

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 11 July 2011

**Public Authority:** Borough of Poole  
**Address:** Civic Centre  
Poole  
Dorset  
BH15 2RU

### Summary

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The complainant requested information in respect of the Council's social services code of practice policies and protocols and in particular, policies where a potential conflict of interest arises with one of its social workers. Following the Commissioner's investigation, the Council provided generic information regarding its code of practice for employees. The Commissioner has investigated and concluded that the Council has complied with its substantive duties under Part I of the Act. However, the Commissioner has also recorded a breach of section 10(1) of the Act in the Council's handling of this request for information.

### The Commissioner's Role

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1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

### The Request

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2. On 13 November 2009 the complainant requested the following information from the Council:
  1. *"Has [named individual A] of [named social services] and [named individual B] also known as [named individual B] ever worked together for [named social services], and during what period? Your*

*personnel department, and/or, relevant pay sections can supply this information instantly.*

2. *Is [named individual B] now employed by Dorset/Poole Social Services?*
  3. *On 17 November 2008, what was [named individual B's] rostered duty? Again, the relevant pay section can verify this instantly.*
  4. *In January/February of this year, Social Services in England instigated contacting the Social Services here in Spain {named locatation]? Who authorised this request? Why was it done? Why was I not contacted first? I request copies of all documentation between the two services.*
  5. *Is it deemed normal Social Service practice, for one of your staff, emotionally involved with a party to an unlawful abduction of children, to remain involved during legal Court proceedings? Is there nothing in place where that person MUST declare a conflict of interest, and remain impartial and uninvolved throughout said proceedings?*
  6. *Under what circumstances, and upon whose authority, did [named individual A] interview my daughters, without my expressed permission. Again, is it not common decency, to inform myself, as parent and lawful custodian, of the interview taking place, and the reasons why?"*
3. On 18 March 2010, the Council contacted the complainant to inform her that its initial assessment was that it was not a freedom of information matter. The Council added that as the request related to the management of a particular case, it would be better handled by the Council's complaints service. The Council also informed the complainant that there were personal information issues which engaged the Data Protection Act 1998 ('the DPA').
  4. On 12 April 2010 the complainant contacted the Council to express her concern at its response and on 13 April 2010 the Council contacted the complainant providing answers to questions one and two of her request.
  5. The complainant was not satisfied with this response and on 14 April 2010 contacted the Council to express her dissatisfaction and also made additional requests for information.
  6. The Council communicated the outcome of its internal review on 19 April 2010 but did not specifically address question 5 of the complainant's original request.

7. Following a complaint to the Commissioner, a subsequent internal review dated 17 November 2010 was sent to the complainant which again did not specifically address question 5 of the complainant's original request.

## **The Investigation**

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### **Scope of the case**

8. On 9 August 2010 the complainant contacted the Commissioner to complain about the way her request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
  - The Council's procedural handling of her request for information.
  - The Council's refusal to provide some information.
  - The Council's failure to make proper responses to her request.
9. During the course of the Commissioner's investigation the following matters were resolved informally and therefore these are not addressed in this Notice:
  - The complainant has confirmed that she was satisfied with the Council's responses to her questions 1 and 2.
  - Questions 4 and 6 were considered under the DPA and have been the subject of a separate investigation by the Commissioner under complaint reference RFA346037.
  - Question 3 was repeated in the complainant's subsequent request for information and is the subject of a separate investigation by the Commissioner.
10. The scope of this investigation therefore relates solely to the Council's response to question 5 of the complainant's original request and its procedural handling of this request for information.
11. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.

### **Chronology**

12. Having clarified the scope of the complaint with the complainant, the Commissioner contacted the Council on 28 February 2011 pointing out that the Council did not appear to have provided a response to question 5 of the complainant's original request for information. The Commissioner added that if the Council had not in fact responded to the

question, it should consider whether it held any generic information regarding the professional code of conduct of social workers.

13. The Council responded on 11 March 2011 enclosing a copy of its 'Code of Conduct For Employees' and providing the link to the 'Code of Practice for Social Care Workers and Employers of Social Care Workers produced by the General Social Care Council.
14. On 14 April 2011 this information was provided to the complainant as the Council's formal response to her request for information. The Commissioner had hoped to resolve this complaint informally. However, it was not possible on this occasion and the complainant requested that a formal decision notice should be issued in respect of her complaint.
15. On 24 June 2011 the Commissioner contacted the Council to confirm whether there were any further generic documents relating to a potential conflict of interest of an employee of the Council, and in particular, social services employees.
16. On 1 July 2011 the Council confirmed that it did not have any additional generic documents about conflicts of interest. However, the Council added that it would advise that any member of the public who has concerns about the conduct of one of its employees should follow the Council's corporate complaints procedure. This would ensure that a thorough investigation was undertaken and recourse would be taken in line with its disciplinary procedures, should this be deemed necessary.

## Analysis

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### Substantive Procedural Matters

#### Is the response compliant with Part I of the Act?

17. The complainant is not satisfied with the Council's response to her request for information. The Commissioner has therefore investigated whether the Council has complied with its duties under Part I of the Act.
18. The Commissioner notes that although the background to the request related to the complainant's concerns regarding a conflict of interest about a named social worker, the request itself asked for information regarding the code of conduct of the Council's social services department, and in particular, its policies regarding an apparent conflict of interest. The Commissioner therefore considers that this amounts to a request for the Council's policies and protocols regarding its Social Services department held on the date of the request (13 November

2009) in relation to potential conflicts of interest. The Commissioner therefore views this request as generic in nature.

19. During the course of the Commissioner's investigation, the Council provided two generic documents to the complainant. As stated in paragraph 13 of this notice, the first document concerned the Council's 'Code of Conduct for Employees' and section 8.4 of this document states:

*"If in the course of their duties an employee finds themselves handling, or making decisions on, any matter which concerns a relative of theirs or a friend or someone they are acquainted with, they must refer the matter to their Manager immediately who may determine that it should be handled by someone else."*

20. The Commissioner considers that this sufficiently answers the complainant's query regarding a conflict of interest.
21. The Commissioner also notes that the complainant was also provided with a second generic document (referred to in paragraph 13 of this notice) produced by the General Social Care Council. Section 5.5 of this code, states that employers of social care workers must inform:
- "...the GSCC about any misconduct by registered social care workers that might call into question their registration and inform the worker involved that a report has been made to the GSCC;..."*
22. The Commissioner believes that this addresses generic concerns regarding the code of conduct of social workers employed by the Council.
23. The Commissioner considers that the two documents provided to the complainant clearly indicate its policies and protocols in relation to a potential conflict of interest of one of its social workers and its more general code of conduct for all employees. He has therefore concluded that its substantive response to the request was compliant with the requirements of Part I of the Act.

### **Procedural Requirements**

24. All sections of the Act referred to in this notice are reproduced in full in the Legal Annex attached to the back of this notice.

### **Section 10(1) – Time for compliance with the request**

25. Section 10(1) of the Act requires a public authority to comply with section 1(1) promptly and in any event, not later than the twentieth working day following the date of receipt.

26. The Commissioner notes that the request for information was sent via email on 13 November 2009. However, the Council did not provide the information relevant to this request until April 2011 during the Commissioner's investigation of this complaint. This represents a breach of section 10(1) of the Act.

## **The Decision**

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27. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:

- Its substantive response to the complainant was in accordance with Part I of the Act.

28. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

- Its failure to provide a response to the request within the timescales specified in paragraph 26 of this notice is a breach of section 10(1) of the Act.

## **Steps Required**

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29. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:

- The Commissioner requires no steps to be taken.

## Right of Appeal

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30. 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,  
Arnhem House,  
31, Waterloo Way,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

31. 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.
32. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

**Dated the 11<sup>th</sup> day of July 2011**

**Signed .....**

**Andrew White  
Group Manager  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Legal Annex

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### General Right of Access

#### **Section 1(1) provides that -**

"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."

### Time for Compliance

#### **Section 10(1) provides that –**

"Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."