

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 December 2019

Public Authority: Local Government & Social Care Ombudsman
Address: 53-55 Butts Road
Coventry
CV1 3BH

Decision (including any steps ordered)

1. The complainant has requested information about the handling of complaints. The Local Government & Social Care Ombudsman ("the LGSCO") provided some information and pointed the complainant to additional information which was already reasonably accessible to her.
2. The Commissioner's decision is that the LGSCO does not hold any further information within the scope of the request, beyond that which it has either provided or has identified as being reasonably accessible. It has therefore complied with its duty under section 1(1) of the FOIA.
3. The Commissioner does not require any further steps.

Request and response

4. On 19 July 2019, referring to previous correspondence, the complainant wrote to the LGSCO and requested information in the following terms:

"However, in contacting yourselves, referrals have been refused on the following grounds; [sic]

- You do not have the standing to make a complaint.

[1] Please advise what is your criteria is for having such standing?

[2] Please advise where the victim of abuse has dementia, how their consent can be obtained to your satisfaction? Or are the most vulnerable adults outside your remit?

[3] Being affected to the point of dying is surely the greatest injustice? Please advise why dying negates the right to justice?

"On one occasion my complaint was investigated – however, your offices chose to accept the explanation given by the LA. This might appear fair, except you furnish the LA with full details of the complaint, but withhold the LA response from the complainant ensuring they cannot challenge the response. Thus they are accountable to no one as no one can challenge their version of events.

[4] Please inform how this is achieving your mission statement to 'help to make sure local public services and social care services are accountable to the people who use them.'?

5. On 12 August 2019, the LGSCO responded. It provided some information in response to part [2]. It withheld information in response to parts [1] and [3] of the request because it said that the information was reasonably accessible and so relied on the exemption at section 21 of the FOIA. In relation to part [4] of the request, the LGSCO interpreted this element as an expression of dissatisfaction with the way it had handled a complaint which the complainant had previously attempted to submit. The LGSCO therefore pointed the complainant in the direction of its service complaints process.
6. The complainant requested an internal review on 15 August 2019. The LGSCO sent the outcome of its internal review on 11 September 2019. It upheld its original position.

Scope of the case

7. The complainant contacted the Commissioner on 15 September 2019 to complain about the way her request for information had been handled.
8. At the outset of her investigation, the Commissioner wrote to the complainant. The Commissioner set out that elements [3] and [4] of the request would not appear to meet the definition of a request for information and might be best explored through the LGSCO's internal complaints process or via a Subject Access Request (SAR). The complainant did not dispute that the information which the LGSCO had withheld under section 21 was "reasonably accessible" to her, but she considered that, as the information that she had seen did not appear to explain why her LGSCO complaint had been refused, further information must be held.

9. The Commissioner has therefore only considered whether further information was held within the scope of the request.

Reasons for decision

Section 1 - Held/Not Held

10. Section 1(1) of the FOIA states 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.*
11. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the authority to check that the information is not held and any other reasons offered by the public authority to explain why the information is not held. Finally, she will consider any reason why it is inherently likely or unlikely that information is not held.
12. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.

The complainant's position

13. The complainant is clearly unhappy with the LGCSO's decision not to review a complaint that she had attempted to submit on behalf of a person who had dementia. The complaint appears¹ to have been refused on the grounds that the complainant did not have standing to bring the complaint.

¹ The Commissioner has not seen a copy of the LGCSO's formal grounds for refusal but has been able to surmise as much from the correspondence between parties.

14. In her original grounds of complaint to the Commissioner, the complainant, referring to the LGSCO's grounds for refusal, stated that:

"I cannot find any definitive policy on their website....Nor can I find on their website advising that although they claim their role is to investigate whether a Council was at fault, they refuse to investigate on the grounds that as the victim is deceased it is too late to achieve a different outcome. I have asked for their policy as to whether their role is to only to investigate whether a council is at fault if a different outcome can be achieved. I can find nothing on their website informing the public their role is so restricted."

15. In later correspondence, she stated:

"What I do not understand is why simple questions asking for clarity have been met with such defensiveness. Whilst I appreciate there cannot be a policy to address every eventuality, surely who can and who cannot raise concerns and whether concerns can be raised about deceased are fairly basic standards?"

16. In summary, as the Commissioner understands it, the complainant's reason for believing that the LGSCO holds further information is that the information it has supplied does not appear to explain why her own complaint was not accepted by the LGSCO.

The LGSCO's position

17. The Commissioner asked the LGSCO to consider whether it held any additional internal guidance or training materials which would cover situations relating to the question of a prospective complainant's "standing."
18. The LGSCO responded to say that its approach to determining the eligibility of complaints was set out in its "Assessment and Investigation" manuals and its "Guidance on Jurisdiction." It noted that these documents were published on its website and therefore reasonably accessible to the complainant. It was these documents that were covered by the section 21 exemption.
19. The LGSCO further noted that it did hold an internal guidance note which covered issues of consent, but that this had already been provided in response to the initial request.
20. The LGSCO stated that it had no dedicated internal training materials on the subject and that new recruits were referred to both the Manuals and the Guidance on Jurisdiction. It reiterated its view that it had provided all the information it held.

The Commissioner's view

21. The Commissioner's view is that the LGSCO does not hold any further information.
22. It is rare that the Commissioner is able to prove definitively that a public authority does or does not hold specific information. Her approach, supported by decisions of the Tribunal, is only to make a judgment as to whether information is held on the balance of probabilities.
23. In this particular case, the Commissioner considers that the documents which the LGSCO has highlighted present detailed explanations of the general approach it takes in relation to the matters which the complainant has highlighted. A body like the LGSCO will deal with a very broad spectrum of complaints and it cannot devise a specific policy to cover every single scenario. Nevertheless, the guidance sets down a clear framework for case officers to apply.
24. The complainant does not appear to accept that the framework covers her complaint. However, even if the Commissioner were to accept that, or to accept that the framework might have been applied incorrectly (and it would not be for the Commissioner to make such a judgment in any case), it would still not prove that the LGSCO does, as a matter of fact, hold further information.
25. What the complainant appears to be seeking is a more detailed reasoning and explanation of the various factors which caused her particular complaint to be rejected by the LGSCO. Such an explanation would not fall within the scope of this request and is unlikely to fall within the scope of the FOIA at all. The Commissioner has already advised the complainant of alternative routes which she may be able to pursue if she wishes to explore and challenge the LGSCO's decision.
26. The Commissioner is therefore satisfied that the LGSCO does not hold any further information within the scope of the request. It has therefore discharged its duty under section 1(1) of the FOIA.

Right of appeal

27. 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@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

28. 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.
29. 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

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