

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 25 September 2014

**Public Authority:** South Gloucester Council  
**Address:** The Council Offices  
Castle Street  
Thornbury  
South Gloucestershire  
BS35 1HF

#### **Decision (including any steps ordered)**

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1. The complainant has requested copies of all materials held by South Gloucester Council ("the Council") in relation to a specified Serious Case Review report.
2. The Commissioner's decision is that the Council does not hold the requested information for its own purposes and therefore the information is not subject to the duty imposed on public authorities by section 1 of the FOIA.
3. The Commissioner does not require the public authority to take any further action in this matter.

#### **Request and response**

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4. On 18 February 2013 the complainant wrote to the Council and requested information in the following terms:

"I now formally request that (under the terms of the Freedom of Information Act) you provide to me copies of all material; held by the Council (and/or the SAB) in relation to the commissioning of, publication and discussion about the SCR report. This will include records of all communications whether formal or informal and whether held in handwritten, printed or electronic, analogue or any other format. In so far as such communications or documents may contain material supplied

to the Council by third parties (e.g. SAB members, Government Departments or DPEA) I ask you to seek any necessary permissions to include such material in your disclosure. In the event that any third party declines to give you such permission, I ask that you provide me with the contact details for that person or body. In the interests of economy and efficiency, there is no need for you to provide physical copies of documents that are in the public domain (e.g. those reports and documents currently published on the Council's website or elsewhere). In such cases, a reference link to the source of the material will be sufficient."

5. The Council acknowledged the complainant's information request on 4 March 2013, advising him that he should expect the Council's response by 22 March.
6. On 22 March the Council wrote to the complainant to advise him that it required more time to consider the public interest test and that it would endeavour to respond to his information request by the end of April 2013.
7. On 30 April the Council confirmed to the complainant that it was considering the application of section 36(2)(b)(ii) of the FOIA and that it would expect to respond to his request by the revised deadline of 13 May 2013.
8. On 15 May 2013 the Council issued the complainant with a refusal notice. In this notice the Council relied on the exemptions to disclosure provided by sections 36(2)(b)(ii) – prejudice to effective conduct of public affairs, 40(2) – personal data of a third party and 41(1) – information provided in confidence. The Council also asserted that, while it holds the information sought by the complainant, it is held on behalf of the Safeguarding Adults Board ("the SAB"). The Council informed the complainant that the SAB is the sole body responsible for commissioning serious case reviews and the SAB is not a public body for the purpose of the FOIA.
9. The complainant wrote to the Council on 13 June 2013 to request an internal review. The complainant provided the Council with a detailed rebuttal of its reasons for refusing his request.
10. The Council provided its internal review on 9 August 2013. The internal review concerned and refers to the complainant's 'modified request' which was made following his meeting with the Council. At that meeting the Council identified what it now considered was the complainant's modified request, namely:

- “What did the local authority and/or the SAB do following their receipt of the draft and final versions of the Serious Case Review Report?
- What subsequent deliberations did the local authority and/or the SAB make in relation to the content of the draft and final version of the Serious Case Review Report, including details of the responses made by professionally registered members of the SAB?
- What actions were taken as a result of the deliberations set out above, and especially what had been done subsequent to and in response to the reminders of the safeguarding ‘alerts’ you had provided to the SAB?”

### **Scope of the case**

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11. The complainant contacted the Commissioner on 2 September 2013 to complain about the way his request for information had been handled.
12. The Council’s internal review addressed the three bullet points listed above. The Council concluded that it, since the modified request does not extend to the detailed evidence that the SAB considered, it was no longer necessary for it to consider the section 36 exemption. It determined that its ‘reason 2’, as set out in its original decision, was correctly formulated but that ‘reasons 3 and 4’ are no longer relevant due to the modification of the request.
13. It is the complainant’s position that he has not modified his information request and that it is the Council which has modified its interpretation of his request. It is therefore necessary for the Commissioner to investigate the complainant’s complaint based on the request of 18 February 2013 and on the reasons given by the Council in its letter of 15 May 2013 for refusing to comply with it.
14. The Commissioner considers the scope of his investigation to be whether the Council holds the information requested by the complainant for the purpose of the FOIA and whether the Council is correct to rely on the exemptions cited to withhold that information.

### **Reasons for decision**

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#### **Section 3 – Public authorities**

15. Section 1(1) of the FOIA 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."

16. Section 3(2) of the FOIA states that:

"For the purpose of this Act, information is held by a public authority if –

(a) it is held by the authority, otherwise than on behalf of another person, or

(b) it is held by another person on behalf of the authority."

17. Before determining whether the Council is correct to rely on any of the exemptions to disclosure provided by Part II of the FOIA, he must first determine whether the information held by the Council is held for the purposes of the FOIA.

18. In the Commissioner's view, where information is held by a public authority, to any extent for its own purposes, it will be considered to hold that information for the purposes of the FOIA.

19. In the Commissioner's view, the only circumstance in which information, which is physically in the possession of the Council, would not be held for its own purpose would be where the Council holds that information on behalf of another person or body.

20. In this case, the Council has argued that it only holds information within the scope of the complainant's request on behalf of the South Gloucestershire Safeguarding Adults Board ("the SAB"). It asserts therefore that the information sought by the complainant is not held for the purposes of the FOIA by virtue of section 3(2)(a).

21. To support its position, the Council argues that the information it holds, is held solely by virtue of its coordinating responsibilities in respect of the SAB and that the information is held by the SAB for its own purposes.

22. The Council has advised the Commissioner that the SAB is a multi-agency board formed by the Council in compliance with the 'No Secrets'

guidance<sup>1</sup> issued jointly by the Department of Health and the Home Office.

23. The SAB is not listed in Schedule 1 of the FOIA as being a public authority for the purpose to the FOIA, nor has the SAB been added to Schedule 1 by any order made by the secretary of State under section 4 of the FOIA.
24. The Council believes that the SAB is analogous to the Safeguarding Children Board, as both bodies are formed with the express intention of safeguarding people.
25. The question of whether the requested information is held by the Council for the purpose of the FOIA is not easy to determine. The Commissioner has carefully considered the representations made by the Council and by the complainant and has concluded that the information is not held for its own purposes. Therefore the Commissioner's decision is that the Council is entitled to rely on section 3(2)(a).
26. The Commissioner considers that the Council physically holds the information sought by the complainant, but does so for a very limited purpose. He considers that true 'ownership' of the information lies with the SAB itself.
27. The Commissioner's believes his conclusion in this matter is somewhat reinforced by actions taken by the complainant since making this request. The complainant informed the Commissioner that he had subsequently made requests for information to two organisations which are members of the SAB - the Avon and Wiltshire Mental Health Partnership NHS Trust, and South Gloucestershire Clinical Commissioning Group.
28. The information sought by the complainant in his subsequent requests was substantially similar to the information he asked the Council to provide. The complainant advised the Commissioner both organisations had made what he considers to be 'adequate replies in compliance with their duties under the Freedom of Information Act'.

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[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/194272/No\\_secrets\\_guidance\\_on\\_developing\\_and\\_implementing\\_multi-agency\\_policies\\_and\\_procedures\\_to\\_protect\\_vulnerable\\_adults\\_from\\_abuse.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/194272/No_secrets_guidance_on_developing_and_implementing_multi-agency_policies_and_procedures_to_protect_vulnerable_adults_from_abuse.pdf)

29. The Commissioner considers that the responses made by the two SAB partner organisations indicates where ownership of the information sought by the complainant lies.

**The exemptions**

30. The Commissioner recognises that, whilst maintaining that the information is not held by the Council for its own purposes, the Council has provided him with copies of the withheld information and its arguments why it should not disclose it to the complainant.
31. In view of his conclusion at paragraph 26, it has not been necessary for the Commissioner to consider the Council's alternative position. He has not considered the Council's application of sections 36(2)(b)(ii), 41(2) and 41.

## Right of appeal

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32. 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)

33. 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.
34. 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**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**