

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 April 2020

Organisation: Slough Children's Services Trust

Address: Ground Floor West
51 St. Martins Place
Bath Road
Slough
SL1 3UF

Decision (including any steps ordered)

1. The complainant has requested financial information from Slough Children's Services Trust ("SCST"). SCST has advised that it is not a public authority for the purposes of the FOIA. It has therefore refused to respond to this request under the FOIA.
2. The Commissioner's decision is that SCST is not a public authority for the purposes of the FOIA and it was therefore not under an obligation to respond to the request. No steps are required in this case.

Background

3. In a previous, separate complaint, the complainant made an information request to Slough Borough Council ("SBC") about payments made to social care providers.
4. In that case, SBC disclosed most of the requested information but said that it did not hold financial information in respect of children's services because those services were provided by SCST, which it advised was a separate legal entity.

5. The complainant argued that SCST held this information on behalf of SBC, and therefore that the information was accessible via SBC, under the FOIA. This issue proceeded to an investigation by the Commissioner and her decision¹ in that case was that SBC was entitled to state that it did not hold this information for the purposes of the FOIA.
6. The complainant appealed that decision to the First-tier Tribunal (Information Rights) (the "Tribunal") [EA/2019/0344]. The matter was 'struck off' on grounds of having no reasonable prospect of succeeding, however, the Tribunal advised the complainant as follows:

"The question whether the Trust can be required to provide the information to [the complainant] is completely separate; to test the current assertion that the Trust is not obligated under the Freedom of Information Act 2000, [the complainant] needs to make a request to the Trust, receive their response and (if need be) invoke his right under section 50 of the Freedom of Information Act 2000 to complain about the Trust to the Information Commissioner's Office. The Information Commissioner's Office may then issue a decision notice under section 50 about the Trust which can be appealed to this Tribunal if either [the complainant] or the Trust disagrees with the Information Commissioner's Office conclusion".

7. This current complaint is as a result of that further request being made to SCST.
8. SCST's website² advises that it was:

"... established as a not-for-profit trust on 1 October 2015 after intervention by the DfE [Department for Education] to remove children's services from Slough Borough Council, following a series of 'Inadequate' ratings".

Request and response

9. On 13 November 2019, the complainant wrote to SCST and requested information in the following terms:

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2019/2615738/fs50833599.pdf>

² <https://www.scstrust.co.uk/who-we-are/our-ofsted-journey/>

"I'd like to make a request for payments to suppliers who provide a service in Health and Social Care, all transactions over £500 from 1st April 2018 to Date. As a minimum, please make sure to include the date, value and recipient of each transaction.

This would include all suppliers falling under the categories :-

- 1. Payments to suppliers who provide fostering and adoption services to the Council*
- 2. Payments to Children's Residential Care Providers*
- 3. Providers who carry out Homeless Services for children*
- 4. Payments to suppliers who provide Special Education Services*

In particular I am looking for itemized transactions (i.e., at the daily level) for suppliers from 1st April 2018 - Current, preferably in CSV format. I look forward to the information at the earliest".

10. SCST referred the request to SBC. On 6 December 2019, SBC responded on behalf of SCST. It advised the complainant that, as it had previously explained to him, SCST was not a public authority.
11. As SBC had advised that SCST was not a public authority, no internal review was requested and the complainant passed his complaint to the Commissioner for her consideration.

Scope of the case

12. The complainant contacted the Commissioner on 12 December 2019, to complain about the way his request for information had been handled. He asked her to consider whether or not SCST was a public authority and therefore needed to respond to his information request. His grounds of complaint are summarised as follows.
13. Firstly, he advised that the Tribunal's findings (see 'Background' above) stated:

"That the Trust cannot be acting 'on behalf of' the Council when it carries out its duties because the reason it exists is because the Council cannot be trusted to do the work the Trust now needs to do, it is acting instead of the Council".
14. Accordingly, he followed the guidance provided by the Tribunal in its findings (see paragraph 6, above) and made a request directly to SCST.
15. SCST had subsequently referred the request back to SBC, who in turn responded on its behalf advising:

"As was previously explained to you SCST are not a public body as defined by the FOIA and do not fall within the scope of the Act. Therefore they will not be responding to your request".

16. In the complainant's view, this response:

"... demonstrates that SBC are still involved in the decision making of SCST ... It appears the Trust disregards the rules of FOIA".

17. Secondly, in the complainant's view:

"The Trust is wholly dependent on public funds and as a consequence, should be subject to the FOI act. (Their latest accounts show they rely completely on the DfE and Slough Council for its [sic] existence)".

18. Thirdly, he argues that SCST is actively engaged in FOIA responses, as can be ascertained on its website³. In his view, SCST:

"... cannot respond only to some requests, whilst rejecting others as outside the scope because of they are run privately. They also cannot separate finance queries as outside the scope - especially as the Trust is completely reliant on public funds - SBC and the DfE for its existence".

19. The complainant also referred to other cases where Trusts had been set up in different authority areas, saying that they had responded to his requests under FOIA. However, the Commissioner has not further considered these arguments as she is only determining whether or not SCST should be properly designated as a public authority in this case. Any findings regarding other Trusts would each have to be considered on their own merits and individual circumstances.

20. Lastly, he argued:

"On a final note, we would like to point out that SCST is a "not for profit organisation" and not a private company in the true sense, as noted by SBC. It should hence be treated in the same way as the Trusts we have mentioned ...".

21. The complainant also provided the Commissioner with a list of points he had considered when ascertaining what properly constituted a 'public authority'. However, these points were in reference to what is

³ <https://www.scstrust.co.uk/who-we-are/information-requests/#freedom-of-information-requests>

considered to be a 'public authority' in respect of the Human Rights Act 1998 rather than the FOIA, which has its own definitions. The Commissioner has therefore not further considered these points here.

22. The Commissioner considers the scope of this case to be concerned with the question of whether the SCST is a public authority for the purposes of the FOIA.

Reasons for decision

23. The FOIA gives members of the public the right to access recorded information held by public authorities and places a duty on public authorities to respond to requests for such information.
24. If a public authority receives a request for information it is legally obliged to provide it within 20 working days, unless any of the exemptions contained within Part II of the FOIA apply. If a public authority believes an exemption does apply to the information that has been requested then the public authority must explain to the requester why the exemption applies, in accordance with section 17 of the FOIA.
25. As cited in paragraph 6 above, the Commissioner initially acknowledges that the complainant made his request to SCST on the advice of the Tribunal as this would be the appropriate mechanism for determining whether or not SCST is a public authority, ie any subsequent complaint for non-compliance with a request made under the FOIA could be brought before the Commissioner for her determination. This matter is what is being tested in this decision notice.
26. Therefore, the question here is whether SCST is a public authority for the purposes of the FOIA.
27. The definition of 'public authority' is given in section 3(1) of the FOIA. In particular it states that under the FOIA a 'public authority' means -
 - "(a) subject to section 4(4), any body which, any other person who, or the holder of any office which -*
 - (i) is listed in Schedule 1, or*
 - (ii) is designated by order under section 5, or*
 - (b) a publicly-owned company as defined by section 6."*
28. Section 5 allows the Secretary of State to designate a public authority by order.
29. Section 6 states that a company is a 'publicly-owned company' for the purposes of section 3(1)(b) if it is wholly owned by the Crown or is wholly owned by any public body listed in Schedule 1 (other than a

government department or any authority which is listed only in relation to particular information).

30. The complainant's views regarding the status of SCST are listed above in the 'Scope' section. He believes it is "*not a private company in the true sense*" and that it is "*wholly dependent on public funds*".
31. Irrespective of whether or not SCST performs a public function and is dependent on public funding, it is not within the Commissioner's remit to make an order under section 5. Only the Secretary of State can do so. At the time of the complainant's request, and as at the date of this decision notice, SCST is not listed in Schedule 1 nor has the Secretary of State made an order under section 5 designating SCST as a public authority. Accordingly, the Commissioner considers that SCST is not a public authority by virtue of either section 3(1)(a)(i) or (ii) of the FOIA.
32. The Commissioner has gone on to consider whether SCST is a publicly-owned company as defined by section 6 of the FOIA.
33. SCST is not wholly owned by the Crown, so the Commissioner needs only to consider whether or not it is wholly owned by any public body listed in Schedule 1.
34. According to Companies House, SCST is a "*Private company limited by guarantee without share capital*" which was incorporated on 12 March 2015. Furthermore, whilst the complainant is of the view that SCST is "*not a private company in the true sense*", available on the Companies House website is a file copy of a "*Certificate of Incorporation of a Private Limited Company*" for SCST (which can be accessed via footnote '5' above). This evidences that, on 12 March 2015, SCST was incorporated under the Companies Act 2006 as a private company. The Commissioner considers this to further evidence both SCST's independence from SBC and its status as a private limited company.
35. In addition, the Commissioner notes the following wording from the Tribunal ruling referred to above, which said:

"The reason that the Trust was created was because the Department for Education could not (in my words) trust the Council to adequately carry out its responsibilities to children. It is logical, therefore, that the Council would have to hand over to the Trust any finance it received which the Council would, ordinarily have put into its own provision of children's services because the Council cannot benefit from being rated inadequate.

Also flowing from the reasons the Trust was set up is the inevitable conclusion that the Trust cannot be acting "on behalf of" the Council when it carries out its duties because the reason it exists is because

the Council cannot be trusted to do the work the Trust now needs to do – it is acting instead of the Council.

Finally, the logical conclusion is that the information sought by [the complainant], which is about financial matters relating to children's services, cannot be held by the Trust on behalf of the Council because the Council has been told by the Department for Education that they cannot be trusted to do the work that the Trust has been created to do and therefore the Council does not need to have any such information because it is not responsible for children's services".

36. The Commissioner initially acknowledges that the complainant made his request to SCST on the advice of the Tribunal as this would be the appropriate avenue for determining whether or not it was a public authority, ie any subsequent complainant for non-compliance could be brought before the Commissioner for her determination. This matter is what is being tested in this decision notice.
37. The complainant is of the view that because SBC responded to his request rather than SCST, this indicates that SBC is involved in the decision-making of SCST, which could be said to indicate some 'governance' of SCST by SBC. On this point, the Commissioner accepts that the response which was sent to the complainant was done so by SBC, and also that it advised him that SCST had asked it to do so on its behalf. However, this would be in line with the processes outlined on SCST's website, where it has indicated that any requests for information being made under the FOIA should be directed to SBC and that it will support any response where it is processing data on behalf of SBC (which it says is not the case here). Therefore, whilst SBC has responded on behalf of SCST, the Commissioner is satisfied that a response by SBC to a request made under the FOIA is entirely to be expected on the basis of what SCST has explained regarding its position. This is because it states that it is not a public authority itself and is not therefore required to respond.
38. The complainant is also of the opinion that SCST is "*actively engaged in FOIA responses*" and that it should not be able to be 'selective' in respect of those requests which it chooses to respond to whilst rejecting others. In arguing this point he referred to information on its website (see paragraph 15 above).
39. In response, the Commissioner notes that this is not what SCST has indicated on its website. According to its website, SCST advises as follows regarding requests made under the FOIA:

"Please be advised that as Slough Children's Services Trust is a private limited company they are not subject to the Freedom of Information Act.

Slough Children's Services Trust will not respond to requests where they are the data controller this includes HR records including staffing and finance information including budgets.

Financial Information for Slough Children's Services Trust is available via Companies House – Slough Children's Services Trust, Companies House Filing History⁴.

... All Freedom of Information requests should be directed to Slough Borough Council via the process listed on their website⁵.

Slough Children's Services Trust will support Slough Borough Council in answering Freedom of Information Requests where they are processing data on behalf of them".

40. The Commissioner therefore notes that any publishing of information, such as Annual Reports, Children's Social Care Strategies & Policies and Children's Social Care Leaflets and Information Sheets is being done on a voluntary basis, and not under the remit of FOIA.
41. The only public authority which could be considered to potentially 'wholly own' SCST would be SBC. The Commissioner therefore raised additional queries with SCST which it passed to SBC. SBC liaised further with SCST and responded to the Commissioner as follows:

"Slough Borough Council (SBC) has previously explained to the Commissioner that SCST was set up under direction from the Department for Education, following unsatisfactory Ofsted inspections. As such, this was not a voluntary outsourcing of its children's services function and the Trust is not a subsidiary or an arm's-length management organisation (ALMO) of SBC. SBC retained control of the information relating to children's services provision until 30 September 2015. After this point, the Trust assumed responsibility. The Trust is a private company limited by guarantee, and is not an arm's-length management organisation (ALMO) to provide children's services on behalf of SBC".

⁴ <https://beta.companieshouse.gov.uk/company/09487106/filing-history>

⁵ <http://www.slough.gov.uk/council/data-protection-and-foi/freedom-of-information.aspx>

42. The Commissioner also asked on what basis SCST has concluded that, although it physically holds the information of the nature requested, it does not hold this information for the purposes of FOIA. In responding, SBC advised:

"SCST holds some data jointly with SBC, and some which both SCST and SBC consider to be SCST's own, internal corporate data. The data held jointly with SBC comprises individual child care record data. SBC agrees that this is information which is held on its behalf by SCST and that as such, it is potentially accessible under the FOIA (subject to the application of exemptions) by means of a request submitted to SBC.

SCST's corporate data, this includes budgets, strategies, tendering, payments, Human Resources information, payroll, and salaries. It is information falling within this category of data which SBC considers to be SCST's own information, to which it has no access or control, and which is not held on SBC's behalf".

43. In view of the arguments considered above, the Commissioner is of the opinion that SCST is neither wholly owned by the Crown, nor any public authority listed in Schedule 1, and therefore it does not satisfy the definition of a publicly-owned company as contained in section 6.
44. Accordingly, the Commissioner considers that SCST is not a public authority by virtue of section 3(1)(b) of the FOIA.
45. As it is not a public authority by virtue of either 3(1)(a)(i) or (ii), or by 3(1)(b), the Commissioner therefore finds that SCST was not required to respond to the complainant's request under the FOIA.

Right of appeal

46. 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

47. 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.
48. 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

Carolyn Howes
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