

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 29 October 2013

**Public Authority:** Worcestershire County Council  
**Address:** County Hall  
Spetchley Road  
Worcester  
WR5 2YA

#### Decision (including any steps ordered)

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1. The complainant has requested the overview report for a specific Serious Case Review (SCR) from Worcestershire County Council (the council). The council refused to provide the information relying on section 40(2) of the FOIA as it considered that the information was third party personal data.
2. The Commissioner's decision is that the council correctly withheld the requested information under section 40(2) of the FOIA. He does not require any steps to be taken.

#### Request and response

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3. On 16 April 2012, the complainant wrote to the council and requested information in the following terms:

*"I am studying over fifty case of filicide presently, one of them being the case relating to children BW and CW, the executive summary of which appears on the Worcestershire authority's website.*

*I have discussed with some of your colleagues by telephone, and I was informed that the Serious Case Review on this case actually commenced two months before the Government's instruction to local authorities in June 2010, that henceforth, the full overview report of SCRs should be published and made available to the public. The review in question was actually not completed until July 2011, 13 months after that instruction. I assumed therefore (wrongly as it turns*

*out) that the report would have been available in full. Hence my request under the Freedom of Information Act."*

4. The council responded on 14 May 2012. It stated that it was unable to disclose the overview report for the SCR in question as it was third party personal data and was therefore exempt under section 40(2). It also advised that the requested SCR was commenced in March 2010, prior to the ministerial instruction to publish overview reports. It therefore considered that disclosing the overview report would breach the Data Protection Act 1998 (the DPA).
5. The complainant requested an internal review on 15 May 2012. The council wrote to the complainant on 10 September 2012 to communicate the outcome of the internal review. It stated that it upheld the decision to withhold the requested information. It stated that the SCR commenced prior to the ministerial instruction and therefore all parties contributing to the SCR did so on the understanding that third party personal data would not be disclosed.

### **Scope of the case**

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6. The complainant contacted the Commissioner on 23 November 2012 to complain about the way his request for information had been handled. He specified that he wanted the Commissioner to investigate the council's application of section 40(2) to his request.
7. Upon viewing the withheld information in this case, the Commissioner suggested that the 'Lessons Learnt' and 'Recommendations' did not constitute personal data and noted that the 'Lessons Learnt' and some of the 'Recommendations' were included in the 'Executive Summary' which is in the public domain. The council disclosed such sections of the overview report in full during the investigation and therefore the Commissioner has not deemed it necessary to consider the 'Lessons Learnt' and 'Recommendations' in this decision notice.
8. In its response to the Commissioner's enquiries, the council also sought to rely on the exemption for information provided in confidence at section 41 of the FOIA. However, because the Commissioner has decided that the council was correct to withhold the undisclosed sections of the overview report under section 40(2) of the FOIA, it has not been necessary to consider the exemption at section 41.

### **Background**

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9. In June 2010 Tim Loughton MP, the Parliamentary Under Secretary of State for Children and Families of the time wrote to all chief executives, heads of children services and lead members for children in England, directing that executive summaries of SCRs should be published, suitably anonymised by redacting personal data.
10. The direction to publish executive summaries of SCRs was an amendment to the statutory guidance *Working Together to Safeguard Children* made on 10 June 2010. However, the Commissioner notes that the direction to publish executive summaries stated that it is "vitaly important that they are appropriately redacted and anonymised to protect the privacy and welfare of vulnerable children and their families." Further to this, it also recognises the need to prepare executive summaries in a form suitable for publication.

## Reasons for decision

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11. Section 40 of the FOIA states that:

*"Any information to which a request for information relates is also exempt information if –*

*(a) it constitutes personal data which do not fall within subsection (1), and*

*(b) either the first or the second condition below is satisfied."*

12. Section 40(2) of the FOIA provides that third party personal data is exempt if its disclosure would contravene any of the data protection principles set out in schedule 1 of the Data Protection Act 1998 ("the DPA").

## Is the withheld information personal data?

13. Personal data is defined by the DPA as any information which relates to a living individual who can be identified from that data or from that data along with any other information in the possession or is likely to come into the possession of the data controller.
14. The overview report of the SCR in question is concerned with the murder and attempted murder of two children by their father. It contains a large amount of information about the family including their engagement with various health, education, police, court and social care services. The Commissioner recognises that the information relating to the deceased individual will not be their personal data and will therefore not be caught by the DPA. However, the remaining family members are

clearly identifiable from the withheld information due to the unique nature of the incident.

15. The Commissioner has considered the extent to which the overview report could be suitably anonymised by removing personal data. However, due to the unique nature of the event and the media interest at the time, it would not be possible to redact the report in a meaningful manner without rendering it useless. The Commissioner is therefore satisfied that the withheld information in its entirety is personal data.

**Is any of the information sensitive personal data?**

16. Section 2 of the DPA defines sensitive personal data as personal data which consists of information on the following:

- an individual's mental or physical health,
- their political opinions,
- their sex life,
- their racial or ethnic origin
- their religious beliefs
- whether they are a member of a trade union
- the commission or alleged commission of an offence by them, or any proceedings for any offence they have committed or are alleged to have committed.

17. The Commissioner accepts that much of the personal data relating to the family falls into one or more of the above categories, and therefore constitutes sensitive personal data about them.

**Does the disclosure of the information contravene any of the data protection principles?**

18. The council considers that the disclosure of the information would contravene the first data protection principle. This states that:

*"Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –*

*(a) at least one of the conditions in Schedule 2 is met, and*

*(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met".*

19. In deciding whether disclosure of personal data would be unfair the Commissioner has taken into account the following factors:

- The individual's reasonable expectation of what would happen to their personal data.
- What damage or distress the data subjects would suffer if the information was disclosed.
- The balance between the rights and freedoms of the data subjects and the legitimate interests in disclosure

### **Reasonable expectations**

20. The withheld information in this case relates to the death of a child which the council deemed required an SCR. The SCR was conducted in accordance with the Working Together to Safeguard Children March 2010 statutory guidance (the March 2010 guidance). The stated purpose of such an SCR is to establish what lessons are to be learned from the case, make recommendations for changes as a result of the lessons learned and improve intra and inter agency working.
21. The council has explained that the SCR commenced in early 2010, prior to Tim Loughton MP's ministerial communication of June 2010 regarding the publication of overview reports of SCRs. The terms of reference for the SCR in this case therefore stem from the March 2010 guidance, chapter 8 of which recognises the need to maintain confidentiality within SCRs in respect of the children, family members and others. Paragraph 8.42 states that the SCR overview report should be used to create an executive summary which should be made public. However, it specifies that the content of such an executive summary should be anonymised to protect the identity of the children, relevant family members and others, and to comply with the DPA. Further to this paragraph 8.50 categorically states that the SCR overview report should not be made publicly available.
22. The council states that these are the terms on which all relevant agencies contributed to the SCR in this case and that the family were advised that this was the guidance in force at the time the SCR was undertaken. The family were told at the outset that an Executive Summary would be published but the full SCR overview report would not be. The council therefore maintains that the family had a reasonable expectation that their personal data would be protected and that it would not be disclosed in the SCR overview report, particularly in view of the sensitive and distressing nature of the case.
23. In addition to this, the council has argued that even if the updated guidance following Tim Loughton MP's ministerial letter of 10 June 2010

applied to this case, the requirement to publish overview reports is still subject to the caveat of anonymisation to protect personal data, and therefore the family would still have a reasonable expectation that their personal data would not be disclosed to the public. The council has also stated that given that there had been a degree of media interest in the case due to the fact that the incident had been subject to a court case, it would have difficulty in sufficiently anonymising the overview report in order to comply with the DPA.

24. Having regard to the guidance under which the SCR was conducted, the Commissioner is satisfied that the family and other related individuals would have a reasonable expectation that their personal data, and particularly their sensitive personal data, would not be published or disclosed.

### **Consequences of disclosure**

25. The council considers that there would be considerable difficulties in sufficiently anonymising the overview report and therefore any disclosure would be likely to lead to renewed media interest which in turn would have the potential to impact on the mental wellbeing of family members. The council has explained that the media interest in the case at the time it was being considered in court was very distressing to the family, and it is therefore concerned about the likely impact any renewed interest may have on the individuals.
26. It considers that the family members would be likely to suffer substantial distress, significantly linked to their expectations that their personal data would not be disclosed and the fact that it relates to distressing events which at the time of the internal review response were still relatively fresh given the gravity of the incident and the impact it had on the remaining family members.
27. The Information Commissioner considers that a consequence of disclosure would be that distress would be caused to the family and other individuals who could be identified from the SCR overview report. This is strongly linked to the fact that they have a reasonable expectation of privacy that their personal data in relation to such distressing events would not be disclosed under the FOIA.

### **Balancing the rights and freedoms of the data subject with the legitimate interests in disclosure**

28. The complainant has informed the Commissioner that he is a published social worker and that he requires the requested information for research he is conducting into suicide filicide cases. He has explained that the purpose of his research is to enlighten and better prepare

frontline professionals for the daunting challenges which such cases present. He has stated that he has no interest in any confidential information and does not intend to disclose any personal information in his publications.

29. He also relies heavily on Tim Loughton MP's ministerial communication of 10 June 2010 as a reason for disclosing the requested information. Whilst he acknowledges that the SCR in question began before the amendment to the guidelines, he considers that the fact that the SCR was not concluded until July 2011 means that it should be subject to the revised guidelines post June 2010 and therefore that the overview report should be published. With regard to this point the Commissioner notes that the ministerial communication explicitly stated that the amendments to the March 2010 guidance applied to all new SCRs initiated on or after 10 June 2010. It states "*There is no change to the guidance contained in Working Together in respect of SCRs initiated prior to 10 June 2010*".
30. The Commissioner appreciates that the amendment to the statutory guidance Working Together to Safeguard Children made by the ministerial communication on 10 June 2010 has created a greater climate of transparency and openness with regard to the serious case review process, and as the SCR in this case was only started a few months prior to June 2010, it may be considered desirable to publish.
31. However, he notes that the ministerial communication stated that "*the content of the SCR overview report should be suitably anonymised in order to protect the identity of children, relevant family members and others, and should comply with the DPA when published.*" In this case, it is relevant that it would not be possible to anonymise the SCR overview report without rendering the remaining information meaningless.
32. The Commissioner appreciates that the principles of openness and transparency are strong in demonstrating that child protection services are functioning well and that improvements are made where failings have been identified. He acknowledges that the decision has been taken to publish overview reports, but considers that this clearly relates to SCRs commenced after 10 June 2010, which is not the case in this instance. He considers that the legitimate interests in disclosure of the withheld information are somewhat met by the provision of the 'Lessons Learnt' and 'Recommendations'.
33. It is clear to the Commissioner that it is outside the reasonable expectations of the family members and others that the assurances of confidence that were provided at the outset of the SCR would be overruled and that their personal data, and in some instances sensitive personal data, would be disclosed. The sensitive personal data, by its

very nature, is information that individuals regard as the most private information about themselves and disclosure of this type of information is likely to have a detrimental or distressing effect on the data subjects. He considers that the reasonable expectations of the data subjects are not outweighed by any legitimate public interest in disclosure, and accepts that disclosure of the personal data in this case would be unfair and unnecessary in the circumstances. The Commissioner therefore considers that the exemption at section 40(2) is engaged and that the council was correct not to disclose the withheld information.



## Right of appeal

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34. 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: 0116 249 4253

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

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

35. 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.
36. 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**  
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