

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 4 July 2011

Public Authority: Northumberland County Council
Address: County Hall
Morpeth
Northumberland
NE61 2EF

Summary

The complainant made a number of requests for specific details of children in care who also attended mainstream school. The council supplied some of the requested information but refused some of the requests under either section 12 (appropriate limits) or withheld information under section 38 (health & safety) and section 40 (personal information) of the Act. The information which is the subject of this notice was considered by the Commissioner to be correctly withheld under section 38.

The Commissioner's Role

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

2. On 25 November 2009 the complainant requested the following information from the council:

"(a) During 2007 how many looked-after children were placed into mainstream schooling or new schools by Northumberland Children's Services/County Council?"

(b) During 2008 how many looked-after children were placed into mainstream schooling or new schools by Northumberland Children's Services/County Council?

(c) During 2007 how many looked-after children who were placed into mainstream schooling or new schools by Northumberland Children's Services/County Council were the subject of formal documented Risk-Assessments?

(d) During 2008 how many looked-after children who were placed into mainstream schooling or new schools by Northumberland Children's Services/County Council were the subject of formal documented Risk Assessments?

(e) During 2007 and 2008 how many formal risk assessments involved the Northumberland Safeguarding Board either during or after assessment?"

3. On 17 December 2009 the council advised the complainant that the requested data was not routinely recorded and that a response would require a manual search of the relevant case files. For 2007 this would entail a manual search of 359 case files concerning children in care during that year in order to answer requests (a) and (b). For 2008 the corresponding number of files requiring manual search would be 329 in order to answer requests (c) and (d). In order to answer request (e) a manual search of the files relating to both 2007 and 2008 would be required.
4. The council calculated that it would take an hour to search each file and therefore more than 18 hours to carry out the task. It advised that the cost of complying would be £25 per hour and that consequently the appropriate limit of £450 as prescribed in the regulations would be exceeded. The regulations to which the council referred are the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. The council therefore informed the complainant that the exemption at s12 of the Act applied to the request.
5. The complainant subsequently refined his request on 23 December 2009 as follows:

"I request that you provide me with the following information:

(i) 2007 – the number of 'looked after children' within Northumberland and identified as having EBSD (Emotional, Behavioural and Social Difficulties) who were entered into mainstream schooling.

(ii) 2008 – as above.

(iii) 2007 – How many of the above were the subject of a formal risk assessment prior to placement.

(iv) 2008 – As above."

6. On 6 January 2010 the council informed the complainant that 62 children and young people had been identified as having both a Behavioural, Emotional and Social Difficulties (BESD) needs category and a looked-after status during 2007 and 2008. It explained that in order to identify whether any of these children were placed in a school by the authority's Children's Services Department (as opposed to already being in a school at the point they became looked-after) it would be necessary to carry out manual file checks in each case. The time taken for each file check was calculated to be an hour and at 62 hours in total this would exceed the 18 hours limit.

7. The council advised the complainant that in order for it to provide as much relevant information as possible he could refine his request to:

"(i) The number of looked after children within Northumberland identified as having BESD who attended mainstream schooling during 2007.

(ii) How many of the above were the subject of a formal assessment prior to or during the period they were looked after.

(iii) The same for 2008."

8. Instead, on 12 January 2010 the complainant revised his request as follows:

"(i) The number of looked after children resident in Northumberland local authority children's homes and Northumberland specialist children's homes (placements) that were identified as BESD, Emotional and Emotional/Complex who attended mainstream schooling during 2007.

(ii) How many of the above were the subject of a formal risk assessment prior to entering mainstream schooling (or entering a new school) during the period they were looked after.

(iii) The same for 2008."

9. On 10 February 2010 the council supplied the complainant with the number of children that fell within the needs category of Emotional, Behavioural Difficulties (EBD) during 2007 who were looked after by the local authority and who attended mainstream school. The council also supplied the complainant with the proportion of those children who had been the subject of a core assessment under the national assessment framework. It further supplied the complainant with the number of

children looked after by the local authority and who attended mainstream school during 2008 and the proportion of those who had been the subject of a planning meeting to consider assessed needs. The complainant was advised that the specific term "risk assessment" used in his request was not recognised by the Department of Health's guidance, *"Framework for the assessment of children in need and their families"* which provides the basis of social work assessment in such cases.

10. On 23 February 2010 the complainant informed the council that he sought to elicit information under the Act concerning children who had been the subject of a core assessment and who might present a danger of significant harm to others. The complainant considered that the council had a duty of care to its employees and the public at large including the pupils of a school which a child with EBD was about to enter. Accordingly, the information he sought related to the "risk and assessment" and "the duty of care" that might be presented to others by such children.
11. On 26 February 2010 the council asked the complainant to clarify the exact question he was asking. On the basis of the information sought in previous requests the council asked whether he was now requesting:

"The number of looked after children in the local authority (in 2007 and 2008) with emotional, behavioural difficulties who have had a risk assessment carried out by the council as a result of concerns over potential harm to others caused by that child."
12. On 1 March 2010 the complainant confirmed that he was seeking that information as summarised by the council and that he had in his possession a Social Services/Children's Services risk assessment document which referred to the posing of risk to self and others.
13. The council asked the complainant for a copy of the document which he supplied. It transpired that the document did not apply to the assessment of children. Instead it was an adult services document used by West London Mental Health NHS Trust.
14. On 16 March 2010 the council confirmed to the complainant that no children in 2007, 2008 or 2009 in Northumberland were the subject of a risk assessment as set out in the NHS Trust document. Also the complainant was advised that two other documents he had supplied to the council did not apply to the authority's mechanisms concerning child assessments.
15. On 18 March 2010 the complainant accepted that the documents he had supplied did not relate to the council's procedures, however, he submitted that his question remained: *"... were any of the children (as*

per my original application) risk-assessed in relation to both self-harm and harm to others? If they were then what are the mechanics of that and how many were so assessed. Moreover, how many, if any, were deemed to pose a risk?"

16. On 19 March 2010 the complainant followed up his submission of 18 March with a further refinement of his earlier requests as follows:

"The number of looked after children within Northumberland identified as having BESD who attended mainstream schooling during 2007?"

How many of the above were the subject of any type of formalised risk-assessment (as described) prior to or during the period they were looked after?

The same for 2008 and 2009.

Of those subject of risk-assessment for the above periods how many were deemed to pose a risk?"

17. On 6 April 2010 the council provided the complainant with an illustration of the structure of a core assessment as set out by the Department of Health and explained that each category required a social worker to consider the issue of risk and ensure that appropriate plans were developed to manage those assessed risks. The council explained that on the basis of the low numbers of children involved it considered that the information now sought by the complainant was exempt from disclosure under s40(2) (personal information) and s38 (health and safety) of the Act.

18. On 8 June 2010 the complainant wrote to say that he rejected the validity of the council's refusal and that he was re-applying for the information sought. He repeated his request for information as re-framed at paragraph 16 above and made the following additional request:

"2007 – In relation to children and young people who are looked after away from home and are the subject to a Placement Information Record (PIR), how many PIRs contain information recorded through the Integrated Children's System (ICS). The ICS incorporated within a PIR is designed to record any information about behaviour patterns including abusive incidents to self or others that have been of concern to a current or previous carers and should be provided along with information about managing behaviour and support which will be required for the child/young person and carer.

The same for 2008 and 2009."

19. On 6 July 2010 the council informed the complainant that the information he had re-applied for had already been deemed exempt from disclosure under s38 and s40 of the Act. With regard to the additional request of 8 June 2010 the authority explained that the undertaking of an audit of all children looked after during the specified periods would exceed the appropriate limit. It calculated that the cost of compliance at £25 per hour would exceed 18 hours and that the exemption at s12 of the Act therefore applied.

20. On 9 July 2010 the complainant extended his additional request of 8 June 2010 (which had been refused under s12) as follows:

" 2008 - In relation to children and young people who are or were previously been (sic) identified as EBD (in 2007 and 2008) and are looked after away from home and subject to a Placement Information Record (PIR), how many PIRs contain information recorded through the Integrated Children's System (ICS). The ICS incorporated within a PIR is designed to record any information about behaviour patterns including abusive incidents to self or others that have been of concern to a current or previous carers and should be provided along with information about managing behaviour and support which will be required for the child/young person and carer.

2009 - In relation to children and young people who are or were previously been (sic) identified as EBD (in 2008 and 2009) and are looked after away from home and subject to a Placement Information Record (PIR), how many PIRs contain information recorded through the Integrated Children's System (ICS). The ICS incorporated within a PIR is designed to record any information about behaviour patterns including abusive incidents to self or others that have been of concern to a current or previous carers and should be provided along with information about managing behaviour and support which will be required for the child/young person and carer."

21. On 28 July 2010 the council informed the complainant that his previous requests remained exempt under s38, s40 or s12 of the Act and that it was unable to add anything further regarding the most recent version of those requests. The council advised the complainant of his right to refer the matter for internal review.

The Investigation

Scope and chronology

22. The complainant made a series of requests and refinements each of which generated a response from the council. An internal review was

requested in respect of only one of those responses – that concerning the complainant's request of 19 March 2010. It is the council's handling of that request which the Commissioner has investigated under s50 of the Act and which is the subject of this decision notice.

23. The complainant had written to the Commissioner on 15 April 2010 to complain about the way his requests for information had been handled by the council. He was advised by the Commissioner on 1 June 2010 that the public authority's internal review procedure needed to be exhausted before a complaint under the Act could be progressed.
24. The complainant subsequently wrote to the council on 8 June 2010 as outlined in paragraph 18. Following the council's response of 6 July 2010 the complainant wrote to the Commissioner expressing his dissatisfaction with the authority's response.
25. On 27 July 2010 the Commissioner advised the council that the complainant's letter of 8 June 2010 should have been viewed as a trigger for the commencement of its internal review procedure. Accordingly, the council completed an internal review on 16 August 2010. The council's review upheld the exemptions of the Act where these had been applied.
26. On 23 August 2010 the complainant wrote to the Commissioner to complain about the council's decision and on 6 September 2010 the Commissioner informed the council that he deemed the complaint to be eligible for consideration under the Act. He commenced his formal investigation on 7 December 2010 and asked the council to amplify its explanation as to the appropriateness of the exemptions it had applied to the request of 19 March 2010.

Analysis

Exemptions

Section 38

27. The council applied the exemption at s38 (health and safety) to withhold the information sought in the request of 19 March 2010. The exemption is detailed in the legal annex at the end of this notice.
28. The complainant was advised by the council that due to the low number of children involved in the answers to his earlier requests it was unable to provide a more detailed response in this instance.

29. In the course of the Commissioner's investigation the council's Children's Services Department maintained that disclosure of the information would be detrimental to the welfare of looked-after children. The Commissioner has taken into account the professional opinion submitted to him that such disclosure would have the potential of jeopardising the stability of child placements leading to emotional damage and harm to the mental health of the children concerned.
30. When information is released under the Act it becomes available to the wider world and not just to the applicant. The Commissioner notes that the information already disclosed in relation to the successive narrowing of the complainant's previous requests together with the information requested on 19 March 2010 would have the effect of particularising a small cohort of vulnerable children. He notes that the format of the request implies that a significant and unmanaged risk to others in the community is posed by this small group of children.
31. He considers there to be a distinct risk that some individuals may infer from the disclosure, particularly if fanned by the media, that the local child they know to be in care, who may or may not have behavioural difficulties, automatically poses a significant and unmanaged risk to others.
32. The prospect of misidentification and potential targeting of such children with the attendant consequences of care planning and placement breakdown constitutes in the Commissioner's view a serious risk to the physical and mental health, and safety of those children. The Commissioner accepts that this endangerment would be likely. He is therefore satisfied that the exemption at section 38(1) of the Act is engaged and he is satisfied that limbs (a) and (b) are both engaged.
33. As the exception is engaged the Commissioner has proceeded to consider whether in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosure.

Public interest arguments in favour of maintaining the exemption

34. (i) Release of such selective information into the public domain has the potential to impact detrimentally on all children in the vicinity who are in looked-after placements in the community.

(ii) The publicised suggestion of potential and unmanaged risk to children or by children engenders press sensationalism and generates vigilantism. It can result in the public targeting of vulnerable children.

(iii) It is in the best interests of looked-after children to be allowed to live as normal a life in the community as possible. The negative

consequences of public exposure can destabilise their placements and result in serious damage to their wellbeing and mental health.

(iv) The welfare of children must be the primary consideration in such circumstances.

Public interest arguments in favour of disclosing the requested information

35. (i) Disclosure of the information would help to further the public's understanding of the complexities of child care and its management within the community.

(ii) Disclosure would help to provide transparency regarding the outcomes of professional assessment in child care cases.

Balance of the public interest arguments

36. In the Commissioner's view the health, safety and welfare of vulnerable children is paramount.

37. He has weighed the competing public interest arguments and has concluded that the public interest in maintaining the exception outweighs the public interest in disclosure.

The Decision

38. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

Steps Required

39. The Commissioner requires no steps to be taken.

Other matters

40. Although it does not form part of this Decision Notice the Commissioner notes the following:

Whilst the complainant's letter of 8 June 2010 was couched in terms of a request "re-application" it should have been viewed by the council as an appeal for an internal review.

The Commissioner considers that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In no case should the total time taken exceed 40 working days.

It was not until 16 August 2010 that the council carried out its review.

Right of Appeal

41. 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.

Website: www.informationtribunal.gov.uk

50. 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 4th day of July 2011

Signed

Steve Wood
Head of Policy Delivery

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Legal Annex

Freedom of Information Act 2000

Section 1(1) states 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.”

Section 12 states that:

- (1) Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.
- (2) Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.
- (3) In subsections (1) and (2) “the appropriate limit” means such amount as may be prescribed, and different amounts may be prescribed in relation to different cases.
- (4) The Secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority—
 - (a) by one person, or
 - (b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them.
- (5) The Secretary of State may by regulations make provision for the purposes of this section as to the costs to be estimated and as to the manner in which they are to be estimated.

Section 38 states that:

- (1) Information is exempt information if its disclosure under this Act would, or would be likely to-
 - (a) endanger the physical or mental health of any individual, or
 - (b) endanger the safety of any individual.

- (2) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, have either of the effects mentioned in subsection (1).

Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004

2. In these Regulations—

“the 2000 Act” means the Freedom of Information Act 2000;

“the 1998 Act” means the Data Protection Act 1998; and

“the appropriate limit” is to be construed in accordance with the provision made in regulation 3.

The appropriate limit

3. (1) This regulation has effect to prescribe the appropriate limit referred to in section 9A(3) and (4) of the 1998 Act and the appropriate limit referred to in section 12(1) and (2) of the 2000 Act.

(2) In the case of a public authority which is listed in Part I of Schedule 1 to the 2000 Act, the appropriate limit is £600.

(3) In the case of any other public authority, the appropriate limit is £450.

Estimating the cost of complying with a request - general

4. - (1) This regulation has effect in any case in which a public authority proposes to estimate whether the cost of complying with a relevant request would exceed the appropriate limit.

(2) A relevant request is any request to the extent that it is a request-

(a) for unstructured personal data within the meaning of section 9A(1) of the 1998 Act^[3], and to which section 7(1) of that Act would, apart from the appropriate limit, to any extent apply, or

(b) information to which section 1(1) of the 2000 Act would, apart from the appropriate limit, to any extent apply.

(3) In a case in which this regulation has effect, a public authority may, for the purpose of its estimate, take account only of the costs it reasonably expects to incur in relation to the request in-

(a) determining whether it holds the information,

(b) locating the information, or a document which may contain the information,

(c) retrieving the information, or a document which may contain the information, and

(d) extracting the information from a document containing it.

(4) To the extent to which any of the costs which a public authority takes into account are attributable to the time which persons undertaking any of the activities mentioned in paragraph (3) on behalf of the authority are expected to spend on those activities, those costs are to be estimated at a rate of £25 per person per hour.