

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 January 2020

Public Authority: Hull City Council
Address: The Guildhall
Alfred Gelder Street
Hull
HU1 2AA

Decision (including any steps ordered)

1. The complainant has requested a copy of a specific case review. Hull City Council concluded that it did not hold the information for the purposes of the FOIA.
2. The Commissioner's decision is that the information is not held by the council for the purposes of the FOIA.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 3 May 2019 the complainant made the following request to the council with regards to a Learning Lessons Review (LLR):

"Please could you advise me of whom I need to contact in regards to applying for a copy of the case review through Hull City Council"

5. The council responded to the complainant on the 13 May 2019. It stated that it only obtained a copy of the Case Review for the purposes of administering her Subject Access Request she made to the Hull Safeguarding Children Board (HSCB), and so the report is held by the

council solely on behalf of the HSCB, and therefore it is not held by the council for the purposes of the FOIA.

6. The complainant requested an internal review on the 25 May 2019 dissatisfied with the council's refusal of the request.
7. The council provided its internal review response on the 25 June 2019 upholding its initial response.

Scope of the case

8. The complainant contacted the Commissioner on the 10 July 2019 dissatisfied with the council's response to her request.
9. The Commissioner considers the scope of the request is to determine whether or not the council holds the requested information for the purposes of the FOIA.

Reasons for decision

Section 3 of the FOIA – Information held on behalf of

10. Section 1 of the FOIA provides a general right of access to recorded information that is held by public authorities. When a request for information is made, a public authority must confirm whether it holds information of the specified nature in the request and if it does, it must provide it to the request unless a valid exemption exists under the FOIA for not doing so.
11. Section 3(2) of the FOIA states that information is held by a public authority if-
 - a) It is held by the authority, otherwise on behalf of another person, or
 - b) It is held by another person on behalf of the authority.
12. As explained in the Commissioner's published guidance¹, each case needs to be reviewed individually to determine whether a public

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https://ico.org.uk/media/fororganisations/documents/1148/information_held_by_a_public_authority_for_purposes_of_foia.pdf

authority holds information for its own purposes. There are various factors that will assist in determining whether the public authority holds the information for the purposes of the FOIA. The weight attached to each one will vary from case to case. In some circumstances, one factor may outweigh all the others.

13. It was found in decision notice FS50368110², as referenced by the council, that Safeguarding Children Boards are not public authorities for the purpose of the Act.
14. The question to consider therefore, is whether the requested information is held by the council for its own purposes or is it held by the council on behalf of the HSCB.
15. Factors that would indicate the information is not held by a public authority include:
 - The authority has no access to, use for, or interest in the information;
 - Access to the information is controlled by the other person
 - The authority does not provide any direct assistance at its own discretion in creating, recording, filing or removing the information; or
 - The authority in merely providing storage facilities, whether physical or electronic.
16. The council has explained to the Commissioner that the complainant made a subject access request to the HSCB for the LLR prior to making her FOIA request.
17. The complainant only received parts of the LLR that related to her. She questioned whether further information in the report also related to her.
18. The council advised the complainant that it had checked the un-redacted LLR, and confirmed that no other parts of the report related to the complainant. As a result, the complainant made her FOIA request to the council for the LLR in its entirety.

² https://ico.org.uk/media/action-wevetaken/decision-notice/2011/639676/fs_50368110.pdf

19. The council has told the Commissioner that the Officer of the HSCB passed the LLR document to the council's Information Governance Team in order for the SAR response to be provided on behalf of the HSCB.
20. The SAR response was sent to the complainant on the 26 February 2019 and signed "*Information Governance (on behalf of the Hull Safeguarding Children Board), Town Clerk's Service, Hull City Council*".
21. It has been confirmed by HSCB's Board Manager and Business Board Manager that the LLR was only provided to the council at the point the SAR was to be processed on behalf of the HSCB.
22. The council has confirmed that both of these HSCB Board Managers are also employed by the council but they only had access to the LLR in their roles as Officers of the HSCB, not their council roles.
23. The council has told the Commissioner that the LLR document is currently held on the council's Information Governance case management system but only on the SAR case record under a specific reference. It says that this copy of the LLR and the accompanying response to the SAR are held only on behalf of the HSCB. If the HSCB had not asked the council's Information Governance Team to provide support in answering the SAR, then the details would not be held on the council's system.
24. The council has stated that its Information Governance Team provided support with the SAR process to assist the HSCB. This assistance included advising on deadlines, agreeing the application of exemptions with the two HSCB Officers, then making the electronic redactions and storing the details on the council's case management system.
25. The council has told the Commissioner that the two HSCB officers have instructed the council at every step of the SAR process and the LLR record has not been stored on its FOIA case record as it is not the council's document to consider for disclosure.
26. The council states that the SAR was received by the HSCB and answered by them even though support was provided by the council. A separate response was sent to the complainant by the HSCB which made clear they are not subject to the FOIA. Which is when a request was made to the council for the information.

27. The Commissioner put to the council that her guidance (at paragraph 11, bullet points 1 and 4) states:

"11. Factors that would indicate that the information is also held by the public authority include:

- *the authority provides clerical and administrative support*
- *the authority deals with enquiries about the information"*

28. The council's response to the Commissioner on this is, is that The Working Together to Safeguard Children guide, section beginning on page 70 (LSCB Chair, Accountability and Resourcing) states at paragraph 12 that *"In order to provide effective scrutiny, the LSCB should be independent. It should not be subordinate to, nor subsumed within, other local structures."*

29. The guide then goes on to state at paragraph 19 that *"All LSCB member organisations have an obligation to provide LSCB's with reliable resources (including finance) that enable the LSCB to be strong and effective."*

30. The council conclude that it is clear from the above two paragraphs that the independence of the HSCB must be maintained while at the same time the member agencies are obliged to provide it with reliable resources.

31. In this case the council confirm that it has provided Information Governance support to the HSCB while being clear at every step that the council is only acting upon the direct instruction of the HSCB to assist it in meeting its SAR obligations and that the LLR belongs to the HSCB which was only made available to the council at the point support with the SAR was required from the council. It therefore is of the view that the information is not held for its own purposes.

32. The Commissioner is satisfied that even though the council provided support in the SAR response, ultimately, the decision on the response that went out was the HSBC's.

33. The only reason the council obtained any access to the information was to enable to HSBC to respond to a SAR. The council did not obtain access to it for any other purpose.

34. The Commissioner, on consideration of the above, therefore finds the information is not held by the council for the purposes of the FOIA.

Right of appeal

35. 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

36. 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.
37. 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

Andrew White
Group Manager
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SK9 5AF