

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 May 2017

Public Authority: London Borough of Lewisham
Address: 1st Floor, Town Hall Chambers
Rushey Green
Catford
London
SE6 4RY

Decision (including any steps ordered)

1. The complainant requested from the London Borough of Lewisham ("the council") information concerning its No Recourse to Public Funds ("NRPF") training material, guidance and other related documents. The council disclosed some information but the complainant was dissatisfied with this and believes further recorded information falling within the scope of her request is held by the council.
2. The Commissioner's decision is that, on the balance of probabilities, the council does not hold any further recorded information to that already provided. She therefore does not require any further action to be taken.

Request and response

3. On 23 November 2015, the complainant wrote to the council and requested information in the following terms:
 - "1. Please provide us with copies of the 'No Recourse Decision Making Guide' versions 1 and 2.
 2. Please provide us with a copy of the operational guidance which was produced following the decision on 21 February 2014 to set up a specialist team to deal with families with NRPF seeking support under s.17 of the Children Act 1989. We understand that your [name redacted] and [named redacted] may have had involvement in

producing this operational guidance. If this operational guidance is the 'No Recourse Decision Making Guide' in (1) above in this request, please expressly state this. We would not require a duplicate copy.

3. Please provide us with a copy of all guidance documents uploaded onto SharePoint between February 2014 to date. Please note, this request includes all guidance documents produced during this period, including that which has since been superseded by later versions.
4. Please provide us with a copy of the training material produced to train the NRPF caseworkers and NRPF in the specialist NRPF team between February 2014 to date. Again, we understand that [name redacted] and/or [named redacted] has involvement in producing this information. Please include a copy of all training material produced during this period regardless of whether it is the training material still in use."
4. The council responded on 8 December 2015, advising the complainant that it required some clarification. It understood this request was also part of an 18 part request regarding an upcoming judicial review and asked the complainant to confirm whether this was correct.
5. The complainant replied the same day and explained that it was correct that it had also made an 18 part request to the council's legal department in respect of an upcoming judicial review. However, the legal department had not disclosed all the information required, as it felt it was not relevant to the judicial review so a request under the FOIA has also been made. The complainant provided a list of 8 documents that have already been provided and confirmed that she does not require duplicate copies of these.
6. The complainant chased the council on 21 December 2015, as she had received no response.
7. The council responded on 23 December 2016. It advised the complainant that as it sought clarification, the statutory time for compliance (20 working days) did not commence until it received the necessary clarification on 8 December 2015.
8. The complainant wrote to the council on 23 December 2015 disagreeing that it was permitted to extend the statutory timeframe for compliance, advising that the council was not seeking clarification in respect of the request itself but other circumstances taking place at the same time in relation to a judicial review.

9. The council issued its response on 5 January 2016 addressing each question in turn.
10. The complainant wrote to the council on 5 January 2016 to raise concerns about the response she had received and in particular the searches undertaken to date to try and locate some of the requested information.
11. The council responded on 8 January 2016 advising the complainant that it would provide a further response in due course.
12. The complainant contacted the council on 12 January 2016 to advise it that she now needed all documents previously disclosed in court proceedings to be disclosed under the FOIA as well, as she had been advised by the council's legal department that the documentation it had provided remained confidential. She also raised further questions about the information provided on 5 January 2016 and how the response does not satisfy her request.
13. As the complainant received no further response, she chased the council on 20 January 2016. She also raised further issues in relation to the searches carried out by the council to date.
14. The council responded on 21 January 2016. It provided a further response to some of the questions and queries the complainant had made.

Scope of the case

15. The complainant contacted the Commissioner on 14 April 2016 to complain about the way her request for information had been handled. She stated that she believes further recorded information is held by the council falling within the scope of her request and that the council has carried out inadequate searches of its records to date. She raised three specific issues, which will be addressed in turn in the next section of this notice.
16. The Commissioner's investigation has focussed on whether, on the balance of probabilities, the council holds any further recorded information to that already provided falling within the scope of the complainant's request.

Reasons for decision

Version 1 and 2 of the guidance.

17. During the Commissioner's investigation the complainant made various submissions explaining why she is of the opinion that the council does hold versions 1 and 2 of the guidance. The co-operation of the council was also sought and there was protracted correspondence on this issue between the council and the Commissioner from October 2016 to the date of this notice.
18. The council explained that version 3 of the guidance was in place at the time of the complainant's request. It advised that versions 1 and 2 of the guidance were created in June to July 2014 and version 3 was finalised between November 2014 and early 2015 and was in force prior to April 2015. But these earlier versions of the guidance are no longer held.
19. The Commissioner asked the council to explain exactly what searches had been undertaken to try and retrieve versions 1 and 2 of the guidance.
20. The council explained that it had consulted the manager of the NRPF team who had been specifically brought into the council to improve the service. The manager had said that she wrote the training guidance for her team and is the only person within the council that produces it. The manager creates and save documents on her desktop and when completed publishes them to SharePoint. It explained that SharePoint is a collaborative workspace where documents can be stored and accessed by all members of a team. It ensures the most up to date and accurate version of any document is available.
21. The council stated that it has searched the manager's desktop and the SharePoint environment but versions 1 and 2 of the guidance are no longer held. It stated that versions 1 and 2 of the guidance were older versions of the guidance disclosed to the complainant and they were originally held by the council but have since been deleted. The council confirmed that it has searched all files and folders on the manager's desktop using both the full title of the guides and a search for just any document with 'Decision Making Guide' in the title and nothing was found. A search was also undertaken under 'All files & folders' for training materials, again nothing was found.
22. With regards to the council's records management policy, the council explained that the destruction of the earlier versions of the guidance was not formally recorded so it is unable to confirm when they were

exactly destroyed. However, it can confirm that they have been deleted due to the simple fact that they are no longer held today. The council reiterated that it has double checked with the manager of the NRPF team to understand clearly how these documents were created, shared and deleted and it remains of the position that the manager created these documents alone without any additional input from other teams or departments. The documents were uploaded on to SharePoint by the manager for the specific time they were relevant. But as this guidance developed and was ultimately updated by a newer version, the earlier versions were deleted. It explained that it was a simple accidental oversight on the council's part that the destruction of these documents was not recorded and it assured the Commissioner that any future destruction of records will now be formally recorded.

23. The Commissioner asked whether copies were made of the earlier guidance and held in other locations within the team itself and the council as a whole. To this, the council responded no and referred to SharePoint again being a collaborative workspace and the manager instructing staff to ensure that they are working from the most up to date guidance in existence.
24. In terms of any statutory requirements to retain versions 1 and 2 of the guidance, the council informed the Commissioner that there were none. It argued that clients have up to 60 days to appeal any decision made. However, it advised that it must be stressed here that the documents requested are guidance only. The operation of the NRPF service is outlined in the Mayor and Cabinet report dated 13 May 2015. This is a public document and has been made available to the complainant separately. The report highlights that the service is a mix of statutory frameworks, relevant case law and the appropriate use of discretion whereby the statutory framework underpins the assessment but does not prescribe the entitlement.
25. The Commissioner asked again when the first version was created and whether at the time of the request it held one or more versions. The council advised (as earlier in the notice) that versions 1 and 2 were created around June to July 2014. It explained that these were very detailed as they were intended to provide staff with comprehensive information on the decision making process for the service. It explained further that as the staff became familiar with the processes the guidance was reduced, as the level of 'hand holding' detail was no longer required and new guidance was issued in July 2015. The council confirmed that this is a much shorter version of the guidance when compared to versions 1 and 2. It also stated again that versions 1 and 2 of the guidance have not been retained.

26. The council said that there is another version of the guidance held by the council – version 4, which is in draft form at this present time. It contains the detail held in versions 1 and 2 and is currently under development by the manager of the team. This version is in draft form so is not in use and is not available to staff.
27. The Commissioner asked the complainant to provide her comments to the council's responses.
28. The complainant stated in her view it seems completely at odds with any other working practice she has encountered for the manager to save all documents to their desktop and is an extremely poor practice from an information management and business perspective. She asked whether the manager has ever emailed the older versions of the guidance at any time to anyone within the council and whether she saved them elsewhere as well. The complainant also felt that the manager's statement that she produces all guidance alone without any input from anyone else or any other department seems at odds with a witness statement the manager provided during judicial proceedings and, in general, with what one would expect of normal working practice. The complainant stated that the witness statement suggested that the manager specifically worked with another member of staff (name of staff member given in statement) to develop the scope of the project, the operational guidance to be used by the team and recruitment and training of all caseworkers. The complainant advised that it had been confirmed by the council in separate correspondence that the operational guidance is the guidance which is the subject of this request (version 1 and 2 of the guidance). She therefore queried whether the council's legal team did not at least provide some input given that the guidance describes various cases and legal tests that apply.
29. The complainant also queried whether the council had searched their shared system more generally and not just the manager's desktop and asked specifically whether two employees within its legal team, one of which had the job titles of NRPF manager and lawyer for some time, had been consulted. She asked whether all of the manager's emails had been searched, the recycle bin and more generally her entire computer, as she understands that documents deleted from the recycle bin are even retained for quite a time afterwards until they are overwritten by other documents.
30. In addition, the complainant stated that she is aware of council reports which pre-date version 3 of the guidance that recall unprecedented levels of judicial review challenges being brought. The complainant is of the view that versions 1 and 2 of the guidance would be relevant to these challenges. Similarly, she stated that the limitation deadline for breach of the Human Rights Act is 1 year less a day or for a breach of

statutory duty or negligence where personal injury is alleged it is 3 years. The complainant believes the council's own complaints process allows for 1 year for making a complaint as well. She advised that one would expect the council to retain the guidance in operation when decisions were made until these limitations expired.

31. The complainant also commented on the council's statement that versions 1 and 2 of the guidance were replaced with a shorter version, as there was no longer a need to 'hand hold' those in the team processing applications. The complainant stated that it cannot be supposed that this will be the situation for ever. Clearly new staff will join the team and old staff will leave and to get rid of comprehensive guidance is nonsensical. The complainant also stated that it is important to note that she considers the *real* reason why new guidance was introduced (version 3) was because of the concerns raised in a pre-action letter in relation to judicial review proceedings. The pre-action letter pointed out the errors in law within the earlier guidance, the council accepted their policy and approach required change and therefore it follows that the council's guidance was updated accordingly.
32. The council was asked to address the complainant's concerns further. It responded by saying that only the NRPf team within the council has access to the site where the guidance is held. It would have been possible for those on the team to print off copies of versions 1 and 2 of the guidance at the time they were in use, but the council stated that a management instruction had been issued to the team instructing them to only use the most relevant guidance and, to check that indeed it is, before using it. It therefore felt it was not necessary to consult members of the team to see if they have retained a copy of the older guidance. It explained that the legal department does not have access to SharePoint and only holds version 3 of the guidance and the Guidance for Assessment and Case Management July 2015 as a result of the judicial proceedings and the section 36 of the FOIA consideration.
33. The council stated that as the manager of the NRPf team has been interviewed 3 times at length, explained exactly how the guidance was produced and where it was held, it sees no need to search the manager's entire computer. The manager saved the documents where it had previously advised, does not retain hard copies and did not save the requested information anywhere else. The manager was also responsible for uploading the guidance onto SharePoint, so it was not circulated to another member of staff within the council to do that. It was also never circulated outside of the team, as it felt this would encourage individuals outside of the team to give advice on NRPf matters for which they are not qualified.

34. The legal department was consulted again in light of the complainant's further comments but the council maintains its position remains unchanged. No one within that department, including those mentioned by the complainant during her other dealings with the council over NRPf assessments, holds an electronic or hard copy of versions 1 and 2 of the guidance.
35. The council also advised the Commissioner that, following consultation with its IT department, it cannot recover deleted documents from the manager's computer. At the time versions 1 and 2 of the guidance were held and, at the time of the request, the backup solution in place only had capacity for 28 days. This solution was later replaced with a new solution but not until November or December 2016. The council confirmed that there is no way of recovering this old data now. It explained further that the information would have only been backed up if it had been saved to the manager's central shared area or central home area (network drives). The local computer drives are not backed up, so if the information was stored there, it would have been lost when all old computers were decommissioned.
36. With regards to the complainant's comments about challenges to assessment decisions, the council responded that its guidance was updated to keep abreast of the relevant changes. As a guidance document, it would be referred to primarily to assist caseworkers in the relevant NRPf framework. However, the guidance document does not determine the destitution assessment. This is an evidential based assessment undertaken on an individual basis. It explained that the team has dealt with over 70 judicial review challenges on all aspects of its decision making process and it is always a case specific process supported by the evidence that has been gathered and is contained in the case file.
37. In cases of this nature the Commissioner is limited to considering whether, on the balance of probabilities, the public authority holds the requested information. She can ask questions, question the searches undertaken and ask for further searches to be carried where appropriate. But this is the extent of the Commissioner's powers in such cases.
38. There has been lengthy correspondence between the Commissioner and the council and, the complainant has provided some very useful information to assist in this investigation. The Commissioner considers she has questioned the searches undertaken by the council as far as she can and challenged the council on why it may still hold this information considering the matters to which it relates and the importance of such information when NRPf assessments were carried out. Although in some cases the responses have been a little curt and the Commissioner has

had to push and push the council for answers, she now considers that she has exercised the extent of her powers in this case. The Commissioner has no alternative now but to conclude, on the balance of probabilities, the council no longer holds versions 1 and 2 of the NRPF guidance.

All guidance documents loaded onto SharePoint between February 2014 and the date of the request.

39. The complainant said that this element of the request does overlap with the issues she raised in relation to versions 1 and 2 of the guidance. She stated that the point to this element of her request is that she requires *all* guidance documents, in operation, since the inception of the new pilot scheme. The complainant commented that whilst it appeared at first that she may have been asking for a lot of information, it should be noted that the NRPF pilot scheme has only been in operation for a short while and the production of new guidance and a coherent and consistent approach to assessment was said to be the purpose of introducing the new pilot and one would therefore have thought easy to produce.
40. The complainant stated that it may be that the council did not read this element of her request properly, nor her follow up request, but the fact that they keep avoiding responding directly to what she was asking for gives rise to concern. She stated that she asked for documents *uploaded* to SharePoint, not necessarily those on SharePoint at the time of the request and to know when removed documents had been destroyed. The council's responses did not however address these points sufficiently. The first response from the council only addressed what was *currently* on SharePoint and overall the council has never addressed whether the guidance exists wherever it was stored before it was uploaded. The complainant confirmed that documents must have been on the NRPF Manager's computer, as she wrote them and she was the only person that uploaded them on to SharePoint. When, for example, version 3 of the guidance was completed and uploaded on to SharePoint, the NRPF Manager would have had to go into her own drive where she saved this version, and others before, to delete older versions otherwise they must still exist. This has never been fully addressed by the council.
41. The Commissioner asked the council for its comments to this element of the complainant's request.
42. The council reiterated essentially what it said above in relation to versions 1 and 2 of the guidance. It has undertaken detailed and lengthy searches and interviewed the NRPF Manager several times and no further recorded information to that already provided to the complainant is held. Searches of the NRPF Manager's desktop were undertaken and

an independent search of SharePoint to see if any removed documents can be recovered. Nothing else was found and removed documents from SharePoint cannot be recovered now. It also stated that it has already informed the complainant that previous guidance was removed but the date that this took place was not recorded.

43. The council stated that it is of the view that the complainant's continual questioning is another attempt to get the council to say something different to what it has already said so this can then be used to open up yet more challenge. It considers all matters have now been fully and comprehensively addressed.
44. Due to the extensive enquiries already made, the responses received from the council, the Commissioner considers that she has no alternative now but to conclude that, on the balance of probabilities, the council holds no further recorded information.

Training material produced between February 2014 and the date of the request.

45. The complainant stated that in response to this element of her request she received two training documents from the council. One did not relate to NRPF issues and was irrelevant to the request and the other guidance was dated November 2014.
46. However, in the NR Decision Maker's signed witness statement the NR Decision Maker (the Commissioner understands this person to be the NRPF Manager referred to earlier in this notice) gave evidence on how she worked to develop the scope of the NRPF pilot project on 21 February 2014, which included "training of the NRPF caseworkers". The complainant believes this strongly suggests that there was training material pre-November 2014 and this has not been disclosed to her.
47. Furthermore, the complainant stated that in the same witness statement the NR Decision Maker says that specialist training was provided to social workers in November 2014. The complainant advised that she asked for the training material used in their training, or confirmation that the slides disclosed to her is that material. She stated that this query has never been addressed.
48. The Commissioner again referred the complainant's comments to the council and asked it to confirm whether any further training material to that already disclosed is held.
49. The council again reiterated the searches undertaken to date and the extensive enquiries it has made during this investigation. It maintains that all appropriate avenues have been explored and it has addressed all issues raised comprehensively.

50. The council confirmed that it has already explained to the complainant that training of case workers took the form of induction and was built around the guidance. It commented that training does not always involve external courses accompanied by specific training materials and it does not have unlimited resources both in terms of time and finance to write, prepare, print or otherwise fund copious amounts of training and guidance production, all within very short timescales.
51. The Commissioner did not consider this statement specifically addressed whether the council holds any further training material to that already provided. So she asked the council again to address this specific point.
52. The council responded confirming that it does not hold any further recorded information to that already provided to the complainant.
53. For the same reasons as detailed above, the Commissioner has no alternative now at this stage but to conclude that, on the balance of probabilities, the council holds no further recorded information.

Other matters

54. This particular case has taken months to finalise and at times the Commissioner considers the council's co-operation and willingness to answer her questions fully and comprehensively has fallen short of what she would generally expect. The Commissioner is of the view that had more thorough and accurate responses been supplied to her from the outset this complaint could have been resolved much sooner. The Commissioner would like to take this opportunity to remind the council of its obligations under the FOIA and of the need to co-operate and provide prompt responses during a section 50 investigation.

Right of appeal

55. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504
Fax: 0870 739 5836
Email: GRC@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

56. 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.

57. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Samantha Coward
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF