

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 January 2023

Public Authority: Ministry of Justice
Address: 102 Petty France
London
SW1H 9AJ

Decision (including any steps ordered)

1. The complainant made a multi-part request for information to the Office of the Public Guardian ("the OPG") about local authority care arrangements. The OPG is an executive agency of the Ministry of Justice ("the MoJ"), the MoJ therefore being the relevant public authority.
2. The MoJ answered some of the questions. It also said that some of the information requested was exempt from disclosure under section 40(2) (Personal information) of FOIA and that it did not hold some information about matters which did not fall within its remit (section 1).
3. The Commissioner's decision is that section 40(2) was applied correctly to withhold personal data about the complainant's son's health. He also found that, on the balance of probabilities, the MoJ did not hold information on the social care training or administrative procedures adopted by individual local authorities. He was also satisfied that one question was not a request for recorded information under section 8(1)(c) of FOIA and that the MoJ was not obliged to respond to it as such.
4. The Commissioner requires no steps as a result of this decision.

Request and response

5. On 10 December 2021, the complainant wrote to the MoJ and requested information in the following terms (Commissioner's numbering):

"This is a FOI request for the Following;

- 1) What training do Local Authorities Deputies have in the Mental Health Act including Section 117 FREE aftercare?
- 2) How do the OPG check a LA [local authority]/Deputy has complied with the MCA 2005 [Mental Capacity Act 2005] code of Practice? Regarding Personal Budgets [PB]/Direct Payment to their Clients?
- 3) How do the OPG check LA/Deputy are following the correct procedures regarding 'incapacity' FIVE questions are asked?
- 4) How do the OPG check for Accuracy regarding 'Care Plans'? past/current? Are they included in Annual return?
- 5) Where would a LA/Deputy record a PB/Direct Payment is in place for his client?
- 6) Under section 117 the LA/CCGs [clinical commissioning group] have a Duty to fund FREE aftercare, is this recorded anywhere on the annual return?
- 7) What is the Procedure for someone who has been paying for Services that should be FREE under Section 117? Including the LA/Deputy's involvement in this?
- 8) Section 4: Safeguarding would the LA/Deputy record in the Annual return to the OPG that the Living Conditions of his Client was described as a 'Health Hazard' by the Social Worker? In 2021?
- 9) Safeguarding was an issue in 2015, where the HA confirmed the Living Conditions were NOT up to their Home Standard, and the Tenant was moved out to live with Parents while a Refurbishment of these one bedroom Complex of 6 flats were ALL refurbished, more than one living there were subject to a COP [Court of Protection] Order for 'Property and Finance'? Is this RECORDED anywhere in the ANNUAL Return?
- 10) Discretionary TRUST; Is it possible for someone subject to a 'Property and Finance' order being named as a Beneficiary (one

of many) in a Discretionary Trust no money changes hands just GIFTS?

- 11) Is a list of names recorded of individuals who are in regular contact with a Deputy's Client – their roll within their visit, and Telephone Contact.
 - 12) What is the OPG position regarding a LA/deputy who failed to understand the Rules for a Private Landlords Rent/Service charges? as set out under UC [universal credit] regulations.
 - 13) A LA/Deputy for 'Property and Finance' is responsible for completing a HB [housing benefit] Application on their clients behalf why is there confusion on this matter by the OPG?
 - 14) The LA/Deputy is there to ensure their clients Rent/Service Charges are paid in FULL to the Private Landlord? In a timely manner. The Question is how long should a private landlord wait for payment?
 - 15) How do the OPG 'integrate' with other Agencies regarding their Clients?"
6. The MoJ responded on 10 January 2022. It briefly answered each of the questions, except the following, for the reasons stated:
- (1) no information held, as the MoJ was not the appropriate organisation to contact about these matters;
 - (9) the information was exempt from disclosure under section 40(2) of FOIA;
 - (10) no information held, as the MoJ was not the appropriate organisation to contact about these matters;
 - (11) no information held as the MoJ was not the appropriate organisation to contact about these matters; and
 - (13) the MoJ asked for clarification of the meaning of the question.
7. The complainant requested an internal review of the MoJ's refusal to answer the above parts of the request and her letter set out a number of personal concerns she had about her adult son's social care arrangements.
8. The MoJ commented on the specific concerns that the complainant had raised about her son's care, but it said that it was unable to comment further on the FOIA request.

Reasons for decision

9. The Commissioner understands from the complainant's correspondence that the request was prompted by her concerns about her adult son's social care arrangements. The local authority was appointed by the Court of Protection to supervise aspects of her son's care and she disagrees with some of its decisions, particularly regarding the managing of his finances and his living accommodation. She has complained to the OPG about this, which has oversight of such arrangements, but is not satisfied with its response on the matter. She believes that the OPG is failing in its duty of care for her son's welfare.
10. When requesting the internal review, the complainant only asked the MoJ to reconsider its refusal to answer parts (1), (9), (10), (11) and (13) of her request.
11. In her complaint to the Commissioner, the complainant did not explain why the MoJ should have answered these questions under FOIA. Rather, she supplied supporting information setting out her dispute with the OPG regarding various aspects of her son's care.
12. The Commissioner recognises that the complainant has genuine concerns about her son's care. However, it is not within his remit to consider those concerns. The Commissioner's duty here is simply to decide whether the MoJ dealt with her request for information in accordance with the requirements of Part 1 of FOIA.
13. FOIA is concerned with transparency and provides for the disclosure of information held by public authorities. It gives an individual the right to access recorded information held by public authorities, unless that information is subject to a non-disclosure exemption.
14. FOIA does not require public authorities to generate new information or to answer questions, provide explanations or give opinions, unless this is recorded information that they already hold.
15. The Commissioner has therefore considered whether the MoJ's refusal of parts (1), (9), (10), (11) and (13) of the request was compliant with FOIA.

Section 1 – information held

16. Section 1(1) of FOIA states:

"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.”

17. The Commissioner has considered whether, on the balance of probabilities, MoJ holds the information described in parts (1) and (11).
18. They ask for information about specific training and procedures followed by local authority staff. The MoJ says that it does not hold the information as it is not the appropriate body to contact on this subject. The complainant has not offered any explanation for why she believes the MoJ (via the OPG) would hold information about training and the day to day procedures followed by local authority staff involved in social care.
19. The OPG has oversight of the activities of deputies, attorneys and guardians who are appointed to protect the financial affairs of people who lack the mental capacity for making decisions about such things. Having considered its functions¹, the Commissioner considers it unlikely that it would hold information on training or administrative procedures for staff involved in social care, which may, in any case, vary between individual local authorities. Requests for such information should instead be directed to the local authorities themselves.
20. The Commissioner’s view is therefore that, on the balance of probabilities, the MoJ does not hold the information requested at parts (1) and (11) of the request.

Section 8 – request for information

21. The Commissioner has considered whether part (13) was a valid request for information which the MoJ was required to respond to under FOIA.
22. A request will be valid under section 8(1)(c) of FOIA if it describes recorded information.
23. Having considered the wording of part (13), the Commissioner is not satisfied that it is a valid request for recorded information. This is because it does not describe recorded information which the requester wishes to receive. Rather, it asks for an explanation of why there is, in

¹ <https://www.gov.uk/government/organisations/office-of-the-public-guardian>

the complainant's view, confusion over who is responsible for completing a housing benefit application. It was, perhaps, intended as a rhetorical question by the complainant, expressing frustration, rather than a genuine request for recorded information. Nevertheless, as the MoJ has responded under FOIA, the Commissioner has considered its response.

24. The Commissioner considers that this is not a request for recorded information which is already likely to be held by the MoJ. It is highly unlikely to have to hand a pre-existing explanation which it can simply extract from a file and send out to the complainant. As set out above, FOIA does not require public authorities to provide explanations or give opinions, unless they are already held as recorded information.
25. Since the Commissioner is satisfied that, for the above stated reasons, part (13) of the request was not a request for recorded information, it was not a valid request under section 8(1)(c) of FOIA, and the MoJ was under no obligation to respond to it under FOIA.

Section 40(2) – personal information

26. Section 40(2) of FOIA says that information is exempt from disclosure if it is the personal data of another individual ("the data subject") and disclosure would contravene a data protection principle. In this case the information requested in part (9) of the request relates to the health and social care arrangements of the complainant's son and it would be necessary to consult information on his personal record in order to answer the request. The Commissioner is therefore satisfied that the personal data in this case is 'special category data', in that it is data on someone's health.
27. The complainant has argued that she has legal authority to act for her son, and to receive information about him. However, disclosure under FOIA is not a private matter and would not be made to her, solely.. It effectively places the information in the public domain.
28. Special category data is particularly sensitive and warrants special protection. It can only be processed (which includes disclosure in response to an information request) if one of the stringent conditions under Article 9 of the UK General Data Protection Regulation (UK GDPR) is met.
29. In this case the relevant condition has not been met. The Commissioner has seen no evidence or indication that the data subject has consented to the disclosure of the information into the public domain or that the information has been made manifestly public by him.
30. As none of the conditions required for processing special category data are satisfied there is no legal basis for its disclosure. Processing this data would therefore contravene a data protection principle; that set out

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under Article 5(1)(a) of the UK GDPR. The information is therefore exempt from disclosure under section 40(2) of FOIA.

Right of appeal

31. 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

32. 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.
33. 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

Samantha Bracegirdle
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Information Commissioner's Office
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