

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 31 January 2023

**Public Authority:** Chief Executive Suffolk County Council  
**Address:** Constantine House  
5 Constantine Road  
Ipswich  
IP1 2BX

#### **Decision (including any steps ordered)**

---

1. The complainant requested copies of all board minutes, agendas and associated documents from April 2020 relating to the SEND Programme from Suffolk County Council ("SCC").
2. The Commissioner's decision is that SCC was entitled to rely on section 22 of FOIA at the time of the request and withhold the information until the planned publication date. However, the Commissioner also notes that the information which was withheld under section 22 FOIA has now been published. Also, the Commissioner has found that SCC has breached both section 10 and section 17 of FOIA because of the delays in its response.
3. The Commissioner does not require SCC to take any further steps.

#### **Request and response**

---

4. On 25 March 2022, the complainant wrote to SCC and requested information in the following terms:

"SEND Programme Board minutes and documents.

Please let me have a copy of all minutes, agenda and associated documents from April 2020."

5. The public authority responded on 4 May 2022. It stated that it held the information, but considered it exempt from disclosure citing section 22 of FOIA as the reason for doing so.
6. SCC intended for the information to be published by the end of August 2022 on its website. It provided a link to where the information could be found by the complainant and public.
7. Following an internal review SCC wrote to the complainant on 1 June 2022 and upheld its position.

### **Scope of the case**

---

8. The complainant contacted the Commissioner on 1 June 2022 to complain about the way his request for information had been handled and on 10 November 2022 to complain as to the time delays in the responses from SCC in response to this matter and the final publication.
9. The Commissioner notes that the information in question was published prior to his investigation commencing. As such he considers the scope of his investigation to decide whether SCC was entitled to rely on section 22 at the time of the request.
10. The Commissioner also deems that the scope of his investigation is to consider whether SCC has complied with its obligations in relation to the time for compliance at section 10(1) of FOIA and section 17 of FOIA.

### **Reasons for decision**

---

11. Section 22(1) of FOIA says that information is exempt information if:
  - (a) the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not),
  - (b) the information was already held with a view to such publication at the time when the request for information was made, and
  - (c) it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph (a).
12. For the exemption in section 22 to apply, the public authority must, at the time of the request, hold the information and intend that it or 'any other person' will publish it in future. This means that it must have a

settled expectation that the information will be published at some future date.

13. The Commissioner considers that SCC held the information at the time the complainant's request was made. SCC clearly explained in its communications with the complainant its intention to publish the information and provided both an expected publication date of August 2022 and a link to the website location where the information could be accessed once published.
14. However, the Commissioner notes that the board meeting papers were partly published in late September 2022 due to accessibility issues on the SCC website which were resolved, and finally published in its entirety in October 2022. The Commissioner considers that SCC was correct to apply section 22 of FOIA at the time of the request and that it was reasonable to withhold the information until the publication date.
15. The fact that there was a delay in the actual publication date of October 2022, from the planned date of August 2022 as initially indicated, does not affect reliance on exemption s22 of FOIA.
16. As the Commissioner is satisfied that the information has now been published before any investigation has commenced, he has not gone on to consider the request any further other than the consideration of any procedural breaches that may have occurred.

### **Procedural matters**

17. Section 10(1) FOIA states that a public authority must respond to a request promptly and in any event not later than the twentieth working day following the date of receipt.
18. Section 17(1) states a public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which—
  - (a) states that fact,
  - (b) specifies the exemption in question, and
  - (c) states (if that would not otherwise be apparent) why the exemption applies.
19. The request for information was made on 25 March 2022. SCC responded with a refusal notice on 4 May 2022. As this was more than

20 working days after the request was made, the Commissioner finds that SCC breached both section 10(1) and 17(1) of FOIA.

20. The Commissioner does not require SCC to take any further steps.

## Right of appeal

---

21. 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](mailto:grc@justice.gov.uk)

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

22. 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.
23. 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 .....**

**Catherine Fletcher**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**