

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 September 2023

Public Authority: Leicestershire County Council
Address: County Hall
Glenfield
Leicestershire
LE3 8RA

Decision (including any steps ordered)

1. The complainant requested information from Leicestershire County Council ('the council') about materials it has circulated to children from the charity Stonewall. The council initially refused the request on the basis that section 43(2) of FOIA applied.
2. The council subsequently disclosed a link to the information which it provides to educational establishments for them to circulate to children and confirmed that no other information is held by it. However, the complainant remained concerned that other information may be held which is passed to looked after children.
3. The Commissioner's decision is that, on a balance of probabilities, no further information is held, and the council has therefore complied with section 1 of FOIA.
 - The Commissioner does not require the council to take any steps.

Request and response

4. On 7 October 2022 the complainant wrote to the council and requested information in the following terms:

“Does the council contribute funding to either Stonewall or Mermaids and if so how much over the past 5 years?

What material on sex, relationship and gender is given to children at school/nursery, at what age? May I please have copies?

Do the council have a view on how many sexes exist. Where will I find a statement?

How is relationship information given to “looked after children?”

5. The council provided some information responding to the majority of the requests and confirmed that it holds information in respect of the request for material on sex, relationship and gender given to children. However, it refused to provide this information on the basis that section 43(2) of FOIA applied.
6. Further correspondence occurred between the parties, during which further requests for information were made which also revolved around the information which is given to children from Stonewall by the council.
7. Following its internal review, the council wrote to the complainant on 30 June 2023. It maintained its position that information from Stonewall which is disseminated by the schools etc so it can be given to children is exempt under section 43(2) of FOIA.

Scope of the case

8. The complainant contacted the Commissioner on 16 July 2023 to complain about the way their request for information had been handled.
9. The Commissioner noted that the complainant's central concern is that she wishes to see what information the council gives to children from Stonewall. The Commissioner therefore agreed with the complainant that the focus of his investigation would be on information of this type held by the council. The Commissioner therefore contacted the council and asked it to reconsider the request taking this focus into account.

10. As a result of its reconsideration of the request, the council disclosed a link to Stonewall's website to the complainant and confirmed that the information provided on this webpage is the sole information which it provides to educational establishments with a view to it being given to children. It also clarified the main information toolkits from this webpage which schools are provided with. It clarified that if schools etc wish further materials from Stonewall they obtain this from Stonewall directly, and therefore, this information would not be held by the council.
11. The complainant wrote back to the Commissioner stating that she remained unhappy as the council had not clarified whether any other, or additional, information is provided to looked after children.
12. The scope of the Commissioner's investigation is therefore to decide whether the council has complied with the requirements of section 1 of FOIA in respect of the information which the council provides to looked after children.

Reasons for decision

Section 1 – General right of access to information

13. Section 1(1) requires that a public authority must inform a requestor, in writing, whether it holds information falling within the scope of the request. If it does hold relevant information, it also requires that it communicates the information to the requestor, subject to any exclusions or exemptions applying.
14. In scenarios where there is some dispute between the amount of information held which a public authority says it holds, and the amount of information that a complainant believes is held, the Commissioner, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
15. In other words, in order to determine such complaints, the Commissioner must decide whether, on the balance of probabilities, a public authority holds any - or additional - information which falls within the scope of the request (or was held at the time of the request).
16. The request was for a copy of all Stonewall material held by the council which is provided to children. The council has disclosed the information which it said it holds to the complainant. It clarified that, if educational establishments hold any other information, it would have obtained this

information from Stonewall directly, and therefore the council would not hold a copy of this. The complainant accepted this point.

17. The complainant remains concerned as she is unclear whether any further information is provided to looked after children by the council. By looked after children the Commissioner understands the complainant to mean children in care, placed in foster homes, etc.
18. The Commissioner therefore wrote to the council on 12 September 2023 and asked it to confirm whether any other, or additional, information from Stonewall is provided to looked after children.
19. The council responded on 15 September 2023. It confirmed that it holds no record of any other information held by it from Stonewall which is shared with looked after children.

The Commissioner's conclusion

20. The Commissioner has considered the council's position, in conjunction with the request. The council's searches led to it disclosing the information it holds which falls within the scope of the request. This was provided to the complainant in line with the requirements of section 1 of FOIA. The Commissioner notes that schools etc would obtain any other information they wish from Stonewall directly, and therefore that information would not be held by the council.
21. In *Oates v Information Commissioner (EA/2011/0138)* the First-tier Tribunal concluded, that "As a general principle, the [Commissioner] was ...entitled to accept the word of the public authority and not to investigate further in circumstances where there was no evidence as to an inadequate search, any reluctance to carry out a proper search or as to motive to withhold information actually in its possession".
22. The Commissioner has been unable to identify a reason why the council would provide other, or further information specifically to looked after children beyond that which it provides to schools and other educational establishments. He has also been unable to identify a motive why the council would wish to withhold information of this type specifically in relation to looked after children. In line with this, the council has confirmed to the Commissioner that it does not hold any records of any other, or further information being provided.
23. In conclusion, whilst the Commissioner recognises that the complainant remains concerned that further information may be held by the council, it has confirmed to the Commissioner that no further information is held in this respect. There is no contradictory evidence available to the Commissioner that indicates that the council's position is wrong, nor any

indication that its searches to determine this have been inadequate given the other information which was located.

24. On this basis, the Commissioner has concluded that, on a balance of probabilities, the council has now complied with the requirements of section 1(1) of FOIA.

Right of appeal

25. 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: 0203 936 8963
Fax: 0870 739 5836
Email: grc@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

26. 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.
27. 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

Ian Walley
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Wycliffe House
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Wilmslow
Cheshire
SK9 5AF