

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 19 February 2018

**Public Authority:** Lancashire County Council

**Address:** County Hall  
Preston  
Lancashire  
PR1 8XJ

#### Decision (including any steps ordered)

---

1. The complainant has requested specific social services records deriving from a now deceased person. The Lancashire County Council (“the Council”) originally refused to provide the requested information under the exemptions provided by sections 36(1)(b), 40(2), and 41(1) of the Freedom of Information Act 2000 (“the FOIA”). During the course of the Commissioner’s investigation the Council concluded that no relevant information was held.
2. The Commissioner’s decision is that no relevant information is likely to be held by the Council.
3. The Commissioner does not require the public authority to take any steps.

## Request and response

---

4. On 6 July 2017, the complainant wrote to Council and requested information in the following terms:

*Why did [deceased person] decide that she no longer wanted to see us again - why did she want us out of her life?*

5. The Council responded on 26 July 2017. It stated that the requested information was withheld under sections 36(1)(b), 40(2), and 41(1).
6. Following an internal review the Council wrote to the complainant on 2 August 2017. It stated that its original position was correct.

## Scope of the case

---

7. The complainant contacted the Commissioner on 21 August 2017 to complain about the way his request for information had been handled, and specifically that the applied exemptions were incorrect.
8. During the course of the Commissioner's investigation, the Council concluded that no relevant information was held, and advised the Commissioner of this.
9. The Commissioner therefore considers the scope of the case to be the determination of whether any relevant information is held.

## Reasons for decision

---

### Section 1(1) – General right of access to information

10. Section 1(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 relevant to the request, and if so, to have that information communicated to them. This is subject to any exclusions or exemptions that may apply.
11. Where there is a dispute between the information located by a public authority, and the information a complainant believes should be held, the Commissioner follows the lead of a number of First-tier Tribunal (Information Rights) decisions in applying the civil standard of the balance of probabilities.

12. In the circumstances of this case the Commissioner will determine whether, on the balance of probabilities, the Council holds recorded information that falls within the parameters of the request.

What information has been requested?

13. The request seeks specific information deriving from a deceased person about her wishes for contact with members of her family.
14. The complainant believes that such information must be held by the Council's social services, and that it will contain direct reference to one or more family members, possibly including himself.
15. The Commissioner understands that this information is sought in relation to an inheritance dispute.

The Council's position

16. The Commissioner asked the Council to confirm what searches for recorded information had been undertaken, and why these searches would be expected to retrieve any relevant information that may be held.
17. The Council subsequently informed the Commissioner of the following:
  - All current records are electronic and held centrally within a database. These records were searched by name and date of birth of the deceased person, with no relevant information returned.
  - Earlier electronic records were stored in a now dormant database. In response to the Commissioner's investigation, the Council accessed this dormant database to search by name and date of birth of the deceased person, and identified some simple administrative records ('35 diary sheet entries'). The latest record found was dated June 2012, and stated that the deceased person had moved to a new area and that the case was completed. These 35 records were individually reviewed for any potential relevance to the request, but none was identified. The Council has clarified that these records should have been destroyed in 2015 in accordance with the Council's 'Adult Social Care Retention and Destruction Policy', which specifies that such records should be destroyed 3 years after the death of the service user or the closure of the case; however because the case was not closed correctly they were not identified for deletion. As these records do not relate to the request, and should no longer be held by the Council, they have been destroyed.

- Prior to the introduction of the (now dormant) database in the 1990s, records were kept in hardcopy form. These records were then electronically catalogued before being archived. The electronic catalogue was searched by name and date of birth of the deceased person, with no relevant information returned. Should any relevant hardcopy records have been destroyed, metadata would have been retained in the catalogue to confirm this.
18. The Council notes that the deceased person died in January 2014, and that the Council's last involvement with that person was in June 2012, after which the person left the local area. On this basis, the Council considers it possible that information relating to the deceased may be held by another local authority.

#### The Commissioner's conclusion

19. The Commissioner understands that the request seeks specific information deriving from the deceased person whilst subject to Social Services involvement.
20. The Council has provided the Commissioner with details of the way in which social services records are maintained. From these details, the Commissioner understands that electronic records are stored centrally in two searchable databases, which have been searched by the name and date of birth of the deceased person. Earlier hardcopy records have also been searched through an electronic catalogue by using the same search terms.
21. Having considered the nature of the information sought, the Commissioner perceives that the Council's searches appear to be logical and appropriate. This is evidenced by the retrieval of administrative records relating to the deceased person which should have been destroyed in 2015 (and which the Commissioner notes were individually reviewed by an officer to identify any relevance to the request).
22. The Commissioner also considers it relevant to note that the deceased person's last interaction with social services was in June 2012, after which they moved to another local area before their death in January 2014.
23. Having considered the above factors, and in the absence of any contradictory evidence, the Commissioner must conclude, on the balance of probabilities, that no relevant information is likely to be held.

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

24. Section 10(1) of the FOIA states that:

*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.*

25. In this case the Commissioner has identified that the Council failed to comply with section 1(1) until the onset of this investigation.

## **Other matters**

---

### The Council's compliance with section 1(1)

26. The Commissioner reminds the Council of the importance of complying with section 1(1) when a request is first received. This action will inform the Council of the steps it must then take.
27. In this case, the Commissioner understands that the Council's original response was a standard template used to respond to any requests for social services records relating to deceased persons. In response to this case, the Council has reminded all relevant officers of the importance of complying with section 1(1) before proceeding any further with a request.

### The complainant's rights under the Data Protection Act 1998

28. In his submissions to the Commissioner, the complainant notes that he has the right to request his own personal data under the terms of the Data Protection Act 1998.
29. The Commissioner confirms that this is correct. However, this decision relates only to the terms of the FOIA, under which the personal data of the requestor is exempt under section 40(1). Notwithstanding this, the Commissioner has determined that no recorded information is likely to be held by the Council that falls within the parameters of the request.

## Right of appeal

---

30. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

31. 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.
32. 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**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**