

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 June 2021

Public Authority: Sheffield City Council
Address: PO Box 1283, Town Hall
Pinstone Street, Sheffield S1 2HH
(email: FOI@sheffield.gov.uk)

Decision (including any steps ordered)

1. The complainant requested documentation relevant to the decision by Sheffield City Council not to generate a safeguarding report regarding the care of her late mother, including emails between officers, advice taken from third parties and the status of any ongoing reviews. The complainant particularly required to see any assessments that led to no safeguarding report being made.
2. The Commissioner is satisfied, on the balance of probabilities, that Sheffield City Council does not hold the requested information and complied with section 1(1) FOIA (Right of access to information).
3. The Commissioner decided that Sheffield City Council took an excessive length of time to respond substantively to the request in breach of Section 10(1) FOIA (Time for compliance).
4. The Commissioner did not require Sheffield City Council to take any further steps to comply with the legislation.

Request and response

5. On 28 February 2020, the complainant wrote to Sheffield City Council (SCC) and requested information in the following terms:

In a meeting held between [names redacted] on 05.02.20 I was advised that the death of my mother – [personal information redacted] - had seemingly not generated a safeguarding report from SCC Adult Services to the SAB.

I request and require all documentation relevant to the decision not to submit a report including - but not limited to - emails between officers on the topic, advice taken from third parties and the status of any ongoing reviews. Particularly I require to see the assessments that led to no report being made.

6. SCC did not reply substantively until 25 August 2020 when it replied saying that it held no further undisclosed information within the scope of the request. The complainant requested an internal review on 25 August 2020 which SCC did not provide until 23 April 2021 despite reminders from both the complainant and the Commissioner.

Scope of the case

7. The complainant told the Commissioner on 18 February 2021 that she had found it very hard and really upsetting not to know what had happened to her mum in her final days.
8. In her investigation, the Commissioner considered representations and evidence provided by both SCC and the complainant about what information SCC held or might have held.
9. The Commissioner did not consider whether information that should have been held was not held, since FOIA does not give her that power.
10. The complainant requested 'documents' from SCC. However applicants' potential entitlement under FOIA is to the 'information' that is held. There is no entitlement within FOIA to the disclosure of documents.

Reasons for decision

Section 1 – right of access to information

11. Section 1 FOIA says:

"(1) 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".

12. Where there is dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held the Commissioner, following the lead of a number of First-Tier Tribunal decisions must decide whether or not, on the civil standard of the balance of probabilities, the public authority holds any information within the scope of the request (or if any was held at the time of the request).
13. The Commissioner is not expected to prove categorically whether information is held, she is only required to make a judgement on whether information is held on the civil standard of probabilities.
14. In deciding where the balance of probabilities lies, the Commissioner considers the complainant's evidence and arguments. She also considers any other information or explanation offered by the public authority which is relevant to her determination.

The complainant's representations

15. On 18 February 2021 the complainant provided the Commissioner with a detailed submission explaining her reasons for not accepting SCC's conclusion that it held no further, as yet undisclosed, information. She said:

"My understanding of the Care Act 2014 is such that should an adult die whilst in care there needs to be a report submitted to the Safeguarding Adults Board [SAB] of the appropriate local authority subject to the circumstances of the death having met certain criteria. This is a Section 44 Notice. In this case care was provided by SCC (albeit via a subcontractor) and SCC are the relevant local authority, the relevant SAB is the Sheffield Adult Safeguarding Partnership.

This understanding has been put to SCC on several occasions and I have never been disabused of my understanding. Certain emails from [name redacted] confirm the criteria meriting a referral and the death of my mother meets these criteria.

SCC have never given me the details of a Section 44 Notice as requested in [reference redacted]. In our email correspondence they have never pointed to their issue of a properly constructed Notice but rather have chosen to obfuscate.

Once again and in my understanding the Section 44 Notice is a legal requirement of the Care Act. SCC has to consider whether to issue the Notice or not. If that consideration determines that a Notice must be issued then the thinking behind and details of that consideration will be evident in the Notice. However if they chose not to issue a Notice

there must be a record of the considerations that enabled them to reach the decision not to issue the Notice.

SCC have never suggested that they overlooked issuing the Notice or forgot to issue the Notice. ...

If a positive decision was made not to issue a Section 44 Notice then the considerations behind that decision are the very details I have been requesting.

I have never been provided with any sort of explanation of my mother's death whilst in the care of SCC. What information I have was garnered after an earlier FoI request and it is neither linear nor comprehensive. I have no chronology of what happened to my mum in the days before her death. I believe that the Section 44 Notice will help me understand what happened to my mother.

Two years on from her death and one year on from my request of a senior officer in SCC and nearly one year on from my submission of [reference redacted] I am still without any information."

16. In addition the complainant explained to the Commissioner that she had put a great deal of effort into trying to get pertinent information and that, in her view, SCC had deliberately obfuscated and ultimately succeeded in their prevarication.
17. On 28 April 2021 the complaint made further representations and told the Commissioner:

An S44 [Care Act 2014 Notice] is a legal requirement if the case at issue meets certain criteria scheduled in the Act.

... In any reasonable judgement my mother met ... the ground rules for a Safeguarding Adult Review

...

I frequently complained that my mother received inadequate time in her care visits, that [care provider name redacted] were making false reports which were accepted by SCC, that [name redacted] were causing my mother distress by the churn of carers and the inappropriate timing of visits to her home – also accepted by SCC but never acted upon.

...

Nowhere do SCC tell me why the criteria of the Act have not been met in the circumstances of my mother's death despite my belief that there is evidence that she did meet the criteria.

If SCC determined that my mother's case did not meet the S44 criteria [then ...] a record is made, therefore there must be a record of that consideration in my mother's case. This is the information I seek.

I would submit that there ought to be – and that there probably is – a record of the consideration of my mother's case meeting the criteria for a S44. I accept that no S44 was issued but it is the underlying consideration that I seek. Even were my mother's circumstances not to merit a referral then by SCC's own admission there has to be a record.

...

no responsible organisation – let alone a Local Authority – would make such a decision of consequence without a record or note of how the decision was reached. ..."

The Council's representations

18. SCC told the Commissioner, in answer to her enquiries, that much of the relevant information was the complainant's personal information which had already been disclosed to her in response to some of her other enquiries and information requests. This amounted to some 2,500 pages disclosed on 31 October 2019. SCC said it did not believe that it held any further undisclosed information that it could provide.
19. SCC said that on 25 August 2020 it had told the complainant that no information was held as regards this request. This conclusion had been based on SCC officers' confirmations that she had received all records on the social care record of her late mother ("the deceased"). She had also been given relevant emails from the email accounts of the officers she had listed in a later request.
20. SCC said that two officers had checked the records, referrals and case notes in its *Liquidlogic* records system and that there was no record that would be considered to meet the criteria for a safeguarding concern, with the majority of the notes around changes to care packages, care providers and finance.
21. As regards searches made, SCC said that the central repository for its case records was its *Liquidlogic* adults' social care system. SCC said it had searched the deceased's record between the date of death of 7 February 2019 and 19 March 2019 for any references to safeguarding concerns. It had found no references to considerations of a referral of the circumstances of the deceased's death to the Safeguarding Adults Board. SCC had sought information about the circumstances of death and had made a formal section 42 safeguarding enquiry to the care provider to clarify matters and address any concerns about any alleged lack of care. This had been recorded on the *Liquidlogic* case file.
22. SCC added that, in its searches of the *Liquidlogic* care record and the subject access request searches covering the period after the deceased's death, no information other than that which had already been provided to the complainant had been found.

23. SCC explained that it had followed a correspondence trail which the complainant requested and which it set out in detail, in addition to checking every relevant record between January and July 2019. SCC could not find any further undisclosed information. SCC assured the Commissioner that it had consulted its Head of Safeguarding and Practice Development; former Interim Director of Social Care; Head of Access and Prevention; Team Manager (Adult Social Care Localities); Adult Social Care Commissioning Service Quality and Performance Manager; and Senior Strategic Coordinator for Business Support and Projects. SCC had searched its relevant electronic records including every record dated 7 February 2019 or later in the deceased's *Liquidlogic* care record. The searches carried out previously had been renewed and searches of *Liquidlogic* and the relevant email correspondence would, SCC believed, contain further records if any existed.
24. SCC told the Commissioner it had identified the emails that the complainant had referenced in a complaint of 26 August 2020, including an email trail involving named officers, for the period of time immediately between the deceased's death and July 2019. SCC reiterated that it did not believe it held any other records that related to her request.
25. The Commissioner subsequently asked SCC for its comments on the complainant's 28 April 2021 further representations. In reply SCC said:
We give you formal assurance that there is no other information about the outcome of the safeguarding enquiry and whether it met the s.44 criteria for referral under the Care Act 2014. We have provided the records we have to [the complainant]. ...

... the searches have included the personal work email accounts of each of the [set of named] officers, and we have their statements to that effect.

The search for records has been undertaken by four different individuals over the past 18 months for information relating to this request. There is none beyond the correspondence we have referred to after the deceased's death; the Section 42 enquiry form completed by [care provider name redacted] on 12 March 2019 and the review of the care logs in the two months prior to the deceased's death.
26. The Commissioner considered this further evidence from the parties but has not seen within it any reason to accept, on a balance of probabilities, that SCC hold further as yet undisclosed information.

Conclusion

27. A significant strand in the case advanced by the complainant, purporting to show that SCC holds further undisclosed information, is her belief that SCC 'should' have created, and so 'should' hold, a safeguarding report.
28. This line of reasoning arose from her belief that the circumstances of the death of the deceased met the relevant criteria set out in the Care Act 2014. SCC did not, and do not, agree that the criteria were met and hold no record of the matter having been considered by the relevant officers. For the avoidance of doubt the Commissioner makes clear that she has no power to consider what, if any, information 'should' have been created, and therefore be held by SCC, and she has not done so.
29. The Commissioner has reviewed the representations made to her by both parties regarding information that is held and has considered the searches that SCC has reported to her, made of its own accord and in response to her detailed enquiries. However the Commissioner has seen no evidence to suggest that SCC is overlooking further information.
30. The Commissioner has noted the reasons why the complainant considers that further information would be held, especially a safeguarding report or correspondence regarding the absence of one. However having reviewed the evidence provided by the parties, and, based on all the evidence available to her, the Commissioner is satisfied that, on a balance of probabilities, SCC does not hold further information that falls within the scope of the complainant's request.
31. She therefore decided that SCC had complied with the requirements of section 1(1) FOIA in this case.

Section 10 FOIA – time for compliance

32. Section 10(1) FOIA states that responses to requests made under FOIA must be provided "*promptly and in any event not later than the twentieth working day following the date of receipt.*"
33. SCC explained that there were three reasons for the delays that have occurred to its initial response to the complainant on 25 August 2020, and its failure since to provide an internal review of that response.
34. Firstly, a senior SCC officer had corresponded with the complainant between 16 March and 4 May 2020 about this request. SCC accepted that this correspondence did not substitute for a response complying with FOIA but opined that it had sought to provide information and address the complainant's questions.

35. SCC added that the first pandemic lockdown had occurred shortly before the normal deadline for the request. It had proved to be a major disruption to business as usual. SCC information management staff had been re-deployed; and sent home to work. Robust remote access to computer networks had taken a long time to establish.
36. SCC said that its information management team had been affected by vacancies and absences which lasted many months and a substantial backlog of FOIA cases had arisen. The result was that SCC was one of ten core UK cities with a heavy backlog of work on information matters.
37. The Commissioner understands the immense pressures placed on public authorities during the coronavirus pandemic. She is sympathetic to the difficult decisions many authorities made, between prioritising front-line services and continuing to meet their obligations under FOIA.
38. In this case, the information request was made on 28 February 2020 but SCC did not reply substantively until 25 August 2020 which was far too long. In failing to issue a substantive response to the request within 20 working days, SCC breached section 10(1) FOIA.

Other matters

Internal Review

39. The Commissioner cannot consider the amount of time it took a public authority to complete an internal review in a decision notice because such matters are not a formal requirement of FOIA. However, it is good practice to offer an internal review, and, where a public authority chooses to do so, the code of practice established under section 45 FOIA¹ sets out, in general terms, the procedure that should be followed. The code states that reviews should be conducted promptly and within reasonable timescales.
40. The Commissioner has interpreted this to mean that internal reviews should take no longer than 20 working days in most cases, or 40 working days in exceptional circumstances.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf

41. On 25 August 2020 the complainant asked SCC to review its decision in this matter of the same date. SCC eventually provided a review on 23 April 2021 during the course of the Commissioner's investigation. While recognising that SCC was working in exceptional circumstances, this delay was excessive and was criticised by the Commissioner.

Right of appeal

42. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

43. 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.
44. 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

Dr R Wernham
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