

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 September 2017

Public Authority: Norfolk County Council
Address: County Hall
Martineau Lane
Norwich
NR1 2DH

Decision (including any steps ordered)

1. The complainant has requested information with regards to a review carried out in relation to a concern about Children Services in general, including the issue of the relationship between foster carers and Norfolk County Council (the council).
2. The council provided some information but refused the remaining under section 40(2) of the FOIA – third party personal data, section 42 of the FOIA – legal professional privilege and section 43(2) of the FOIA – commercial interests.
3. During the Commissioner's investigations, the council located and provided further information and maintained the exemptions already applied. It did however release some information previously withheld under section 40(2) of the FOIA. The council also applied section 21 of the FOIA to some of this further information located – information accessible by other means.
4. The council also advised the Commissioner of information falling within the scope of the request that it considered was not held by it for the purposes of the FOIA.
5. Following the council's further response, the complainant no longer disputed the application of sections 40(2), 43 or 21 of the FOIA. These were therefore withdrawn from the Commissioner's investigations in this case. The complainant still disputed section 42 of the FOIA and questioned whether further information was held by the council.
6. The Commissioner's decision is that section 42 of the FOIA is engaged to some information, some information is not held by the council for the

purposes of the FOIA and no further information is held by the council falling within the scope of the request.

7. The Commissioner does not require the council to take any steps.

Request and response

8. On 25 October 2016 the complainant wrote to the council requesting the following:

1) *"You will recall that at the meeting with you and [name redacted] on 1st September, it was agreed that you would send written proposals for dealing with all outstanding cases where former and current foster carers and former looked after children had been unable to give evidence to the Parker Review. It was expressly agreed that the proposals would be sent to both me and to the NFCA. Eventually, long after the agreed deadline of Friday, 9th September, I received a letter setting out four options. However, no letter was sent to NCFCA and despite [name redacted] emailing [name redacted] chasing this, still nothing has been sent.*

Could you ensure that the proposals are sent to [name redacted] as Chair of NFCA without further delay.

2) *Could you confirm that [name redacted] approved and signed off the final version of the report which was published.*

3) *Could you also forward to me copies of all documents you holds which relate to the Parker Review from the date of the meeting we held – and attended by [name redacted] – before Christmas last year until present date. Can you ensure that you include all letters, emails, file notes, draft documents, internal memorandum and reports. Please include all correspondence (letters and emails) between [name redacted] and the County Council."*

9. The council contacted the complainant on 28 November 2016 advising that it was not going to be able to provide the information within the required 20 working days and hoped to have a response by 12 December 2016.

10. The complainant then complained to the Commissioner on the 25 January 2017 as no response had been received.

11. After the Commissioner contacted the council, it responded to the complainant on the 6 February 2017.
12. For the first part of the request, the council informed the complainant that this was not a request for information and would be dealt with separately outside of the FOIA.
13. For the second part of the request, the council advised that the published report was not required to be signed off.
14. For the third part of the complainant's request, the council provided information it held, but also redacted and withheld some of the information relying on section 40(2) of the FOIA – third party personal data, Section 42 of the FOIA – legal professional privilege and section 43(2) of the FOIA – commercial interests.
15. On 16 February 2017, the complainant requested that the council carry out an internal review in relation to the information being withheld under section 42 and 43 of the FOIA.
16. The council provided its internal review response on the 9 March 2017, amending its original response. With regards to the information being withheld under section 42 of the FOIA – legal professional privilege, it found that:
 - a. It could release further information that was previously withheld and provided this information in its response which included a copy of the written order from the court.
 - b. Ten pages that had been initially withheld under section 42 of the FOIA should have been withheld under section 41 of the FOIA – information provided in confidence. Although it found section 41 to be engaged to this information, the council noted that the complainant had previously seen these documents and therefore would be prepared to provide him with copies outside of the FOIA should he agree to this.
 - c. Some information on three pages (pages 5-7) should have actually been withheld under section 40 of the FOIA rather than section 42.
 - d. The council upheld its original response to maintain section 42 of the FOIA to remaining information withheld under this exemption.
17. With regards to the information originally withheld under section 43 of the FOIA, the council's internal review found insufficient public interest in withholding this information and therefore disclosed it.

Scope of the case

18. The complainant contacted the Commissioner following the internal review asking her to consider the council's refusal of the remaining information, including the information withheld under section 40(2) of the FOIA and determine if the council holds more information than what has been located and provided.
19. Although the complainant did not ask the council, as part of its internal review, to review its application of section 40(2) of the FOIA or determine if further information is held, the Commissioner decided the best way forward was to investigate the council's section 40(2) refusal and whether further information is held alongside the other exemptions without requiring a further internal review to take place first.
20. During the Commissioner's investigations the council located further information falling within the scope of the request. It provided the non-exempt information to the complainant but advised that section 40(2) and 42 applied to parts of this further information and withheld it.
21. The council also applied section 21 to some further information – accessible by other means, and provided links to this information.
22. The council advised the Commissioner of further information relating to the review, which it refers to as the 'PR material' (Parker Review material). The council is of the view that this is not held by it for the purposes of the FOIA as per section 3(2) of the FOIA – information held by a public authority.
23. On review of its application of section 40(2), the council amended its position on this exemption by providing the complainant with the details of senior officers of the council.
24. The council maintained the exemption for the personal information of its junior officers, members of the public and senior non-council officers.
25. The Commissioner asked the complainant whether he was satisfied with the council's revised application of section 40(2), and if not to advise the Commissioner. The complainant has not disputed the revised application of section 40(2) and therefore this exemption will not be considered further in this decision notice.
26. As noted in paragraph 16, regarding the information withheld under Section 41, the council stated in its internal review that it would provide the information to the complainant outside of the FOIA if the complainant agreed. The Commissioner asked the complainant to let her know if he did not agree to this informal resolution. The complainant has

not come back to the Commissioner asking for a formal decision on section 41 of the FOIA. The council has also advised the Commissioner that the complainant has been in touch with it about this information and a confidentiality agreement has been sent to him to begin the release of this information outside of the FOIA. On this basis, this exemption will not be considered further in this decision notice.

27. The council also relied on section 21 of the FOIA – information accessible by other means - to provide links to its website for redacted copies of individual case studies. The complainant has not disputed the council's application of section 21 of the FOIA and it will not be considered further in this decision notice.
28. The Commissioner therefore considers the scope of the case is to determine whether the council holds any further information other than what has already been located, whether the 'PR material is held by the council for the purposes of the FOIA and whether it has correctly relied on section 42 of the FOIA to withhold the information it has under this exemption.

Background information

29. The council has provided the Commissioner with some background information to help with understanding the context of the request.
30. In 2013 the then Interim Director of Children Services initiated a review, which was published in March 2014 entitled the 'Parker Review'. This was in response to a meeting with a group of MP's expressing their concern about Children Services in general, but included the issue of the relationship between foster carers and the council.
31. The council has explained that the review was conducted by an independent person (the reviewer) appointed by the council and the conclusion of the review was "an improving service which is emerging from the history of a weaker practice which has left a legacy of issues."
32. The council says that recommendations were made to improve processes as a result of the review following an in depth investigation and consideration of 15 cases in particular. The council has highlighted that the concluding remarks of the review stated: -

"This review is incomplete because many of the complainants have not chosen to engage with it."

"NCC fostering service does not stand out from many other local fostering services positively or negatively."

33. The council has advised the Commissioner that the Norfolk Foster Carers' Association (the NFCA) chairman was not satisfied with the arrangements for the review as he felt he should be allowed to be present during all foster carer interviews.
34. The council has explained that the Interim Director of Children Services attempted to address this and set up an Independent Foster Care Panel in 2015 to review the outstanding cases. This was chaired by the reviewer for continuity and became known as "Parker 2". The panel was made up of several independent reviewers.
35. This review was aimed at satisfying those who wanted their cases independently reviewed and had missed the opportunity in 2013.
36. The council has told the Commissioner that the NFCA's chairman insisted on being on the panel and sought Judicial Review against the council which was refused. The report of the panel's findings were published in 2016.
37. Six of the eight carers or caring families that were interviewed as part of the review and considered by the panel were found not to have been treated fairly by the council or the council had not acted in the interests of the child(ren).
38. The council has explained to the Commissioner that apologies were made in writing with offers of face to face meetings and issues of underpayment were addressed with recompense being made.
39. The council has told the Commissioner that six other cases, represented by the NFCA, did not agree to an interview as part of the review and offered, through an MP, a number of options for these carers to have their cases reviewed independently.
40. The MP also approached the council in support of the NFCA, and having failed to reach an agreement, there is still dissatisfaction with how the matter has been dealt with by the council and so this FOI request has followed.

Reasons for decision

Section 1 of the FOIA – Information held/ not held

41. Section 1 of the FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information within the scope of the request, and if so, to have that information communicated to him.

42. Where there is some dispute between the amount of information identified by a public authority and the amount of information that the complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions must decide whether, on the civil standard of the balance of probabilities, the public authority holds any further information within the scope of the request (or was held at the time of the request).
43. The complainant has told the Commissioner what information he considers is missing from what has been provided. The Commissioner has addressed this with the council to establish whether it holds this information.
44. The Commissioner has also asked the council to explain what searches it has carried out in order to establish whether it holds this information or any other information falling within the scope of the request.
45. The specific information that the complaint considers he has not been provided with are listed a) to j) below and the council's responses to these follows each point raised:
 - a) The complainant considers that the council has failed to provide the date when the reviewer approved and signed off the final version of the report published.
46. The council has told the Commissioner that the reviewer did not sign off the published report as there is no requirement to do so, which is why this information has not been provided as there is no signed document to provide.
 - b) The complainant has told the Commissioner that with regards to paragraph 29 of the Terms of Reference (ToR), it states *"the chair will provide a final summary report of the findings of the Panel to be approved by the panel and then made public"*. The Complainant says there is no evidence that this process was followed but the council seems to have published its own summary of the chairman's summary.
47. The council has told the Commissioner that the reviewer provided a single completed report to the council which had been approved by the Panel and that the complainant has been given access to a copy of this original report.
48. The council has further explained to the Commissioner that the full findings of the report have been made public, subject to minor editing to ensure confidentiality and to make the published document more accessible, which it says is in keeping with paragraph 30 of the ToR *"NCC will make arrangements for a final summary version of the report"*

to be made public alongside their response to the report and the recommendation contained therein".

- c) The complainant has stated that with regards to paragraph 28 of the ToR: *"A final decision report will be prepared and agreed by the panel as a true record of the decision they have made in respect of each case they have considered."* The complainant says he requested these reports and any drafts associated to them, but they have not been received.
49. The council has told the Commissioner that it does not hold individual case reports but case reports could be held in the 'PR material' which is not held by the council.
- d) On 16 March 2016, [the reviewer] informed the Director of Children's Services that he would be sending him "a report tonight". The complainant states that he not received a copy of this.
50. The council says it has searched the Director of Children's Services email account prior to it being deleted, and the email with the associated report was not found.
51. The council has told the Commissioner that the Director of Children's Services email account was deleted on the 24 January 2017 in line with its retention schedule for employees leaving the council. He left the authority in November 2016.
52. The council has confirmed to the Commissioner that his mailbox was searched for relevant material to do with this request prior to it being deleted.
53. It has explained that the usual council policy is to have information wiped from laptops and for the account to be deleted, which was the process followed for the Directors laptop. In addition, the retention and destruction policy states that managers' files must be retained to the end of the year and the Director's files were destroyed in accordance with this policy.
54. The council states that this information could potentially be held in the 'PR material'.
- e) On 29 April 2016, the reviewer wrote an email to the Director of Children's Services requesting an "update on discussions/ negotiations with NFCA." The complainant has told the Commissioner he has not received a copy of this.

55. The council has told the Commissioner that a copy may be located in the 'PR material', but this is not held by the council for FOI purposes.
- f) The complainant has told the Commissioner that he considers there have been unnecessary redactions made in the reviewer's email, dated 23 May 2016, to The Director of Children's Services. These being, item 1(4) of the reviewer's agenda and 2(d), the end date set by the reviewer for completion of his review is missing.
56. The council provided the Commissioner with an unredacted copy of this email and has explained that item 1(4) is redacted as it relates personally to the reviewer and not to the specifics of the case. The Commissioner, having viewed the redacted material, is satisfied that it is personal data about the reviewer and not related to the case and therefore outside the scope of the request.
57. For Item 2(d), the council has told the Commissioner that this has not been redacted; the date was never put on the original email sent by the reviewer.
- g) The complainant has told the Commissioner that at a meeting on 24 March 2016, the reviewer asked the solicitor at nplaw for an update regarding negotiations with NFCA. The complainant has not received this.
58. The council has responded to the Commissioner explaining that a time recording note was made of this meeting by the council but it has not been able to trace a copy of the record regarding the content of the meeting. The council are of the belief that there may have been a handwritten note of the meeting, but it has been unable to locate it.
- h) The complainant has told the Commissioner that he has not received a copy of the reviewer's initial draft recommendations which suggested that the council review its procedure for handling allegations and concerns about foster carers etc.
59. The council has told the Commissioner that it has not been able to locate and nor does it have any record of any initial draft recommendations described. Recommendations about policy and process changes were in the published report.
- i) The complainant has told the Commissioner that on 23 May 2016, the reviewer asked the Director of Children's services for an update on (a) political changes following elections in May, (b) media and (c) invoices. The complainant says he has not been provided with a response to that.

60. The council has responded to the Commissioner on this explaining that the note of the meeting was included in the information provided. The three specific points were not mentioned in this note. The council says they may have been discussed in the meeting but no other information is held on this. The council provided a copy of these emails sent between the 23 and 26 May 2016.
- j) Lastly, the complainant has told the Commissioner that on 1 September 2016 at a meeting between himself, the Director of Children's Services, NFCA and [name redacted] that the Director of Children's Services promised to provide the NFCA with a chronology explaining the delay in ratifying the agreement reached in March 2016 between the reviewer and the NFCA. He says he has not received this chronology.
61. The council's response to the Commissioner is that it does not recognise such a promise was made and there is no evidence of a chronology being recorded at the time of the request.
62. On top of asking the council to respond to the above specific information that the complainant considered to be missing, the Commissioner has asked the council to explain what searches it has carried out in order to try and locate the above as well as determine if any other information is held within the scope of the request.
63. The council has told the Commissioner that searches were carried out with the following relevant people; the Director of Children's Services, the PA to the Assistant Director who became the contact officer after the completion of the Parker Review, and the PA to the Director of Children's Services because the Director was the lead for the Parker Review.
64. The council has told the Commissioner that the information would most likely be in electronic format but some could have been printed and stored as hard copy.
65. Other than explained previously about the Director of Children's Services mailbox being deleted after leaving the council, the council has told the Commissioner that it has no record of any other information being deleted or destroyed relevant to the scope of the request.
66. The council has advised the Commissioner that the Parker Review was carried out on behalf of the council in response to complaints by the NFCA. It was not part of the council's statutory responsibilities and there is no statutory requirement for it to retain the information.
67. On review of the above explanations on the searches carried out and the way information is retained, the Commissioner is satisfied, on the

balance of probabilities, that the council holds no further information falling within the scope of the request.

68. The Commissioner will now go on to consider if the 'PR material' is held by the council for the purposes of the FOIA.

The 'PR material' Section 3(2) of the FOIA – Information held by a public authority

69. The council has advised the Commissioner that there is further information contained in The Parker Review mailbox, the Parker Review electronic file folder and some paper files. It refers to this as 'the PR material'. This information is not the outcome of the reviews, but material created, collated and used by the reviewer to produce the outcome of his reviews.
70. The council considers that this information is not held by it for the purposes of section 3(2) of the FOIA because the reviewer was carrying out a review completely independent of the council.
71. Section 3(2) of the FOIA sets out the criteria for establishing if information is held for the purposes of the FOIA:

"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

(b) It is held by another person on behalf of the authority"

72. The Commissioner's guidance on section 3(2)¹ of the FOIA states that when a public authority holds information solely on behalf of another person, it is not held for the purposes of the FOIA and that each case needs to be considered according to the specific circumstances.
73. The Commissioner asked the council to provide a detailed explanation as to on what basis it has concluded that, although it physically holds the

¹ https://ico.org.uk/media/for-organisations/documents/1148/information_held_by_a_public_authority_for_purposes_of_foia.pdf

information, it does not hold this information for the purposes of the FOIA.

74. The council has told the Commissioner that it requested and paid for independent reviews in relation to the council's arrangements with some foster carers, to be carried out by an independent person who, other than these reviews, does not have any relationship with the council.
75. The council provided the reviewer with facilities such as an email account, a telephone number, an office space and limited administrative support. Once these reviews had concluded, no ongoing support was provided.
76. The council has told the Commissioner that the council now simply provides electronic and manual storage for the 'PR material' and it is not intended to be used by the council for anything. It has told the Commissioner that it does not access the material and therefore does not control the material.
77. The council has advised the Commissioner that it does not determine what information is retained, altered or stored in the 'PR material', but as this type of material does not fall within any of its defined categories within its retention schedule, the council says it will store the material for a period of six years from the conclusion of this complaint.
78. The council has further advised the Commissioner that it does not have use for, or interest in using, the 'PR material'. It has stated that as these were independent reviews, to protect the independence of these reviews and the integrity of independent reviews, the council does not intend to make use of these or any future independent reviews.
79. It has also told the Commissioner that it does not deal with enquiries about the 'PR material'. The cost of storing this material is also nominal and is borne by the council's overall budget.
80. The council has stated to the Commissioner that there are no contractual or statutory regulations which determines who has authority over the information created in the 'PR material'.
81. The council has told the Commissioner that there is potentially information held in this 'PR material' consisting of things such as emails between the reviewer and officers in council, as the reviewer would have contacted relevant officers as part of his investigations. This would also include officers that no longer work at the council whose email accounts have been deleted. As the council commissioned an independent review, it considers that it would undermine the independence of that review and integrity of any future independent reviews if the council were to

search the 'PR material' for duplicate copies of the council's information which it has deleted under its retention and destruction policy.

82. In practical terms, for the Council to be satisfied that it has conducted a thorough search for this material, it would need to examine all of the 'PR material' including material that will likely contain exchanges with foster carers and information around their experience with the council. Such information will have been provided by the foster carers to the reviewer in confidence and with the belief and expectation that they could be candid as he was conducting a review of the arrangements independent of the Council.
83. The council concludes that very often, independent reviews take place after the council's complaints process has concluded. It is therefore of the view that the public would have no confidence in the independence of such reviews if the council were able to access such material.
84. The Commissioner has considered the above explanations by the council. It is satisfied that this material was created by a reviewer independent to the council in order to conduct his independent reviews.
85. The Commissioner accepts that if the council was to have control of or the ability to access/ alter/ or add to the material for its own use, then this could undermine the process and purpose of an 'independent review' because being able to access it could potentially influence any decisions and outcomes of these reviews. For example, witnesses may be less inclined to give full and frank responses to the reviewer's enquiries about a public authority if they thought the public authority being reviewed would be privy to it.
86. The Commissioner has also considered factors in the guidance on section 3(2) of the FOIA which could indicate that the 'PR material' is held by the council solely on behalf of another person (the independent reviewer) and concludes that:
 - The council, as the local authority, has no access to, use for, or interest in the information;
 - Access to the information is controlled by the independent reviewer
 - The council, as the local authority, does not provide any direct assistance at its own discretion in creating, recording, filing or removing information;
 - The council, as the local authority, does not deal with enquiries about the information

87. The Commissioner has also considered the fact that the council has paid the independent reviewer to carry out reviews into its relationship with some foster workers, but as previously stated above, if the council were able to have access of the material used to create an independent review then doubts could be raised on just how independent these reviews are, as simply knowing a public authority can access this material could potentially influence the outcome of the review.
88. The Commissioner is therefore satisfied in this case that the 'PR material' is not held by the council under section 1(1)(a) of the FOIA because under section 3(2) of the FOIA the information is only held on behalf of another person, that being the independent reviewer.

Section 42 of the FOIA – Legal professional privilege

89. Section 42 of the FOIA states:

(1) "Information in respect of which a claim to legal professional privilege or, in Scotland, to confidentiality of communications could be maintained in legal proceedings is exempt information."

90. Legal professional privilege protects the confidentiality of communications between a lawyer and client. It has been described by the Information Tribunal in the case of *Bellamy v The Information Commissioner and the DTA (EA/2005/0023)* as:

"... a set of rules or principles which are designed to protect the confidentiality of legal or legally related communications and exchanges between the client and his, her or its lawyers, as well as exchanges which contain or refer to legal advice which might be imparted to the client, and even exchanges between the clients and their parties if such communication or exchanges come into the being for the purpose of litigation."

91. There are two types of privilege within the concept of LPP:

- Litigation privilege; and,
- Advice privilege

92. The council has advised the Commissioner that part of the information withheld under section 42 falls under litigation privilege and part under advice privilege. It provided a copy of this information to the Commissioner highlighting which parts it withheld under litigation privilege and which parts under advice privilege.

Information withheld under Legal Advice privilege

93. Legal advice privilege is generally considered where no litigation is in progress or is contemplated. Legal advice privilege may only be claimed in respect of certain limited communications that meet the following requirements:

- The communications must be made between a professional legal adviser and client;
- The communications must be made for the sole or dominant purpose of obtaining legal advice; and
- The information must be communicated in a legal adviser's professional capacity. Consequently not all communications from a professional legal adviser will attract privilege.

94. The Commissioner has viewed the information withheld under advice privilege which is email communication between the council's solicitor and its Director of Children's Services and relevant team members relating to the Parker Review case.

95. The Commissioner is therefore satisfied that the withheld information represents legal advice provided to a client by their legal advisers. The Commissioner is not aware of any evidence to suggest that the information has lost its confidentiality by entering the public domain.

96. Consequently the Commissioner accepts that the withheld information attracts legal professional privilege on the grounds of legal advice privilege, and that on this basis section 42(1) is engaged.

Information withheld under litigation privilege

97. Litigation privilege will be available in connection with confidential communications made for the purpose of providing or obtaining legal advice in relation to proposed or contemplated litigation. This type of privilege can only be relied upon in circumstances where the following criteria are met:

- Where litigation is underway or anticipated. Where litigation is anticipated there must be a real likelihood of litigation taking place; it is not sufficient that litigation is merely a possibility;
- The dominant purpose of the communications must be to obtain advice to assist in the litigation; and
- The communications must be made between a professional legal adviser and client, although, privilege may extend to

communications made with third parties provided that the dominant purpose of the communication is to assist in the preparation of the case.

98. The council has explained that the withheld information was being provided for the purposes of litigation and that the dominant purpose of the communication was to assist in the preparation of litigation. The advice and correspondence related to different proceedings but all concerned the overall dispute relating to the Parker review and the council has advised that the solicitors all acted in their professional capacity.
99. Litigation privilege can be applied to a wide variety of information, including advice, correspondence, notes, evidence or reports. The Commissioner has reviewed the withheld information and is satisfied that it consists of communications made for the dominant purpose of litigation and is therefore satisfied that it attracts legal professional privilege.

Public interest test

100. As a qualified exemption, section 42(1) is subject to a public interest test. The information must therefore be disclosed if the public interest in disclosure outweighs the public interest in maintaining the exemption.

Public interest arguments in favour of disclosure

101. The council has stated to the Commissioner that it considered the importance of being publicly accountable and transparent in its decision making to better inform public debate in this matter.
102. The complainant has told the Commissioner that in December 2015 it was agreed that due to the clear conflict of interests, nplaw would not be involved in advising the Parker Review and that the panel chair would be provided with independent legal advice. He considers that the council's claim to legal privilege when it has failed to honour that agreement is unreasonable.
103. The council has responded to the Commissioner on this stating that as can be seen from the un-redacted version of the information, there were discussions between nplaw and the reviewer about facilitating his own advice, rather than being advised by nplaw. Clearly there was communication with him, but the council states this was procedural such as drafting a suggested standard letter to foster carers, also nplaw acted as a point of contact with the reviewer at times.
104. However the privilege claimed in this case is in relation to legal communications with advice to members of the council's management

team and was not advice to the reviewer who was employed to conduct an independent review.

Public interest test arguments against disclosure

105. The council has told the Commissioner that it has considered the inherent public interest in legal professional privilege being fundamental to the effective administration of justice and the need for legal advice to be given in a confidential manner.
106. The council considers that if this was not so then such advice may not be given or given in an inhibited way for fear of disclosure.
107. The council has also explained to the Commissioner that this matter remains live and contentious and thus continues to be the subject of debate, with the possibility of further litigation and a further independent review. So if this information were to be divulged then it could possibly result in any further required legal advice not being given in a full and frank manner.

Balance of the public interest test

108. The Commissioner appreciates that in general there is a public interest in public authorities being as accountable as possible in relation their decisions.
109. However, there is also a strong opposing public interest in maintaining the council's right to communicate with its legal advisors in confidence. To outweigh that public interest, the Commissioner would expect there to be an even stronger public interest in disclosure.
110. The Commissioner appreciates that this overall issue is still ongoing, even though reviews have been undertaken, and the legal advice is still relatively recent. The Commissioner also notes that the council has accepted that there have been failings with regards to the foster carers and the children.
111. The Commissioner sees that there is a legitimate public interest in the public knowing how the council has operated in relation to the overall case and also notes that the council has provided information in relation to this request.
112. In light of this, the Commissioner sees that it is important that the council should be able to ensure it gets full and frank legal advice in the matter to allow the legal system to draw its conclusions in the appropriate way.

113. The Commissioner therefore concludes that the arguments in maintaining the exemption at section 42(1) of the FOIA outweigh the arguments for disclosure and finds that the exemption remains engaged in this case.

Right of appeal

114. 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

115. 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.

116. 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

Andrew White
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