

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 February 2016

Public Authority: Herefordshire Council
Address: Plough Lane
Hereford
HR4 OLE

Decision (including any steps ordered)

1. The complainant requested information relating to concerns raised about a particular care home. The council refused to supply some information and cited the exemptions under section 43(2) and section 40(2) of the Freedom of Information Act 2000 ("the FOIA"). These exemptions relate to commercial information and third party personal data. The Commissioner's decision is that the council incorrectly sought to withhold a significant amount of the information using the exemption under section 43(2) and he has therefore found a breach of section 1(1)(b) and 10(1) of the FOIA. However, the Commissioner found that that some information ought to be withheld using the exemption under section 40(2). The Commissioner requires the public authority to take steps to ensure compliance with the legislation. In this case there is a significant amount of information to be released with specific redactions and the Commissioner has therefore set out his steps in Annex A associated with this decision notice.
2. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

3. On 14 January 2015, the complainant requested information from the council. (He did not number the points in his original request however the Commissioner has done so below for ease of reference).

"Under FOI I would like to know:

- 1. Have any concerns been raised before about Abbey Grange?*
- 2. When and why*
- 3. How were the concerns addressed*
- 4. I would like to see the action plan drawn up to address any concerns*
- 5. Are the same staff still employed as were employed at the time of the incidents, if indeed there were any"*

4. The council replied on 10 February 2015. In response to point 1, the council confirmed that individual safeguarding concerns have been raised. It refused to respond to point 2 using the exemption under section 43(2) of the FOIA (commercial interests) and it also referred to the Data Protection Act 1998 ("the DPA") although it did not specifically cite section 40(2). In response to point 3, the council said that the concerns were addressed through the safeguarding process. The council refused to respond to point 4 using the exemption under section 40(2) of the FOIA (personal data). In response to point 5, the council said that this information was not held.
5. On the same day, the complainant wrote to express dissatisfaction. At this stage, he also requested further information as follows:

"Please tell me:

- 1. The number of safeguarding alerts about Abbey Grange and the time period over which you are supplying the information*
- 2. Of these alerts how many were raised, quite properly by the home and how many by outside agencies. (Please break this down into professional patient advocate, social workers, medical professionals and family/friends)*
- 3. If alerts are rated please tell me what rating was given to each alert. I will be happy with something like 4 minor, 1 major etc*
- 4. Please supply comparison data on how this compares to the average care home under your jurisdiction*

...Finally, I want to be clear that I am only asking for anonymised data. I do not require, or indeed wish, to pry into anyone's personal info"

6. The council replied on 12 February 2015. It said that its response to the further requests would be the same and it said it could not disclose this information. The council said that it would conduct an internal review of all of the requests.
7. The council completed its internal review on 13 March 2015. The council said that it wished to maintain its position.

Scope of the case

8. The complainant contacted the Commissioner on 19 April 2015 to complain about the way his requests for information had been handled. The complainant has complained to the Commissioner about the council's response to the requests 2, 3, and 4 made on 14 January 2015. He has also complained about the council's response to his requests on 10 February 2015.
9. Some of the information caught by the scope of these requests concerned the complainant's father. The complainant confirmed that he did not require the Commissioner to consider this information because of earlier disclosures made by the council.

Reasons for decision

Section 43(2) – Commercial interests

10. The exemption under section 43(2) is engaged if disclosure of the information would or would be likely to prejudice the commercial interests of any person, including the public authority itself. The Commissioner has published detailed guidance on this exemption which may be accessed via the following link:

https://ico.org.uk/media/for-organisations/documents/1178/awareness_guidance_5_v3_07_03_08.pdf
11. The Commissioner's guidance explains that a commercial interest relates to a person's ability to participate competitively in a commercial activity i.e. the purchase and sale of goods or services. In this case, the council explained to the Commissioner that the information concerns the quality of the service being provided by a particular care home, Abbey Grange, a business contracted by the council to deliver residential care and support services. The Commissioner accepts that the information is commercial in nature.
12. For clarity, the withheld information consists of information relating to specific safeguarding incidents, comparative information relating to request 4 made on 10 February 2010 and various reports relating to monitoring activities, mostly by the council.
13. The council said that the information would be likely to prejudice the commercial interests of the home. The First-Tier Tribunal (Information Rights) ("the tribunal") has established in previous cases that "would be

likely to prejudice" means that there must be a real and significant risk of prejudice which is substantially more than a remote possibility but need not be more probable than not.

14. For the purposes of this exemption the Commissioner will not accept speculation about prejudice to the interests of third parties. The Commissioner expects public authorities to provide evidence that its arguments genuinely reflect the concerns of the relevant third parties. This is in line with the decision by the tribunal in the in the case of *Derry City Council v The Information Commissioner* (EA/2006/0014). In this case, the council tried to argue that disclosure of information would prejudice the commercial interests of Ryan Air, but as the arguments expressed only represented the council's own thoughts on the matter rather than any concerns expressed by Ryan Air itself, the tribunal found that section 43(2) was not engaged.
15. The council explained to the Commissioner that it had consulted the home in this case about the requests and it provided details of the response received. The home raised the following concerns in its written response:
 - The information can be misinterpreted leading to the perception that the home is not suitable and rival businesses could use the information to their advantage. This would prejudice the home's commercial interests by causing reputational damage and financial loss in turn.
 - The information would undermine the safeguarding process by inhibiting the likelihood of alerts being raised
 - The disclosure would affect staff morale
16. The council said that disclosure of the withheld information would not give a fair indication of whether or not the home is a good or bad one. It said that the disclosure would be likely to lead to the perception that the home was poor based on information taken out of its full context. It said that it agreed that as a result, the home would be likely to lose business. The council elaborated that organisations reporting concerns, including care homes, are of different sizes and provide different levels of service. Moreover, it said that safeguarding concerns in themselves do not necessarily equate with a failing in the service. A sudden act out of character by a service user resulting in harm to another service user which could not be foreseen by staff members may be reported as a safeguarding concern for example. The council also added that it agreed that the disclosure would be likely to adversely affect the relationship between care homes and the council, affecting the level of trust necessary for raising safeguarding concerns.
17. It is worth noting that as the case progressed, it became apparent to the Commissioner that the council had interpreted the requests made on 14

January 2015 more narrowly than had been intended by the complainant, and the council's earlier arguments were therefore focused on this narrower interpretation of the requests. Initially, the council had interpreted the requests as relating purely to specific safeguarding concerns that had been raised. The Commissioner highlighted that the requests made on 14 January 2015 related to "concerns" about the home, and this appeared to encompass more than only specific safeguarding concerns. The council subsequently confirmed with the complainant that he was interested in any concerns about the home and the council was allowed a further opportunity to reconsider the requests and to submit appropriate arguments to the Commissioner.

18. The council identified information of the type described in paragraph 12 of this notice as falling within the scope of all of the requests at issue, having previously attempted to limit the withheld information only to the safeguarding concerns and comparative information. The council acknowledged that not all of the information involved the expression of specific concerns, but it did involve monitoring of the home and involved various recommendations for improvement. As such, the council considered that it was reasonable and practical to interpret this information as falling within the scope of the requests in its entirety rather than attempting to isolate parts of the various documents. The Commissioner agrees with this assessment.
19. Firstly, the Commissioner would like to highlight that some of the arguments made were not relevant. The general principle that the arguments about prejudice for this exemption must focus on commercial harm rather than any other type of prejudice has been well-established in previous cases before the Commissioner and the tribunal. The Commissioner therefore explained to the council that he could not consider under this exemption whether the disclosure of any of the information would be likely to undermine the safeguarding process and likewise, it was not relevant whether or not the disclosure would be likely to affect staff morale. However, it is worth noting for clarity that the Commissioner offered the council the opportunity to consider the application of an alternative exemption, such as section 36 (prejudice to the effective conduct of public affairs), to reflect the concerns about the impact on safeguarding. The council initially confirmed that it wished to rely on this exemption however it subsequently withdrew that argument following consultation with the newly appointed qualified person at the council.
20. Despite the withdrawal of the exemption under section 36 and guidance by the Commissioner, the council continued to raise concerns in connection with section 43(2) focused on prejudice to the safeguarding process. It sought to maintain that, "...*the council's main concerns in*

regard to the release of the information in relation to both concerns and in particular safeguarding concerns is that it may cause any such concerns to be unreported if it is known that they will be published or released in response to requests for information, and this will negatively impact on the residents of care homes". As noted above, the Commissioner is not able to consider these concerns in connection with section 43(2) because it is not relevant to this particular exemption, which is limited to prejudice to commercial interests. However, the Commissioner has had regard to this concern in relation to some of the information discussed below relating to the exemption under section 40(2).

21. The Commissioner firstly considered the requests made on 10 February 2015 because these requests were most closely connected to the arguments made by the council and the contractor concerning prejudice to the home's commercial interests as a result of information taken out of its appropriate context. The Commissioner can appreciate the council's and the home's concerns about the nature of these requests. While it seems likely that the complainant was attempting to increase the likelihood of obtaining some information by focusing these requests purely on safeguarding figures, and he was attempting to provide some context by asking for comparative information, the Commissioner agrees with the council that the disclosure of information in response to these requests would still lack an appropriate level of context and would be likely to give a misleading impression of the quality of the home.
22. The Commissioner is sometimes wary of accepting arguments relating to the harm caused by taking information out of context because it is often possible to rectify this simply by putting the information into its appropriate context in some way. However, there are some cases where this is not possible, such as where the appropriate contextual information would be exempt under the FOIA for another reason. The Commissioner's view is that this is one of those instances and that relevant supporting information relating to specific safeguarding concerns would be exempt under section 40(2) (see analysis below). When sensitive figures of this nature are taken out of appropriate context, the Commissioner accepts that this information would be likely to prejudice the home's ability to compete fairly with other providers of the same services because the reputational damage may very well make other homes seem more attractive, and may be misleading to prospective customers, and there is a real risk that this information may be exploited by competitors when figures of this nature are not routinely published about other providers. In view of this, the Commissioner accepts that the exemption under section 43(2) was engaged with respect to all of the requests made on 10 February 2015.

23. In relation to the requests made on 14 January 2015, the information has much more context than the requests made on 10 February 2015 discussed above. Nonetheless, the council has explained that no information about the monitoring activities and details of safeguarding alerts is routinely disclosed. The Commissioner accepts that disclosure in these circumstances may very well cause reputational damage to the home by creating the perception that the home is worse than others not subject to the same disclosure for comparative purposes. This is particularly so in relation to information relating to specific safeguarding concerns. The Commissioner accepts that this would be likely to prejudice the commercial interests of the home and that section 43(2) is therefore engaged.

Public interest in disclosing the information

24. In cases where the Commissioner accepts that section 43(2) was engaged, he must go on to consider the application of the public interest test associated with this exemption. This provides that even when the exemption is engaged, information can only be withheld if in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing it.

25. The scheme of the FOIA itself envisages that there is always some public interest in the disclosure of information. This is because it promotes the aims of transparency and accountability, which in turn promotes greater public engagement and understanding of the decisions taken by public authorities.

26. In this case, the Commissioner considers that there is a strong public interest in the council being accountable and transparent about the monitoring activities of homes it has contracted with. This involves the expenditure of a significant amount of public money and more importantly, the care of vulnerable individuals. It is understandable that the public would wish to be as reassured as possible about the quality of care on offer and what actions the council takes to ensure that standards are maintained, as well as how the contracted care homes respond to any concerns. The disclosure of this information may also help to drive up standards by providing another layer of scrutiny of care homes in addition to the main avenues provided by the Care Quality Commission ("CQC").

Public interest in maintaining the information

27. As noted above, the Commissioner accepts that the disclosure of the information would be likely to prejudice the commercial interests of the home because it would be likely to cause reputational damage to the

home, placing it at a disadvantage in comparison with other providers which would be likely to result in financial loss. The legislation recognises that there is a legitimate public interest in ensuring that undue harm is not done to the commercial interests of third parties through the disclosure of information under the FOIA. There is also a public interest in protecting the relationship of trade between the council and third party businesses and ensuring that businesses are not discouraged unnecessarily from entering into arrangements with public authorities that contribute to public services. In this case, the home is contracted by the council to provide valuable and necessary public care services.

Balance of the public interest

28. The complainant stated in his request for an internal review that he made these requests because he has concerns about the home and specifically about the care provided to his father. He said that the council had chosen to act as the “sole arbiter” as to whether a care home meets the needs of its residents and had refused public oversight of its regulation. He said that it appeared to him that protecting the care home’s business was more important than the needs of residents and their relatives.
29. The Commissioner accepts the complainant’s points about the public interest in the disclosure of this information as acknowledged above and he accepts that it appears to be the case that there would be no other way of achieving the same level of transparency that the requests seek. However, as with the disclosure of any information, there is always the question of degree. It is not always necessary or proportionate to disclose every last piece of information in order to satisfy the public interest. This is not the same as saying that the needs of a business are more important than the needs of residents and their relatives, but simply that there is an appropriate balance to be considered with any decisions reached about disclosure made on a case by case basis depending on the circumstances.
30. In this case, there is clearly a background concern which has given rise to these particular requests, with a particular focus on areas where the home may be offering poor service. While that is a personal issue, it also points towards a broader public interest in allowing the public to understand more about the quality of care being offered by this particular home which the Commissioner can take into account. However, there will be other complaint mechanisms available to members of the public to pursue particular concerns about care homes. The Commissioner also does not accept the complainant’s comments

that the council is acting as “sole arbiter” as to whether the care home has met the needs of its residents.

31. As the council points out, a thorough regime of independent inspection is provided by the CQC. This particular care home has been inspected by the CQC and its predecessor, the Commission for Social Care Inspection (“CSCI”). The CQC’s website explains the nature of the current review regime. It states that after each inspection, a report is produced which is published on the organisation’s website. In most cases, the reports include ratings which show its overall judgement of the quality of care. The CQC’s reports set out its findings in respect of five key questions, describing the good practice found as well as any concerns identified. Any evidence about breaches of regulations is clearly set out and recommendations are also made to help providers improve their ratings in the future. The care provider must respond to any areas of concern identified and develop an action plan to make improvements. The CQC will also follow up on any action it asks a provider to take either by contacting them or by visiting to carry out a more focused inspection.
32. The council has also explained to the Commissioner that it works closely with the CQC, liaising with it on a regular basis. It said that the CQC will also contact the council for information about a provider. Information will be shared with the CQC about any quality concerns received and the action that the council has taken in response to those concerns. There is a monthly multi-agency meeting that takes place at the council, attended by CQC, where concerns about providers will be shared between all in attendance and if appropriate, actions agreed. This does go some way towards meeting the public interest in improving care standards.
33. Further to the regulatory background above, the council also highlighted that an organisation known as “Health Watch” also publishes some information about care homes under its “Enter and View” programme. The council explained that authorised representatives go into health and social care premises to hear and see how the consumer experiences the service. The views of the service users are then published (with consent) in a report on the local Health Watch website.
34. Against this background, the Commissioner considered the concerns raised about the disclosure of the safeguarding information requested on 10 February 2015. As noted, the Commissioner agrees that without appropriate context, the disclosure of this information would be likely to cause reputational damage to the home, thereby prejudicing its commercial interests. Disclosure in the form requested would be likely to create a misleading impression of the quality of care being offered and would provide a very limited picture of the issues. The information would not reveal important details about the nature of the concern and what

action was required or taken, if any. This lack of context is crucial in reaching the conclusion that the disclosure would be likely to prejudice the commercial interests of the provider (and other providers in the case of the comparison data requested) by risking damage to reputation in an unfair and disproportionate way, which would be likely to cause a sufficiently severe level of prejudice to outweigh the public interest in disclosure. This is in view of the fact that there is already independent regulatory oversight of concerns about care homes and the regulator will make information public as deemed appropriate on a case by case basis. The CQC, as the care regulator, is best placed to make decisions about what information to include in its published reports, including matters relating to safeguarding.

35. Some additional information dealing with safeguarding concerns is also caught by the requests on 14 January 2015. Appropriate context is still lacking in the Commissioner's view given the redactions that would need to be made to remove the risk of identification (see analysis about section 40(2) below) and the incomplete context. Where it would not be possible to describe fully the nature of the safeguarding incident including what happened, why and how it was dealt with, the benefits to the public of knowing about the existence of that safeguarding report are more limited in the Commissioner's view, and moreover, the disclosure of that information would be likely to cause disproportionate harm to the commercial interests of the home because redacted material would be likely to lead to speculation about the full nature and outcome of a safeguarding incident. Again, the Commissioner considers that the severity of prejudice would be sufficient to outweigh the public interest in disclosure in view of the fact that there is already independent regulatory oversight of concerns about care homes.
36. In relation to the remaining information covered by the requests on 14 January 2015 which does not relate to specific safeguarding incidents, the Commissioner's considerations are different because the information is capable of providing greater context. It would help the public to more fully assess the effectiveness of the council's own monitoring, as a support to the CQC, in a way that the disclosure of safeguarding figures in isolation or heavily redacted details of safeguarding incidents would not do. While some accountability is provided by the fact that the council works closely with the CQC to share its monitoring findings and outcomes, and the CQC's reports are published, disclosure would allow the public to better understand what the council's own procedures involve, and to assess the opportunities for improving care in between the inspections provided by the CQC. It would also reveal the council's level of concern and actions over a period of time, and how these evolved separately to the CQC processes. Transparency about the nature of the council's work would encourage the maintenance of a high standard of monitoring and follow-up. Additionally, it would reveal how

the contractor engaged with the council's monitoring. It is appropriate, in the Commissioner's view, for a care provider contracting with a public authority, to expect greater scrutiny commensurate with the fact that a public service is being provided.

37. While the Commissioner has accepted that the disclosure of the information relating to the monitoring activities would be likely to prejudice the home's commercial interests, the Commissioner has had regard to the severity of the prejudice that would be likely in view of the circumstances. As noted above, there is already regular review of care home standards by the CQC, and a significant amount of transparency as a result of the publication of those reviews. Care homes are already used to and expect the publication of detailed information about the care they are providing. It appears to be the case that a significant amount of the material in the council reports is likely to be reflected in the reports of the CQC already given that the two authorities work closely together in the manner described.
38. As well as the above, the Commissioner has had regard to the age of the information when considering the severity of the prejudice. As a general principle, the severity of commercial prejudice will diminish over time. In the case of the care home monitoring not relating to specific safeguarding incidents, the Commissioner considers that the risk of prejudice would be strongest in relation to particularly recent information where the full implications of those findings have not perhaps been properly explored by all the relevant parties. Once the parties have had the opportunity to consider and respond appropriately, and once there had been a published report by the CQC as has occurred in this case, the Commissioner's view is that the severity of prejudice would be likely to be significantly less. In this case, the Commissioner notes that the earliest information dates from the beginning of 2009. This information was six years old at the time of the requests. The Commissioner considers that the severity of the prejudice would be less in relation to information of that age for example.
39. The Commissioner has also had particular regard to the nature of the monitoring information itself. The Commissioner's impression during his investigation was that the council had been overly concerned about the "type" of information that the requests covered and that this appears to have resulted in the council giving insufficient consideration to the actual nature of the information contained within the documents and exempting nearly all of it in a "blanket fashion" even where the sensitivity of the information did not appear to be great. While it is fair to say that some information was more sensitive, it is not as sensitive as safeguarding concerns and the Commissioner considers that it is appropriate to draw this distinction. The Commissioner considers that there is a strong public interest in greater transparency and

accountability in relation to the monitoring of care providers for the reasons outlined above. The Commissioner's view is that the risk of commercial prejudice would be insufficient to tip the balance in favour of maintaining the exemption in relation to the monitoring information that does not concern specific safeguarding incidents given the strong public interest in transparency and accountability about the quality of contracted care homes and he has therefore decided to order the disclosure of this information with appropriate redactions subject to the exemption under section 40(2) discussed in more detail below.

Section 40(2) – Third party personal data

40. This exemption 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 DPA.
41. The council applied this exemption to some of the withheld information only. No exemption was claimed under section 40(2) in relation to the comparative information relating to request 4 made on 10 February 2010 and three of the monitoring reports.

Is the information personal data?

42. Personal data is defined by the DPA as any information relating to a living and identifiable individual. In this case, it includes detail of specific safeguarding alerts, staff names and other details relating to their employment, information relating to the care of individual residents and comments made by relatives. The Commissioner is satisfied that all the withheld information is personal data. It either directly identifies the individual or risks indirect identification through the disclosure of broader circumstantial detail. For example, even if specific names were redacted, there is often still a sufficient level of risk that an individual could be identified by others with knowledge of some of the circumstances, such as relatives or care home staff members for example.

Would disclosure breach the Data Protection Principles?

43. The Data Protection Principles are set out in Schedule 1 of the DPA. The first principle and the most relevant in this case states that personal data should only be disclosed in fair and lawful circumstances. The Commissioner's considerations below have focused on the issue of fairness. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the individual and the potential consequences of the disclosure against the legitimate public interest in disclosing the information.

44. When considering whether a disclosure of personal information is fair, it is important to take account of whether the disclosure would be within the reasonable expectations of the individual or individuals concerned. However, their expectations do not necessarily determine the issue of whether the disclosure would be fair. Public authorities need to decide objectively what would be a reasonable expectation in the circumstances.
45. Beginning first with information about specific safeguarding alerts, as noted above, the Commissioner has found that this information should be withheld under section 43(2) in its entirety. However, as a significant part of the reasoning for that concerned the necessity of withholding information under section 40(2) and the lack of context this situation would create, it is appropriate for the Commissioner to explain his reasoning for agreeing with the council that much of this information would be exempt under section 40(2).
46. For clarity, the Commissioner considered that the exemption could be applied to even more information relating to specific safeguarding alerts than had been highlighted by the council. However, the Commissioner does not consider that it is necessary to specify here exactly what information the Commissioner would add to the council's initial consideration because the following analysis adequately captures the appropriate reasoning.
47. The Commissioner considers that there is a sufficient risk of the identification of individuals. Even with specific names redacted, the information is still capable of revealing personal data about various individuals because of the circumstantial details, including the person who raised the safeguarding alert, residents at the home, and staff members at the home. The council states that information of this nature would not normally be disclosed to the public, and it has expressed concern that the information is provided in confidence.
48. Undoubtedly, this information is of a very sensitive nature concerning the care received by individual residents and provided by individual staff members. The council has also confirmed that those reporting safeguarding concerns do so in the expectation that it will be confidential, since to do otherwise may risk the failure to make those reports in the first place. Medical and care details and individual employment matters are also typically very private matters, normally attracting a very limited audience. Disclosure of the full details would also reveal to the individual who made the report what the outcome of the report was. The Commissioner can accept that disclosure of this information to the general public in response to this request would be outside the reasonable expectations of the individuals concerned, not only because of the expectations set by the council but also because of

the nature of the information itself which makes such an expectation reasonable. The disclosure would be likely to cause distress and it may also inhibit the reporting of safeguarding concerns in the future.

49. In relation to the remaining information, some staff names and employment details have been specifically highlighted for consideration under section 40(2). The Commissioner notes that this largely relates to third party employees, primarily staff members at the home (not including the owners). The Commissioner accepts that individuals working for a third party body would generally have different expectations about disclosure than employees of a public authority, regardless of seniority or role though it is clear that much of the information does not in any event relate to senior individuals. The council has made it clear to the Commissioner that no specific expectation had been set to suggest that these staff members could expect disclosure of their individuals names in the context of monitoring reports about the home. The Commissioner accepts that this would have been a reasonable expectation in the circumstances and that disclosure may cause varying degrees of distress, depending on the full context.
50. Finally, the Commissioner has no difficulty in determining that the disclosure of information relating to individual residents' care, including some comments made by relatives about the care received would generally be outside the reasonable expectations of individuals and would be likely to cause distress. This information relates to very private matters regarding vulnerable individuals and this would remain the case even if individual names are not included.

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

51. In general, there is always some legitimate interest in the disclosure of information that is held by public authorities. This is because disclosure helps to encourage the general aims of achieving transparency and accountability. It also assists people in understanding the decisions made by public authorities and to be more involved in that process.
52. The Commissioner has already noted above in his analysis of the use of the exemption under section 43(2) that there are specific public interest benefits, particularly in enabling the public to be more reassured about the quality of care on offer, to understand the complete monitoring regime that has taken place beyond just that publicised by the CQC, and to encourage the maintenance of high standards by providing another layer of scrutiny.

53. However, the Commissioner draws the same conclusion that disclosure of the details of individual safeguarding reports would not achieve the right balance between the rights and freedoms of data subjects and the legitimate public interest in disclosure. There are particularly strong reasons for protecting this type of information as outlined above, and that outweighs the legitimate interest in disclosure in view of the fact that there is independent oversight of such issues through the close working relationship that exists between the council and the CQC, with certain information published as deemed appropriate by the regulator. There are no specific factors that the Commissioner is aware of in this case that would tip the balance towards further transparency relating to any or all of the safeguarding alerts in the reports.
54. Turning now to the remaining information that does not concern specific safeguarding reports. As also noted in the section 43(2) discussion above, the Commissioner has formed the view that there is a much more persuasive public interest case for releasing the majority of the information relating to the monitoring of the care home. It is the Commissioner's view that the disclosure of this information would go a significant way towards satisfying the legitimate public interest in disclosure. However, it would not be proportionate, in view of the reasonable expectations, and the distress it would cause, to disclose any information about the care of individual residents. This information appropriately attracts a high level of sensitivity. Finally, the disclosure of certain details relating to individual employees would likewise not be proportionate. The Commissioner is satisfied that the disclosure of this information would not add so significantly to the public's understanding of the main issues that it should be disclosed in spite of the reasonable expectations held by these employees and the distress it may cause them.
55. For the reasons outlined, the Commissioner was satisfied that the council had correctly applied the exemption under section 40(2) to the relevant information because the disclosure of this information would be unfair in the circumstances.

Annex A

56. This is the annex referred to in paragraph 1 of this decision notice. It sets out the steps that the council is required to take to ensure compliance with the legislation.
57. The Commissioner requires the council to release the documents below to the complainant, redacting the information as indicated.

58. For clarity, the documents are referred to as Document A, B and C etc. because of the concerns the council expressed in relation to the exemption under section 43(2) about identifying a full picture of the monitoring that had taken place regarding this particular care home, including details of when that monitoring had taken place. A separate confidential annex has been provided to the council only to identify the documents in question.
59. The Commissioner would also like to highlight that the disclosures should be made with due regard to the council's obligations to protect personal data under the DPA. The Commissioner notes following his review of the information that it appears to be the case that the council might not have identified all the information that may be exempt under section 40(2). This may include for example, but is not necessarily limited to, names or initials of care home employees and residents, employment details relating to specific staff members at the care home such as reason for absence and questionnaire feedback which may identify the respondent. The council is encouraged to review each document thoroughly prior to disclosure and to make any additional redactions that may be appropriate under section 40(2) of the FOIA. The council may wish to consult the Commissioner's guidance on the website at www.ico.org.uk.

Document A to be disclosed with the following redaction:

- The second sentence in the comments box relating to the "Safeguarding Referrals" evidence

Document B to be disclosed with the following redactions:

- The staff names or initials identified by the council as appear highlighted in red in the document provided to the Commissioner on 18 November 2015.

Document C to be disclosed with the following redactions:

- Paragraphs relating to the care of individual residents should be redacted as appear highlighted in red in the document provided to the Commissioner on 18 November 2015.

Document D to be disclosed with the following redactions:

- All the information highlighted in red by the council in the document provided to the Commissioner on 18 November 2015.
- The entire paragraph and heading following the paragraph headed "Social Activities"

Document E to be disclosed with the following redactions:

- Staff names or initials and the details of care plans as appear highlighted in red in the document provided to the Commissioner on 18 November 2015

Document F to be disclosed with the following redactions:

- The staff name highlighted in red on the document provided to the Commissioner on 18 November 2015

Document G to be disclosed with the following redactions:

- Staff names in the "Responsible persons" column as highlighted in red in the document provided to the Commissioner on 18 November 2015

Document H to be disclosed

Document I to be disclosed with the following redactions:

- The information relating to care records highlighted in red in the document provided to the Commissioner on 18 November 2015

Document J to be disclosed with the following redactions:

- The staff names highlighted in red in the document provided to the Commissioner on 18 November 2015

Document K to be disclosed

Document L to be disclosed with the following redaction:

- First sentence in comment box relating to heading "Safeguarding referrals"

Document M to be disclosed

Right of appeal

60. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

61. 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.
62. 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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Information Commissioner's Office
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Water Lane
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SK9 5AF