

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 May 2023

Public Authority: Haringey London Borough Council
Address: 7th Floor, River Park House
225 High Road
Wood Green
London N22 8HQ

Decision (including any steps ordered)

1. The complainant has requested information associated with a Care Quality Commission inspection. Haringey London Borough Council ('the Council') withheld the information under sections 36 and 40 of FOIA. These exemptions concern prejudice to the effective conduct of public affairs and personal data respectively.
2. The Commissioner's decision is that the Council has correctly applied sections 36(2)(b)(i) and (ii) and section 40(2) to the requested information. It is not necessary for the Council to take any corrective steps.

Request and response

3. The complainant made the following information request to the Council on 5 February 2022:

"From the most recent inspections, the inspectors wrote that:

"Feedback from local authorities was not positive about the management of the service. There was a lack of accountability when things went wrong or when suggestions for improving the service were made, often placing the blame on others."

Our directors, board members and legal team will like to know:

1. Which staff from your local authority feedback to CQC Inspectors regarding the management of the service.
 2. Why your feedback could not be positive about the management of the service.
 3. What things when wrong that [redacted] management did not take accountable for.
 4. Which manager or managers at [redacted] did not accept accountability.
 5. What suggestions for improvement were made and for which our management failed/refused to take on board by management.
 6. Where the [redacted] management placed blame on others.
 7. When did the [redacted] management place blame on others.
 8. What blame did [redacted] management place blame on others.
 9. What reasons the [redacted] management give for refusing/failing to take on board suggestions.”
4. The Council’s final position in its internal review dated 14 July 2022 was to withhold the information requested in Q2-9 under sections 36(2)(b)(i) and 36(2)(b)(ii) of FOIA and to withhold the information requested in Q1 under section 40(2).

Reasons for decision

5. This reasoning covers the Council’s application of section 36 and 40 to the information the complainant has requested. The Council has provided the Commissioner with a copy of the information relevant to Q2-9 of the request that it is withholding – minutes from a Safeguarding Planning meeting.
6. In its accompanying submission to the Commissioner the Council has also provided a background and context to the request which he does not intend to reproduce in this notice.

Section 36 – prejudice to the effective conduct of public affairs

7. Under sections 36(2)(b) of FOIA, information is exempt information where, in the reasonable opinion of a qualified person (i) disclosure would, or would be likely to, inhibit the free and frank provision of advice and/or (ii) disclosure would, or would be likely to, inhibit the free and frank exchange of views.
8. Information may be exempt under sections 36(2)(b)(i) and (ii) if its disclosure would, or would be likely to, inhibit the ability of public authority staff, and others, to express themselves openly, honestly, and completely, or to explore a range of options, when providing advice or giving their views as part of the process of deliberation.

9. The exemptions at section 36 can only be engaged on the basis of the reasonable opinion of a qualified person. In its response to the complainant the Council advised that its qualified person (QP) was its Monitoring Officer. The Commissioner is satisfied that the Council's Monitoring Officer is authorised as the QP under section 36(5) of FOIA.
10. The Council provided the Commissioner with a copy of its correspondence with the QP about the request. From this correspondence the Commissioner accepts that the QP gave their opinion that the exemptions were engaged and gave the opinion at the appropriate time – 9 June 2022 (the Council responded to the request on 10 June 2022.)
11. The QP's opinion was that disclosing the information would be likely to inhibit the Council and the Care Quality Commission (CQC) from providing advice and exchanging views about care providers and care settings. The QP also considered that disclosure would undermine the Council's partnership working with the CQC. In the circumstances, the Commissioner accepts that the QP's opinion was a reasonable one.
12. The QP's opinion was that the envisioned prejudice would be likely to occur through disclosing the withheld information. The Commissioner will accept that is a credible level of likelihood and that there is a more than a hypothetical or remote possibility of the envisioned prejudice occurring.
13. The Commissioner therefore finds that the Council was entitled to withhold the information requested in Q2-9 of the request under section 36(2)(b)(i) and section 36(2)(b)(ii) of FOIA. He has gone on to consider the associated public interest test.

Public interest test

14. The Council has acknowledged that there is a public interest in disclosure as this would increase transparency, would inform the public so that they could better engage in any debate about how the Council delivers services, and would increase public trust and confidence.
15. Disclosing the information would also help the public to understand whether the CQC report in this case was appropriate, thorough, and objective and that its findings were well-founded and based on appropriate evidence.
16. However, the Council has explained that its Quality Assurance Team works very closely with CQC colleagues and information about providers and their care settings is shared regularly. It says it is common practice for the CQC to contact Commissioning Officers to obtain feedback and views about care settings, how services are managed etc. The Council

shares this information in confidence to help CQC inspectors to carry out their inspections.

17. The Council considered there is greater public interest in ensuring that its officers can provide, and the CQC is able to access, confidential feedback on care providers to assist with the CQC's inspections and its reports on how providers of care services are performing.
18. The Council therefore argues that there is greater public interest in withholding the information. This is because the harm likely to be caused through disclosure – the impact on the quality of the CQC's decision making and the damage to the Council's relationship with the CQC – would be significant. Disclosing the information would, the Council says, undermine its partnership working relationship with the CQC in a fundamental way, making it less likely in future that officers would share information that could be imperative to adult safeguarding. Disclosing the information would also be likely to inhibit free and frank discussions in the future. Losing frankness and candour between Council officers and the CQC would damage the quality and flow of advice and discussion and lead to poorer decision making.
19. The Commissioner appreciates that the requested information is of interest to the complainant, and he recognises the wider public interest in public authorities demonstrating they are transparent. However, in this case the Commissioner is satisfied that there is greater public interest in the information being withheld. He has found that disclosing it would be likely to inhibit the Council's discussions with the CQC about care providers and undermine the relationship between the two bodies. The Commissioner considers there is greater public interest in the Council and the CQC being able to discuss care providers' performance freely and frankly. This is so that both bodies have access to all the relevant information about a care provider's performance that they need to make appropriate decisions about that provider. This helps to make sure that the care services that vulnerable people are receiving is safe and satisfactory.

Section 40 – personal data

20. Under section 40(2) of FOIA information is exempt information if it is the personal data of another individual and disclosure would contravene one of the data protection principles. The most relevant principle in this case is that that set out under Article 5(1)(a) of the UK General Data Protection Regulation (UK GDPR). This says that personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject.

21. The complainant has requested the names of Council staff who provided certain feedback to the CQC - these staff are categorised as the data subjects in this case. The Commissioner is satisfied that the requested information is the data subjects' personal data – they can be identified from the information and the information relates to them.
22. The Commissioner appreciates that, for personal reasons, the complainant has a legitimate interest in this information that would be met through disclosing the information. There is also a wider public interest in transparency about the CQC's and Council's decision-making in relation to the care providers with which the Council works.
23. However, in its correspondence to the complainant, the Council advised that the data subjects in this case would reasonably expect that their personal data would not be disclosed to the world at large under FOIA and that disclosure would therefore cause those individuals harm or distress. The Council also advised that disclosing their names could cause the data subjects to be targeted and harassed in retaliation for those officers giving their professional opinion.
24. The Commissioner understands that the officers concerned are not at the highest levels of Council staff seniority. As such he agrees that they would not expect their personal data to be disclosed and that, in the circumstances of this case, disclosing it would cause them distress.
25. To summarise, the Commissioner considers that there is insufficient legitimate interest to outweigh the data subjects' fundamental rights and freedoms. He therefore considers that disclosing the information requested in Q1 of the request would be unlawful as it would contravene a data protection principle; that set out under Article 5(1)(a) of the UK GDPR.

Right of appeal

26. 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

27. 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.
28. 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

Cressida Woodall
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF