

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 31 March 2022

Public Authority: London Borough of Southwark
Address: Town Hall
Peckham Road
London
SE5 8UB

Decision (including any steps ordered)

1. The complainant has requested information relating to the timelines for paediatric assessments held by the council. The council provided a link to some relevant information, however it said that there is no set timeline or policy as this is dependant upon the welfare of each individual child. The complainant argues that that information should be held as every other London Borough Council holds, and publishes this information.
2. The Commissioner's decision is that, on a balance of probabilities, the council was correct to state that no relevant information is held by it.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 25 January 2021 the complainant wrote to the council and requested information in the following terms:

"I wish to know what is Southwark's safeguarding policy towards the timing of a CP medical after it has been agreed in a pre-strategy meeting to a Section 47 for all categories of abuse , (sexual, physical, emotional and psychological).

I ask because unlike other councils who generally state 24hrs for at least sexual and physical categories of abuse (also by implication it appears psychological and emotional abuse as well), there does not appear to be a public policy on this issue on any public Southwark safeguarding website or document."

5. The council responded on 15 February 2021. It said that:

"The timing of child protection medicals follows those set out in the London Child Protection Procedures (3.10.1 and 3.10.2) which can be found here: <http://www.londoncp.co.uk/>

The need for a child protection medical, and the timing of a child protection medical, is always dependent on the needs of the child, on a case-by-case basis and should be considered at a strategy meeting. This can range from an immediate need for a medical on the same day, or else planned within a slightly longer period."

6. The complainant wrote back to the council on 23 February 2021. He gave more specific circumstances and asked the council to clarify its position under those circumstances.
7. Following further correspondence where the complainant both narrowed his request to issues of physical abuse, but also sought greater clarification on the council's policy, he wrote to the council on 9 March 2021 requesting that it carry out an internal review of its decision.
8. Following an internal review, the council wrote to the complainant on 22 March 2021. It maintained its original position that the request had been responded to appropriately and that no further information is held beyond that which it had directed him to previously. It also refused to answer the complainant's further questions on the basis that these were an attempt to extend and expand upon his initial request.
9. It pointed out that the Act does not require the council to respond to 'yes/no' questions, or to create information in response to a request.

Scope of the case

10. The complainant contacted the Commissioner on 23 March 2021 to complain about the way his request for information had been handled.

11. His central complaint is that the council's response does not make it clear whether there is a maximum time which a child may have to wait before an examination takes place. He said that:

"I narrowed it down to just physical abuse category and to understand the separate timing when welfare is seen as not compatible with an immediate examination (it is recognised as being taking place on the day otherwise) for circumstances when the child's wounds are fresh, doesn't move home, change routine including school and no legal order is made. However essentially any circumstances deemed not in the welfare of the child for an examination. As it stands, I do not know council policy on the timing of a medical when it is not compatible with the welfare of a child to do it on the day. It could be months, years."

12. The Commissioner considers, therefore, that the complaint is that the council should hold the requested information.

Reasons for decision

Section 1 – General right of access to information

13. 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.*

14. Section 1(1) requires that any person making a request for information to a public authority must be informed in writing by the public authority whether it holds information relevant to the request, and if so, to have that information communicated to them. This is subject to any exclusions or exemptions that may apply.

15. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the ICO, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
16. In other words, in order to determine such complaints, the ICO 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).

The complainant's position

17. The complainant argues that the council, by stating that the information is not held, is seeking to avoid answering the question posed in his request. He has concerns, therefore, about the procedures in place relating to child protection when compared to other authorities which, he argues, do provide a maximum limit before a physical assessment must take place.
18. The Commissioner considers that the complainant's further questions sought to clarify the council's response by giving a series of specific examples and asking the council to clarify what its response would be in such situations. This further correspondence sought to fill out the nature and meaning behind the initial request for information by providing different examples to demonstrate the point he was trying to make; that the council's responses appear to suggest that there is no apparent maximum limit to the delay which might occur before physical assessments should take place, which, he argues, is not the case with other authorities.

The council's position

19. The council said that it did not carry out relevant searches on its own systems because it is aware that no relevant information is held. The relevant information is held on external platforms. It provided a link to the relevant information in response to the request for information.
20. The council argues that it, like every other London Authority, has relied upon the London Child Protection Procedures to set out the processes to be followed when undertaking enquiries under section 47 of the Children Act 1989 since those procedures were first published in 2003. This includes the arrangements for a paediatric examination of a child if required as part of those enquiries.

21. It argues that the timelines which the complainant is concerned about are set during a child strategy meeting, and are based upon the child's welfare in each individual case.
22. It said that it has other procedures which deal primarily with other services for children in need, children looked after and young people leaving care.
23. It argues that the procedures which it follows are those set out in the document it provided a link to in its initial response to the complainant's request for information¹. There is no set policy on the timeline per se; as this is decided on a case-by-case basis.
24. It argued that the council relies upon the London Procedures to set out its expectations of staff undertaking section 47 Enquiries. A section 47 enquiry is a process to decide the type of action which is required to safeguard and promote the welfare of a child. The procedures are maintained by the London Safeguarding Children Partnership. There would therefore be no internal record of the maintenance or update of those procedures held by the Council.
25. It said that it commissions a third party, "Tri.X" to provide its internal procedures which includes the summary of the key points of the London Procedures referred to above. Both the London Procedures and the Southwark Procedures include archive and amendment records. There is no record of any change to the relevant section of the London Procedures since 2015 when they were first published; there is no record of any changes to the relevant sections of the Southwark Procedures since 2014 when they were first commissioned. Both sets of procedure documents are held on external platforms and are not held by the council.

The Commissioner's conclusion

26. The Commissioner recognises the importance of the information sought by the complainant. The complainant is seeking clarity on the council's reactions to issues of this nature in specific circumstances, and there is a strong argument that its policies on important matters such as this should be clear and explainable by the council.

¹ <http://www.londoncp.co.uk/>

27. However, the Commissioner also recognises that the council's response to child welfare issues of the nature described is flexible. It is to make a decision on the circumstances of each individual case, based upon the welfare of each individual child involved. In doing this, it follows the procedures in place throughout London in the London Child Protection Procedures. It therefore directed the complainant to where these procedures could be found online. It argues that it holds no further information in this respect.
28. There is no contradictory evidence available to the Commissioner that indicates that the council's position is wrong.
29. On this basis the Commissioner has concluded that, on the balance of probabilities, the requested information is not held.

Right of appeal

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

31. 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.
32. 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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