Section 30(4) provides that –

“In relation to the institution or conduct of criminal proceedings or the power to conduct them, references in subsection (1)(b) or (c) and subsection (2)(a) to the public authority include references-

- (a) to any officer of the authority,
- (b) in the case of a government department other than a Northern Ireland department, to the Minister of the Crown in charge of the department, and
- (c) in the case of a Northern Ireland department, to the Northern Ireland Minister in charge of the department.”

Section 30(5) provides that –

“In this section-

"criminal proceedings" includes-

- (a) proceedings before a court-martial constituted under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957 or a disciplinary court constituted under section 52G of the Act of 1957,

- (b) proceedings on dealing summarily with a charge under the Army Act 1955 or the Air Force Act 1955 or on summary trial under the Naval Discipline Act 1957,
- (c) proceedings before a court established by section 83ZA of the Army Act 1955, section 83ZA of the Air Force Act 1955 or section 52FF of the Naval Discipline Act 1957 (summary appeal courts),
- (d) proceedings before the Courts-Martial Appeal Court, and
- (e) proceedings before a Standing Civilian Court;

"offence" includes any offence under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957."

Section 30(6) provides that –

"In the application of this section to Scotland-

- (a) in subsection (1)(b), for the words from "a decision" to the end there is substituted "a decision by the authority to make a report to the procurator fiscal for the purpose of enabling him to determine whether criminal proceedings should be instituted",
- (b) in subsections (1)(c) and (2)(a)(ii) for "which the authority has power to conduct" there is substituted "which have been instituted in consequence of a report made by the authority to the procurator fiscal", and
- (c) for any reference to a person being charged with an offence there is substituted a reference to the person being prosecuted for the offence."

Law enforcement.

Section 31(1) provides that –

"Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice-

- (a) the prevention or detection of crime,
- (b) the apprehension or prosecution of offenders,
- (c) the administration of justice,
- (d) the assessment or collection of any tax or duty or of any imposition of a similar nature,
- (e) the operation of the immigration controls,
- (f) the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained,
- (g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2),
- (h) any civil proceedings which are brought by or on behalf of a public authority and arise out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment, or
- (i) any inquiry held under the Fatal Accidents and Sudden Deaths Inquiries (Scotland) Act 1976 to the extent that the inquiry arises out

of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment.”

Section 31(2) provides that –

“The purposes referred to in subsection (1)(g) to (i) are-

- (a) the purpose of ascertaining whether any person has failed to comply with the law,
- (b) the purpose of ascertaining whether any person is responsible for any conduct which is improper,
- (c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise,
- (d) the purpose of ascertaining a person's fitness or competence in relation to the management of bodies corporate or in relation to any profession or other activity which he is, or seeks to become, authorised to carry on,
- (e) the purpose of ascertaining the cause of an accident,
- (f) the purpose of protecting charities against misconduct or mismanagement (whether by trustees or other persons) in their administration,
- (g) the purpose of protecting the property of charities from loss or misapplication,
- (h) the purpose of recovering the property of charities,
- (i) the purpose of securing the health, safety and welfare of persons at work, and
- (j) the purpose of protecting persons other than persons at work against risk to health or safety arising out of or in connection with the actions of persons at work.”

Section 31(3) provides that –

“The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice any of the matters mentioned in subsection (1).”