

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 11 October 2016

**Public Authority:** Wakefield Metropolitan Borough Council

**Address:** Wood Street  
Wakefield WF1 2HQ

### Decision (including any steps ordered)

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1. The complainant has requested information concerning Haroon Bhatti, a five year old boy who was murdered by his father in 2012. Wakefield Metropolitan Borough Council ('the Council') says it holds the requested information but that it holds it on behalf of Wakefield District Safeguarding Children Board (WDSCB). It says that since WDSCB is not a public authority for the purposes of the FOIA, the Council cannot be said to hold the information under section 1(1) of the FOIA.
2. The Commissioner's decision is that the Council does not hold the requested information for the purposes of the FOIA.

### Request and response

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3. On 22 January 2016, the complainant wrote to the Council and requested information in the following terms:

*"Please provide copies of all communications sent and received by [Individual 1] between January 15, 2016, and (including) today's date which relate in any way to the Haroon Bhatti case. This includes all attachments.*

*\* Please provide copies of all communications sent and received by [Individual 2] between January 15, 2016, and (including) today's date which relate in any way to the Haroon Bhatti case. This includes all attachments.*

*\* Please provide a copy of the IMR submitted by the council to the SCR into Haroon Bhatti's death."*

4. The Council responded on 23 February 2016. It said that emails sent by the named individuals relating to the Haroon Bhatti case were sent and received on behalf of WDSCB. The Council said that WDSCB is not a public authority as defined by the FOIA and therefore the Council does not hold the requested information.
5. Following an internal review the Council wrote to the complainant on 12 April 2016. It acknowledged that it had not referred to part of the request, namely the request for the Individual Management Review (IMR). The Council maintained its position that it does not hold the requested information, including the IMR, because it is held for and on behalf of WDSCB and this is not a public authority for the purposes of the FOIA.

### **Scope of the case**

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6. The complainant contacted the Commissioner on 8 June 2016 to complain about the way his request for information had been handled. He considers that the Council would hold the IMR and the communications in question for its own purposes as well as for those of WDSCB.
7. To decide whether the FOIA applies to the request, and whether the Council can be said to hold the requested information under section 1(1) of the Act, the Commissioner has first confirmed the status of WDSCB. If she finds that WDSCB is not a public authority for the purposes of the FOIA, the Commissioner will consider whether the Council holds the information solely for and on behalf of WDSCB, or whether the Council also holds the information for its own purposes.

### **Reasons for decision**

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#### **Is WDSCB a public authority for the purposes of the FOIA?**

8. The Council has told the Commissioner that WDSCB is not listed in Schedule 1 of the FOIA as being a public authority for the purposes of the FOIA. Nor has WDSCB been added to Schedule 1 by any order made by the Secretary of State under section 4 of the FOIA.
9. The Council says that there is a clear distinction between WDSCB, which is a statutory body in its own right, and the Council, which is a statutory member of WDSCB. WDSCB is a statutory body under section 13 of the Children Act 2004 and its functions are set out in Sections 13-16 of that

Act, and in the Local Safeguarding Children Board Regulations 2006. In common with other Local Safeguarding Children Boards, the membership of WDSCB also includes relevant health, police, housing and voluntary sector agencies.

10. The Commissioner has previously found (in FS50368110, FS50448670<sup>1</sup> and FS50539851) that Local Safeguarding Children Boards (LSCB) are statutory bodies in their own right and not public authorities for the purposes of the FOIA. She is therefore satisfied that Wakefield District Safeguarding Children Board is not a public authority for the purposes of the FOIA.

**Does the Council hold the requested information for the purposes of the FOIA?**

11. Under section 1(1) of the FOIA, anyone who requests information from a public authority is entitled to be informed by the authority whether it holds the information and, if it does, to have that information communicated to him or her.
12. The Council's position is that, while it holds the requested information, it holds the information for and on behalf of WDSCB. Since WDSCB is not a public authority for the purposes of the FOIA, the Council says it cannot be said to hold the information itself.
13. With regard to the communications that have been requested, the complainant has told the Commissioner that the Council failed to release these to him on the grounds that they were produced to help WDSCB respond to his press enquiries about the Haroon Bhatti case.
14. In the complainant's view, the correspondence is held by the Council for the Council's own purpose of responding to press enquiries and managing the news output. The complainant says that although the statements contained in the correspondence may have been made in the name of WDSCB or WDSCB's chair, Council employees worded the statements. They were written, according to the complainant, in order to manage news reporting in a case where the complainant says there have been serious failings by the Council itself.

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<sup>1</sup> <http://search.ico.org.uk/ico/search/decisionnotice?keywords=FS50448670>

15. The complainant says that WDSCB's statements on the case confirm that recommendations were made and fully implemented but that the Council has refused to say what these were. By providing what he categorises as 'PR' for WDSCB, the complainant argues that the Council is able to help shape what statements are made, and thereby limit scrutiny of its actions.
16. In his request for an internal review, the complainant refers to the Commissioner's decision in FS50448670. In that case, which concerned Kirklees Council, the Commissioner decided that the Council was incorrect in its view that communications between it and the Kirklees Safeguarding Children Board were not held for the purposes of the FOIA.
17. In its submission to the Commissioner in the present case, the Council says it has taken FS50448670 into account. It notes that, in that case, Kirklees Council had not undertaken any searches for the communications that had been requested. This was because Kirklees Council considered that *no* communications between it and Kirklees Safeguarding Children Board are held by Kirklees Council for the purposes of the FOIA. The Commissioner did not agree that this was a valid argument. She considered that correspondence between Kirklees Council and Kirklees Safeguarding Children Board regarding the publication of a particular report would be held for the purposes of the FOIA.
18. In the present case, the Council says that it searched for, identified and retrieved the requested communications. It says that it considers that it holds this information by virtue of its responsibilities in respect of WDSCB: the officers named in the complainant's request co-ordinate responses to media enquiries on behalf of WDSCB.
19. The Council directed the Commissioner to the relevant section of the WDSCB Constitution. Paragraph 8.6 of the Constitution says that WDSCB will designate the Council's press office to provide a co-ordinated response to media enquiries on behalf of the partner agencies in relation to Serious Case Reviews (SCR).
20. The Council has also told the Commissioner that the complainant requested substantially similar information from one of the press officers named in the request, directly. The Council provided the Commissioner with the officer's response and noted that throughout this correspondence, the approval and authority of the Independent Chair of WDSCB is sought as the Council considered the information to belong to WDSCB.
21. The Commissioner has considered both parties' arguments and her decisions in previous, similar, cases. On this occasion, she is satisfied

that the requested communications are not held for the Council's own purposes. This information is held in accordance with the Council's duties to provide membership and support to WDSCB, including providing co-ordinated responses to media enquiries on behalf of the partner agencies, in relation to SCRs. The complainant has himself noted that the statements in question have been made in the name of WDSCB and the WDSCB Chair. As such, the Commissioner considers that the information is held on behalf of another person – ie WDSCB, which is not a public authority – and that the Council therefore does not hold the requested communications itself for the purpose of the FOIA.

22. The Commissioner has next considered the IMR that has also been requested. The complainant has drawn the Commissioner's attention to her decision in FS50585136. He says that in that case, which concerned Thames Valley Police, the Commissioner decided that the IMR that had been requested was held by Thames Valley Police for its own policing purposes.
23. The complainant argues that the IMR in the present case would have had the purpose of enabling the Council to examine the extent of its involvement with Haroon Bhatti, his father and family, and the actions it took, in order to help improve its child and adult services. In the complainant's view, any responsible public body would want to examine its actions following the murder of a child and that the IMR would have been produced to help the Council improve its services.
24. The Council has confirmed in its submission that it holds all the information that has been requested in accordance with its duties to provide membership and support to WDSCB.
25. From her own research, the Commissioner understands that IMRs form part of a Serious Case Review. SCR are undertaken by LSCBs for every case where abuse or neglect is known or suspected and either the child dies or is seriously harmed; and there are concerns about how organisations or professionals worked together to protect the child. The Commissioner further understands that, as a multi-agency organisation, LSCBs commission IMRs from its partners. They are used to analyse the performance of the individual agencies involved in the case and inform the SCR.
26. The Commissioner does not accept the complainant's argument that the IMR in this case would have been produced to help the Council improve its services. In the Commissioner's view, the IMR would have been commissioned by WDSCB as part of its SCR of the Haroon Bhatti case.
27. The Commissioner has nonetheless considered whether the Council also holds this particular information to any extent for its own purposes, and

not only on behalf of WDSCB. If the Council does hold the IMR to any extent for its own purposes, then it holds this information for the purposes of the FOIA and it must respond to the request.

28. The Council has confirmed to the Commissioner that the IMR is a fundamental and integral part of the SCR and that it is owned by the WDSCB. The Council has told the Commissioner that the IMR exists only to inform the SCR and to give background information to the independent author so that they can compile the Overview report in line with national guidelines and procedures.
29. The Council says that the SCR sets the terms of reference for the IMR and the IMR must comply with those terms of reference. The compilation of the IMR must adhere to a very specific format and particular guidance as set by the SCR Panel which is a sub-committee of WDSCB. If the IMR is not presented in the prescribed format it would be returned to the author for amendment and re-submission. The SCR Panel makes the decision whether to accept that the IMR meets the standards, as part of the SCR procedure.
30. The Council has explained that the WDSCB Business Manager organises a briefing session for IMR authors to provide guidance on how the report should be written and constructed for the SCR Panel.
31. Although the IMR may propose a recommendation for an agency, all actions are incorporated into one overarching Action Plan from all the IMRs, which WDSCB oversees and ratifies.
32. The Council has confirmed to the Commissioner that the IMR document is controlled and owned by WDSCB and has been used only for the purpose of gathering background information to inform the SCR. Moreover, the Council says that in this particular case, WDSCB requested all agencies preparing an IMR not to keep their own copy. The Council therefore maintains its position that the IMR report is owned by WDSCB and is not held by the Council for its own purposes to any extent.
33. The Commissioner accepts that WDSCB commissioned and owns the IMR in question. As with the requested communications, the Council may hold a copy of the IMR but it is held on behalf of the WDSCB and is not held for any of the Council's own purposes. Since WDSCB is not a public authority, the Commissioner is satisfied that the Council also does not hold this particular information for the purposes of the FOIA.

## 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: 0870 739 5836  
Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

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** .....

**Pamela Clements**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
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