

## **Freedom of Information Act 2000 (Section 50)**

### **Decision Notice**

**Date: 24 August 2011**

**Public Authority: Doncaster Metropolitan Borough Council**  
**Address: The Management Suite**  
**Council House**  
**College Road**  
**Doncaster**  
**DN1 3AJ**

### **Summary**

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The complainant requested a full copy of the Edlington Serious Case Review, suitably redacted, from Doncaster Metropolitan Borough Council (the Council). The Council refused the request on the basis that it did not hold a copy of the report for the purposes of the Act. The Commissioner has investigated and concluded that the Council was entitled to say that it did not hold a copy of the report. Although he found procedural errors in the Council's handling of the request, the Commissioner does not require any steps to be taken.

### **The Commissioner's Role**

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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**

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2. Serious case reviews are commissioned by the Director of the Local Safeguarding Children Board (LSCB) under Regulation 5 of the Local Safeguarding Children Board Regulations 2006.
3. According to the LSCB Regulations, a serious case is one where abuse or neglect of a child is known or suspected; either the child has died or the child has been seriously harmed; and there is cause for concern as to

the way in which the authority, their Board partners or other relevant persons have worked together to safeguard the child.

4. Statutory guidance indicates that on approval of the final Serious Case Review (SCR), the LSCB should publish only the SCR executive summary.
5. A very serious assault occurred in Edlington, South Yorkshire, in the late spring of 2009. The victims of the assault were two boys aged 11 and 9 years old who did not know their attackers. The assault was perpetrated by two brothers aged 11 and 10 years old. The executive summary of the SCR in the Edlington case was published in January 2010.
6. On 10 June 2010, the Parliamentary Under Secretary of State for Children and Families announced that, in addition to the executive summary, LSCBs should publish overview reports of all new SCRs initiated on or after 10 June 2010 unless there are compelling reasons relating to the welfare of any children directly concerned in the case for this not to happen.

## The Request

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7. The complainant wrote to Doncaster Metropolitan Borough Council (the Council) on 18 August 2010:

*"Under the terms of the FOI Act, I'd like to ask again for the Edlington serious case review held by Doncaster Council - suitably redacted.*

*It was several months ago that an earlier request was made and I believe circumstances have now changed".*

8. From the correspondence, it appears that there was some confusion between the complainant and the Council regarding this re-making of the request. As a result, the complainant confirmed on 27 October 2010 that he required the Council to respond to his request for information.
9. The Council refused to provide the requested information in its response of 10 November 2010. The basis of its refusal was that it did not have a right to release material from the Serious Case Review. It explained that although the Council had received the report, it had not *"assumed the 'property' of the document"*. It told the complainant:

*"Property remains vested in the Doncaster Safeguarding Children Board. As such, only Doncaster Safeguarding Children Board can*

*make a decision on the release, whether that be full or partial release, of the serious Case Review”.*

10. Notwithstanding this statement, the Council further refused the request, citing the exemptions at sections 36(2)(b)(i) and (ii), 40(2) and 41 of the Freedom of Information Act.
11. The complainant requested an internal review of this decision on 10 November 2010.
12. The Council upheld its decision in its internal review correspondence of 7 December 2010.

## **The Investigation**

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### **Scope of the case**

13. The complainant contacted the Commissioner on 10 January 2011 to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:

*“In the internal review, the council states the serious case review is held on behalf of another person, namely the Doncaster Children's Safeguarding Board.*

*In reality, the review is held by the council as a document to learn lessons from and as a record of the council's own culpability. It is not just held for safe keeping on behalf of the safeguarding board....*

*To say such a review is simply held on behalf of another public body when social work practise is, hopefully, going to be closely informed by the contents of the review does not stack up as a reasonable application of section 3(2)(a).”*

14. The Commissioner therefore considers the scope of his investigation to be whether any information, within the scope of the request, was held by the Council at the time of the request.

### **Chronology**

15. The Commissioner advised the Council on 5 February 2011 that he had received a complaint in this case. The Council wrote to the Commissioner on 2 March 2011 providing further explanation as to why it considered that it did not hold the requested information. It also provided the Commissioner with submissions regarding exemptions

which it wished him to consider if he concluded that the information was in fact held.

16. There was further correspondence between the Commissioner and the Council on 16 May 2011 and 14 June 2011.
17. The Commissioner notes that, throughout his investigation, the Council has provided thorough and comprehensive responses to the questions he has posed.

### **Findings of fact**

18. Doncaster Safeguarding Children Board is a statutory body in its own right, distinct from the Council. It is not a public authority for the purposes of the Act.

### **Analysis**

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#### **Substantive Procedural Matters**

#### **Is the requested information held by the Council for the purposes of the Act?**

19. Section 1(1) 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 information of the description specified in the request, and*

*(b) if that is the case, to have that information communicated to him."*

20. Section 3(2) provides that:

*"For the purposes of this Act, information is held by a public authority if –*

*(a) it is held by the authority, otherwise than on behalf of another person, or*

*(a) it is held by another person on behalf of the authority."*

21. The complainant has put forward strong arguments as to why he considers the overview report should be published. However, the

Commissioner must first determine whether the report is held by the Council for the purposes of the Act.

22. In the Commissioner's view, where information is held by a public authority, to any extent for its own purposes, then it holds that information otherwise than on behalf of another person, and therefore it holds the information for the purposes of the Act.
23. The only circumstance in which information physically in its possession would not be held by a public authority by virtue of section 3(2)(a) would be where information is only held on behalf of another person, and is not held at all for that public authority's own purposes.
24. In relation to this request, the Council argued that the information was not held for its own purposes and was therefore not held for the purposes of the Act by virtue of section 3(2)(a).
25. The Council provided the Commissioner with evidence in support of this argument. The Commissioner has examined this evidence in a Confidential Annex to this document which is available to the public authority but not to the complainant.
26. The complainant has brought to the Commissioner's attention the fact that the prime purpose of a SCR is for agencies and individuals to learn lessons to improve the way in which they work both individually and collectively to safeguard and promote the welfare of children. In this respect, the Council has advised that steps to learn lessons are primarily taken through implementing the action plans based on the recommendations of the SCR. It confirmed that the recommendations of the SCR:

*"are carried forward into the Executive Summary which is used as the basis for drawing up action plans".*

27. In the Commissioner's view, the question of whether or not the requested information in this case was held by the Council has not been straightforward to determine. However, having considered the evidence in this case, the Commissioner is satisfied that the information is not held for the Council's own purposes. He has therefore concluded that the Council was correct to say that the requested information is not held for the purposes of the Act.

## **Exemptions**

28. The Commissioner recognises that, while maintaining that the information was not held for the purposes of the Act, the Council also provided him with its arguments with respect to withholding the requested information in this case. Although he has concluded that the

information is not held for the purposes of the Act, for completeness, the Commissioner has briefly addressed the question of disclosure.

29. In doing so, the Commissioner is aware of the Government's statement that Local Safeguarding Children Boards (LSCBs) should publish both the overview report and the executive summary of all new Serious Case Reviews (SCRs) initiated on or after 10 June 2010. However, he acknowledges that there was no such expectation with respect to the SCR overview report in this case as it was initiated before this date.
30. He acknowledges that the SCR in this case was therefore not written with the benefit of the Government's guidance with respect to preparing reports in a form suitable for publication, for example suitable anonymisation of the content to protect the privacy and welfare of vulnerable children and their families.

#### **Section 41 Information provided in confidence**

31. In this case, having considered the evidence, the Commissioner is satisfied that the copy of the overview report which the Council had access to was provided in confidence. Furthermore, having considered the purpose of a Serious Case Review and the manner in which they are conducted, he is satisfied that the content of the overview report would be likely, to a greater or lesser extent, to be information provided in confidence by the contributors to the report. In this respect, he notes that the Council has argued that the contributors to this report would have had an expectation of confidentiality.
32. In the Commissioner's view, not only was the report, if held, provided in confidence but also it would clearly contain information provided with the expectation of confidence.
33. As section 41 is an absolute exemption, there would be no need to consider the public interest test.

#### **Section 40 Personal information**

34. The Commissioner has also considered the exemption at section 40 of the Act.
35. Personal data of any other person (third party data) is exempt under section 40(2) if disclosure would breach one of the data protection principles. Generally this will mean balancing the legitimate interests of the public in having access to the information against the interests of the individual under the first principle and, in particular, considering whether it is unfair to release the information.

36. As disclosure of information under the Act is considered disclosure to the public at large and not to the individual applicant, in the case of personal data there is no assumption of disclosure and the Commissioner must balance the legitimate public interest in disclosure against the interests of the individual(s) whose data it is.
37. SCR overview reports inevitably contain personal information relating to surviving children, family members and others. In his view, given the nature of a Serious Case Review, the content of the overview report in this case would, if held, clearly contain a lot of personal data, and in some cases sensitive personal data, about family members and other individuals.
38. When considering disclosure, in the Commissioner's view, the main consideration is whether it would be fair in all the circumstances to identify an individual. Furthermore, in accordance with Schedule 2 Condition 6 of the Data Protection Act (DPA), the Commissioner must also be satisfied that the disclosure must be necessary for a legitimate interest of the public and that, even where necessary, disclosure must not cause unwarranted interference to the rights, freedoms and legitimate interests of the data subjects.
39. In accordance with his guidance on the disclosure of personal information, where information pertinent to the request would, if held, constitute sensitive personal data, the Commissioner considers that an additional criterion has to be met in order for sensitive personal data to be disclosed under the Act, namely that that disclosure must meet at least one of the conditions in Schedule 3 of the Data Protection Act.
40. In this case, disclosure of the requested information, if held, would, in his view, be likely to breach the first data protection principle.

## **Procedural Requirements**

### ***Section 10 Time for compliance***

### ***Section 17 Refusal of request***

41. In this case, the complainant's request was made on 18 August 2010. Although the Council received the request, it appears that "*it thought it had been resolved*". The Commissioner understands that there was communication between the Council and the complainant in which matters, including an earlier response, were discussed.
42. The complainant appears to have a different understanding of the situation. He contacted the Council by telephone on 27 October 2010 about this request. He also confirmed in writing that he had not withdrawn the request and that he required a response.

43. The Council issued its refusal letter on 10 November 2010. It therefore took the Council over 20 working days to respond to the information request. Accordingly, the Commissioner finds the Council in breach of section 10(1) of the Act (in that it did not respond to the request for information within 20 working days following the date of receipt) and of section 17(1) (by failing to provide the details required by that section within 20 working days).

### **The Decision**

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44. The Commissioner's decision is that the Council dealt with the request in accordance with the requirements of the Act in that it did not hold the requested information. However, it breached section 10(1) by failing to advise the complainant of this within 20 working days of the request and section 17(1) by failing to issue the refusal notice within the statutory time limit.

### **Steps Required**

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The Commissioner requires no steps to be taken.



## Right of Appeal

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45. 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@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

46. 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.
47. 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 24<sup>th</sup> day of August 2011**

**Signed .....**

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

## Legal Annex

### General Right of Access

#### **Section 1(1) provides that -**

"Any person making a request for information to a public authority is entitled –

- (b) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (c) if that is the case, to have that information communicated to him."

#### **Section 2(3) provides that –**

"For the purposes of this section, the following provisions of Part II (and no others) are to be regarded as conferring absolute exemption –

- (a) section 21
- (b) section 23
- (c) section 32
- (d) section 34
- (e) section 36 so far as relating to information held by the House of Commons or the House of Lords
- (f) in section 40 –
  - (i) subsection (1), and
  - (ii) subsection (2) so far as relating to cases where the first condition referred to in that subsection is satisfied by virtue of subsection (3)(a)(i) or (b) of that section,
  - (iii) section 41, and
  - (iv) section 44"