

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 31 May 2012

Public Authority: Birmingham City Council
Address: Council House
Victoria Square
Birmingham
B1 1BB

Decision

1. The complainant has requested information about the impact of Article 8 of the Human Rights Act (the right to respect for private and family life) on disclosure of confidential social services information. Birmingham City Council disclosed the information it located and indicated that if further information was required, it would require the complainant to clarify the request. Some time later, the complainant clarified and refined his request and further information was disclosed.
2. The Commissioner's decision is that Birmingham City Council has complied with the requirements of the Freedom of Information Act 2000 and does not need to take any further action.

Request and response

3. On 9 May 2011, the complainant wrote to Birmingham City Council (the council) and requested information in the following terms¹:

"I refer to disclosures made from confidential Social Service files. Article 8 offers general protection for a person's private and family life, home and correspondence from arbitrary interference by the State.

¹ http://www.whatdotheyknow.com/request/disclosure_of_confidential_infor#incoming-235373

Under the Act can you please provide internal recorded information as to precisely how Article 8 impacts upon the access to and disclosure of Social Service information held on a confidential basis in the following circumstances.

- 1/ If police are requesting information to prevent crime.*
- 2/ If an estranged parent requests detail of his/her daughter.*
- 3/ If a school requests information relevant to a pupil.*
- 4/ If the police request information, to deal with a conduct complaint against them, that is accessed only because it is favourable to them.*
- 5/ If a doctor requests information relevant to a patient.*

If you require any further information or clarification please feel free to ask."

4. Birmingham City Council responded on 12 May 2011. It disclosed a document to the complainant relating to a protocol for information exchange with West Midlands Police, and explained that it was the only document it had been able to locate which covers elements of his request. It explained that work was ongoing to introduce a single protocol with more general application in future. It confirmed that a thorough search had been undertaken, but it acknowledged the possibility that further information might have been missed. It invited the complainant to contact it if he had any information which might assist it in determining or locating additional information which he required.
5. The complainant requested an internal review on 7 June 2011, stating that the information supplied does not meet his request and is too generic in nature.
6. Following an internal review the council wrote to the complainant on 1 July 2011. It gave its view that the response did not answer all the questions fully and that the request should be referred back to the service area so that it could contact the complainant directly to obtain clarification of his request.
7. The council subsequently wrote to the complainant on 5 August 2011, asking him for clarification of his request. The complainant telephoned the council on or around 18 August 2011 to clarify his requirements and confirmed by email that he had made the call. The council replied to the complainant, also on 18 August, to say that it required a clear understanding of what he was requesting, asking him to be specific as to what he meant by 'requirements re: consent, records etc in diverse scenarios'.
8. The complainant clarified and refined the request on 6 December 2011.

9. On 6 January 2012 the council disclosed information in respect of this refined request.

Scope of the case

10. On 15 December 2011 the complainant contacted the Commissioner to complain about the way his request for information had been handled. He complained about the length of time Birmingham City Council had taken and that [at the time of writing] the case had still not been resolved.
11. The Commissioner wrote to the complainant, giving his understanding of the complainant's grounds of complaint, having regard to the fact that a disclosure of information had occurred subsequent to the complaint being submitted. The complainant responded, summarising his complaint as:

"I was dissatisfied with the statutory response of 12 May 2011. I was then dissatisfied with the very extensive delays and prevarication at the internal review stage that breached the section 45 Code of Practice. Finally I was dissatisfied with the Council's response in January 2012 in relation to the very, very delayed internal review response."

12. The Commissioner recognises that the complainant has not indicated that he is dissatisfied with the information now disclosed to him, and he considers the scope of the case is to examine any apparent procedural breaches of FOIA which may have occurred. The complainant has indicated that he requires a decision notice to be served.

Reasons for decision

13. The applicable sections of FOIA are as follows:

General Right of Access

Section 1(1) provides 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 1(3) provides that –

“Where a public authority –

(a) reasonably requires further information in order to identify and locate the information requested, and

(b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.”

Time for Compliance

Section 10(1) provides that –

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

Section 10(6) provides that –

“In this section –

“the date of receipt” means –

(a) the day on which the public authority receives the request for information, or

(b) if later, the day on which it receives the information referred to in section 1(3);

14. The original request was submitted on 9 May, and received a response on 12 May. Consequently, the response was prompt and within the 20 working days, as required by section 10(1).
15. The response indicated that this was the information which had been located after a thorough search. It also indicated areas where work relating to the request was ongoing within the public authority, and asked the complainant to provide any further information he had which might assist the council in determining and locating information it might hold. The Commissioner observes that this would fall within the remit of the provision of advice and assistance under section 16 of FOIA, and appears to be an attempt to comply with the applicable elements of the

code of practice issued under section 45 of FOIA (the section 45 COP)², particularly paragraphs 8-9:

"8. A request for information must adequately specify and describe the information sought by the applicant. Public authorities are entitled to ask for more detail, if needed, to enable them to identify and locate the information sought. Authorities should, as far as reasonably practicable, provide assistance to the applicant to enable him or her to describe more clearly the information requested.

9. Authorities should be aware that the aim of providing assistance is to clarify the nature of the information sought [...]"

16. The complainant did not, at this stage, provide any clarification. He subsequently requested an internal review. The internal review was concluded by 1 July 2011. It found that the substantive response provided did not fully cover the request (which was considered to be broad in scope) and that clarification would be required in order to provide additional information. The Commissioner observes that the internal review does not acknowledge that clarification had already been requested.
17. The complainant indicates that he gave verbal clarification on or shortly before 18 August 2011, but on 18 August the council responded that any clarification it had received was not sufficiently specific to enable it to understand what information he was requesting. No further clarification was provided until 6 December 2011, and the council disclosed information in response on 6 January 2012, which is within the 20 working days set out at section 10(6) of FOIA quoted above.
18. The council's substantive response to this refined request may have contained information which would have been within the scope of the original (9 May 2011) request. The Commissioner has therefore considered whether a breach of section 10(1) has occurred as that disclosure took place after the 7 June 2011, which was when the original 20 working days would have elapsed (and is the same date that the complainant requested his internal review).
19. The Commissioner concludes that no breach of section 10(1) has occurred. This is because the council's first substantive response was within the 20 working days, and it did indicate that it would require

² <http://www.justice.gov.uk/downloads/information-access-rights/foi/foi-section45-code-of-practice.pdf>

further clarification from the complainant if it was to locate and disclose further information. This means that it exercised its option, at section 1(3), to request *'further information in order to identify and locate the information requested'*. The Commissioner agrees with the council that the original request was broad in scope and somewhat general in nature, eg:

"[...] how Article 8 impacts on the access to and disclosure of social services information held on a confidential basis [...]"

and to the extent that the five circumstances outline the scope of the request, to some degree, the Commissioner recognises that the sort of information which might be covered could include policy documents, procedural guidance, internal discussions, queries or advice, or any number of other pieces of information which discuss or otherwise concern themselves with the application of Article 8 to confidential social services information.

20. The Commissioner agrees that this remains a substantial area of interest, and that the council could reasonably require further information from the complainant in order to ensure that it addressed his request appropriately and satisfactorily.
21. No satisfactory further information was forthcoming from the complainant until 6 December 2011 and, in accordance with the requirements of section 10(6) of FOIA, it disclosed information pursuant to that clarification, within 20 working days of receiving the clarification it sought.
22. The complainant has made his concerns about the delays known to the Commissioner. However, it appears to the Commissioner, from the above, that the delays were not to the disclosure of information, or the provision of substantive responses to the request, but were instead delays while the council sought, and subsequently received, the clarification it reasonably required to properly address the request. Sections 1(3) and 10(6) of FOIA make it clear that a public authority is not required to respond to the request during any process of requesting and receiving any clarification it reasonably requires.
23. Additionally, the council having disclosed the information it located in the first instance promptly, the complainant did not contact it again until the point at which the initial 20 working day window elapsed, so that no further opportunity to comply with section 10(1) in the first instance was available to the council, in any event. Until it heard back from the complainant, it was entitled to assume that the information it had disclosed was satisfactory.
24. If the internal review had concluded that further information fell to be disclosed, and did so, that would have been in breach of section 10(1).

The internal review, however, concluded that information was reasonably required from the complainant. As the complainant had already been given an opportunity to provide any further information, the internal review was, in effect, endorsing the use of the provisions at section 1(3). As these were already 'in play' the timescale for compliance was therefore governed by section 10(6), not section 10(1).

25. The Commissioner finds that the clarification was reasonably required, and was not received by the council until 6 December 2011.
26. The Commissioner finds that the request was dealt with in compliance with the requirements of part I of FOIA and no further action is required.

Right of appeal

27. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

28. 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.
29. 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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Wycliffe House
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SK9 5AF