

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 28 June 2011

Public Authority: Surrey County Council
'The Council'

Address: County Hall
Penrhyn Road
Kingston upon Thames
Surrey
KT1 2DN

Summary

The complainant made six requests to Surrey County Council ('the Council') for information that focussed on a potential working relationship between two named individuals.

Two of those requests were for the complainant's own personal data and were considered under the Data Protection Act 1998 (DPA). The remaining four were considered by the Commissioner under the Freedom of Information Act 2000 (the Act). The Council responded to the questions, but did not explain whether it held relevant recorded information in relation to them all.

The Commissioner finds that there is no relevant recorded information for three of those requests, but finds that there was relevant recorded information held for one of them. The Council has now provided the complainant with the recorded information for the outstanding element. The Commissioner is now satisfied that on the balance of probabilities no further relevant recorded information is held by the Council.

The Commissioner has found a breach of section 1(1)(b) because the information held was not provided to the complainant before his investigation and section 10(1) because the request was not answered in 20 working days. However, he requires no remedial steps to be taken in this case.

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.

Background

2. The complainant is concerned about the circumstances that led her previous partner to, in her view, illegally gain custody of their children. She made a number of requests to different public authorities to understand what happened.

The Request

3. On 12 November 2009 the complainant requested six items of information, including the following four that are the subject to the Commissioner's investigation:

'[1] Has [Individual A redacted] of Guildford/Surrey Social Services, and [Individual B redacted] ever worked together for Surrey/Dorset Social Services, and during what period? Your personnel department, and/or, relevant pay sections can supply this information instantly.

[2] Is [Individual B redacted] now employed by Dorset/Poole Social Services?

[3] On the 17th November 2008, what was [Individual B redacted]'s rostered duty? Again the relevant pay section can verify this instantly.

[5] Is it deemed normal Social Service practice, for one of your staff, emotionally involved with a party to an unlawful abduction of children, to remain involved during the legal Court proceedings? Is there nothing in place where that person MUST declare a conflict of interest, and remain impartial and uninvolved throughout said proceedings?'

4. On 16 March 2010 the Council provided its response. It provided the following recorded information that it held:

[1] The answer was no. [Individual A redacted] has worked for it for 18 years and had never worked with, or had any knowledge of [Individual B redacted].

[2] The information is not held by Surrey County Council. Dorset/Poole Council would have recorded information about its own staff.

[3] The information is not held by Surrey County Council. Dorset/Poole Council would have recorded information about its own staff. It said that [Individual A redacted]'s involvement ended on 14 November 2008.

[5] It was unable to answer this question. It said that it refuted that [Individual A redacted] was conflicted in this case.

5. The complainant requested an internal review on 17 March 2010. She was not satisfied with the answers that she had received.
6. On 1 April 2010 the results of the internal review were communicated to the complainant. The Council provided further clarification about its answers:

[1] It had no records of [Individual B redacted] being employed by it.

[2] It does not have access to other Council's personnel records and cannot therefore answer this question.

[3] It does not employ [Individual B redacted] and so has no access to information about what she was doing.

[5] It confirmed that all members of its staff were obliged to declare a conflict of interest. It continued to refute that [Individual A redacted] was conflicted in this case.

The Investigation

Scope of the case

7. On 17 May 2010 the complainant contacted the Commissioner to complain about the way her request for information had been handled. She specifically asked the Commissioner to consider her views that,
 - the Council was late in complying with its obligations under the Act;

- the responses provided to some of the questions were inaccurate.;
and
 - the information was crucial to understanding her case.
8. On 11 April 2011 the complainant agreed that the scope of the Commissioner's investigation would be:
- (1) To determine whether the Council holds further relevant recorded information in respect of parts [1], [2], [3] and [5] of the request.
 - (2) If so, to determine whether this can be disclosed to the public.
 - (3) To consider all issues of timeliness in this case.
9. Section 7 of the DPA gives an individual the right to request copies of personal data held about them. This is referred to as the right of subject access. The Commissioner conducted an assessment under section 42 of the DPA into the Council's compliance with the DPA and informed the complainant of this in a letter dated 10 March 2011. This does not form part of this Decision Notice..
10. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act. In particular, the Commissioner cannot comment on custody disputes and related matters.

Chronology

11. On 26 July 2010 the Commissioner wrote to the complainant to explain that he required further documentation to consider her complaint. He received this documentation on 13 August 2010.
12. On 20 August 2010 the Commissioner wrote to the complainant and the Council to explain that he had received eligible complaints under the DPA and the Act. He explained that he would conduct the DPA assessment first.
13. On 30 March 2011 the Commissioner wrote to the complainant to confirm the scope of the investigation under the Act and to gather further arguments from the complainant.
14. On 2 April 2011 the Commissioner received a response. The complainant asked the Commissioner to revise the scope of the investigation. On 4 April 2011 the Commissioner responded. The complainant agreed the scope of the investigation on 11 April 2011.

15. On 19 April 2011 the Commissioner made detailed enquiries of the Council. On 27 May 2011 he received a response.
16. On 3 June 2011 the Commissioner asked the Council further questions and asked it to provide further information to the complainant in response to request [5]. The Council answered the Commissioner's questions on the same day. The information relevant to request [5] was disclosed to the complainant on the same day.

Analysis

Substantive Procedural Matters

Is further relevant recorded information held for any of the requests?

17. Section 1¹ provides that 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 recorded information of the description specified in the request and (b) if that is the case to have that information communicated to him. It follows that it is necessary for information to be held in recorded form by the Council at the date of the request for it to be subject to the Act. The date of the request in this case is agreed to be 12 November 2009.
18. Firstly, it should be noted that some policies and protocols relevant for request [5] were located during the course of the Commissioner's investigation and released to the complainant. The Commissioner wants to note that the Council breached section 1(1)(b) because it failed to provide them until the Commissioner's intervention. However, he requires no remedial steps to be taken because the information has now been released.
19. The remainder of his analysis will focus on whether there was any further relevant recorded information held within the scope of the four information requests.
20. The standard of proof that the Commissioner uses to determine whether relevant recorded information is held was confirmed by the Tribunal in *Linda Bromley & Others v Information Commissioner and Environment Agency* [EA/2006/0072] ('*Bromley*'). It said that the test for establishing

¹ All sections of the Act that are cited in this Notice can be found in full in an attached legal annex.

whether information was held by a public authority was not one of certainty, but rather the balance of probabilities.

21. He has also been assisted by the Tribunal's explanation of the application of the 'balance of probabilities' test in *Bromley*. It explained that to determine whether information is held, requires consideration of a number of factors including the quality of the public authority's final analysis of the request, the scope of the search it made on the basis of that analysis and the rigour and efficiency with which the search was then conducted. It also requires considering, where appropriate, any other reasons offered by the public authority to explain why further recorded information is not held.
22. The Commissioner has considered the arguments of both sides and considered the factors specified in *Bromley*.

Request [1]

23. The first request asks whether two individuals have worked together for either the Council or for another public authority.
24. The Council replied that [Individual A redacted] has worked for it for 18 years and could confirm that she had never worked with [Individual B redacted].
25. The complainant refutes that this is so. She explained that the treatment of her case makes her suspect that there was collusion between the two individuals. She also claimed that the information provided is what suits the Council rather than the truth. The complainant explained that she suspects that [Individual B redacted] has worked for the Council in the past.
26. The Commissioner asked the Council to explain in detail how it had searched its records and why it was sure that its position stated in paragraph 24 was correct.
27. The Council has explained that it has two systems that it has checked to come to its position that it has not employed [Individual B redacted]:
 - It has an electronic HR system that began operating in 2005/6 and included the live records that were held prior to then. This system is called 'SAP'. This system is complemented by manual personnel files that sit alongside SAP.
 - It also has a system called 'SWIFT' that began operating in the mid 1990s. This records social care staff names when they are working with service users. It cannot handle a social work case without it having a named worker. Each named worker has their

own SWIFT identification number. The system records the names of business support and professionals.

28. The Council explained that it had carefully checked the two systems for the relevant individuals and found no records for [Individual B redacted]. SWIFT does include locum staff, however the Council decided to double check this matter and asked its locum provider whether it had supplied [Individual B redacted] to it. It confirmed that it had not.
29. The Council also specified the searches that it had done on the two systems. It checked for both iterations of the name the complainant specified and conducted wildcard searches for part of her name too. No records were returned.
30. The Council also, for completeness, double checked the complainant's files to ensure that [Individual B redacted] did not work for it in that case. There was no recorded information within that file that indicated that she did.
31. The Council also explained that the individual that had considered the complainant's overall complaint undertook the internal review. This ensured that knowledge was not lost between the consideration of the complaint and the information request.
32. The Commissioner has been satisfied for the reasons outlined above that on the balance of probabilities the Council holds no further relevant recorded information about [Individual A redacted] and [Individual B redacted] working together either for it or the other public authority mentioned. This is because he is satisfied that the Council has asked the right people, searched the right places and conducted rigorous searches of its systems. Having considered the complainant's contrary arguments he is not satisfied that the Council holds further recorded information.

Request [2]

33. The second request asks whether [Individual B redacted] was employed by another public authority at the date of the request; 12 November 2009.
34. The Council has explained that it does not hold recorded information about whether an individual was employed by another public authority on a set date.
35. It explained that it had no business reason to record whether this was so. As noted above, it had checked its SWIFT system and there were no records for [Individual B redacted] at all.

36. The complainant contends that the responses she had received from the Council and the other public authority were inconsistent and that this meant that the Council held the information that she requested. The Commissioner does not consider that the responses were inconsistent and in any event does not consider that the complainant has provided any evidence that the Council would know whether someone was employed by another public authority on a set date.
37. The Commissioner accepts that the Council's position is reasonable and on the balance of probabilities it does not hold information about the employment situation of [Individual B redacted] at the date of the request. He is satisfied that it has checked the correct places and that there are good reasons why it would not hold the information requested.
38. He is also satisfied that the Council acted appropriately in explaining that it was appropriate for the other public authority (who received the same request at the same time) to consider this question.

Request [3]

39. The Council has explained that it did not employ [Individual B redacted] on 17 November 2008 and therefore had no relevant recorded information about what duty she had or in what capacity she did it in.
40. The Commissioner notes that the request itself explains that the complainant believes that [Individual B redacted] works for a different public authority. He is also satisfied that the Council has checked the right systems using the correct terms and has convincingly demonstrated that it did not employ [Individual B redacted] on 17 November 2008.
41. The Commissioner is satisfied that there is no business reason for the Council to hold information about the duties of employees of other public authorities and that the complainant has not offered any convincing arguments to the contrary.
42. He is therefore satisfied on the balance of probabilities that no relevant recorded information was held for request [3].

Request [5]

43. Request [5] was worded in the following way:

'Is it deemed normal Social Service practice, for one of your staff, emotionally involved with a party to an unlawful abduction of children, to remain involved during the legal Court proceedings? Is there nothing in place where that person MUST declare a conflict of interest, and remain impartial and uninvolved throughout said proceedings.'

44. The Council explained to the Commissioner that in its view this request amounted to an allegation that it refuted and that it was appropriate for it to deny the allegation and confirm that an individual must declare a conflict of interest and provide nothing further.
45. The Commissioner's view is that this request amounted to a request for the policies and protocols that it's Social Services had on the date of the request in relation to potential conflicts of interest and confidentiality.
46. The Council agreed to process the request on this understanding and the Commissioner provided the information directly to the complainant on 3 June 2011.
47. The Commissioner is content that these policies read as complete for the situation specified and that it is reasonable that no further relevant recorded information would be held in this case. He also believes that they portray an accurate picture of the obligations placed on its social workers.
48. The complainant has not offered any arguments about why further recorded information would be held in these circumstances and the Commissioner accepts that all the relevant recorded information has now been located and provided.

Procedural Requirements

49. Section 10(1) requires that a public authority complies with section 1(1) of the Act in 20 working days.
50. The Council failed to issue a response in 20 working days and the Commissioner wishes to record the breach of section 10(1).

The Decision

51. 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:
 - It provided all the relevant recorded information that it held for requests [1], [2] and [3] prior to the Commissioner's investigation; and
 - It provided all the relevant recorded information that is held for request [5] during the Commissioner's investigation.
52. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

- It breached section 1(1)(b) because it failed to provide all the relevant recorded information for request [5] prior to the Commissioner's investigation; and
- It breached section 10(1) because it failed to answer the request for information in 20 working days and so did not comply with section 1 of the Act.

Steps Required

53. The Commissioner requires no remedial steps to be taken in this case. This is because the complainant received the information to which she was entitled to for request [5] during the course of the Commissioner's investigation.

Right of Appeal

54. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

55. 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.
56. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 28th day of June 2011

Signed

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

Legal Annex

Section 1 - General Right of Access

Section 1 of the Act provides 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.
- (2) Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.”
- (3) Where a public authority –
 - (a) reasonably requires further information in order to identify and locate the information requested, and
 - (b) has informed the applicant of that requirement,the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.”
- (4) The information –
 - (a) in respect of which the applicant is to be informed under subsection (1)(a), or
 - (b) which is to be communicated under subsection (1)(b),is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request.”
- (5) A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b).”
- (6) In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as “the duty to confirm or deny”.”

Section 10 - Time for Compliance

Section 10 of the Act provides that:

(1) Subject to subsections (2) and (3), 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."

(2) Where the authority has given a fees notice to the applicant and the fee paid is in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt."

(3) If, and to the extent that –

(a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or

(b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given."

(4) The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with the regulations."

(5) Regulations under subsection (4) may –

(a) prescribe different days in relation to different cases, and

(b) confer a discretion on the Commissioner."

(6) In this section –

"the date of receipt" means –

(a) the day on which the public authority receives the request for information, or

(b) if later, the day on which it receives the information referred to in section 1(3);

“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.”