

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 September 2015

Public Authority: Stoke-on-Trent City Council
Address: Civic Centre
Glebe Street
Stoke-on-Trent
ST4 1HH

Decision (including any steps ordered)

1. The complainant has requested minutes of meetings of the Stoke-on-Trent Safeguarding Board and of any sub-committee meetings attended by Stoke-on-Trent City Council (the "Council") representatives to that Board. The Council argued that it does not hold this information for the purposes of the FOIA (section 3 refers). It upheld this position at internal review.
2. The Commissioner's decision is that the Council does not hold the information for the purposes of the FOIA.
3. No steps are required.

Request and response

4. On 4 November 2014, the complainant requested information of the following description:

"In order to assist you with this request, I am outlining my query as specifically as possible.

S-o-T Safeguarding Board

1. Please provide copies of the minutes of the S-o-T children and safeguarding board meetings and any executive or sub meetings held in the last two years held by LA representatives to that board.

I would be interested in any information held by your organisation regarding my request.

I understand I do not have to specify particular files or documents and that it is your authority's responsibility to provide the information I require.

I would like to receive the information via email".

5. On 18 November 2014, the Council responded. It argued that it did not hold the information for the purposes of the Act, citing Section 3(2) of the FOIA as its basis for doing so.
6. The complainant requested an internal review on the same date (18 November 2014). He argued that he was seeking papers sent to Council representatives who sit on the Board and who have received the minutes as part of their duties.
7. The Council sent him the outcome of its internal review on 12 December 2014. It upheld its original position and explained that although it had relevant information physically in its possession, it was held on behalf of the Safeguarding Board which is not a public authority for the purposes of the Act. It cited a 2011 decision notice of the Commissioner in support of its position: https://ico.org.uk/media/action-weve-taken/decision-notices/2011/639676/fs_50368110.pdf

Scope of the case

8. The complainant contacted the Commissioner on 5 January 2015 to complain about the Council's refusal. He also drew attention to the fact that he had received a copy of the minutes of meetings of the Stoke and Staffordshire Local Enterprise Partnership which, in his view, contradicted and thus undermined the Council's position with regard to the requested information.
9. The Commissioner has considered whether the Council holds the requested information for the purposes of the FOIA.

Reasons for decision

10. Section 13 of the Children Act 2004 requires each local authority to establish a Local Safeguarding Children Board ("LSCB") for their area

and specifies the organisations and individuals (other than the local authority) that should be represented on LSCBs.¹

Is the requested information held by the Council for the purposes of the Act?

11. 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."

12. Section 3(2) provides that:

"For the purposes 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."

13. The Commissioner has therefore considered whether the requested information is held by the Council for the purposes of the FOIA. In the Commissioner's view, where information is held by a public authority, to any extent for its own purposes, then it holds that information otherwise than on behalf of another person, and therefore it holds the information for the purposes of the FOIA.

14. The only circumstance in which information physically in its possession would not be held by a public authority by virtue of section 3(2)(a) would be where information is only held on behalf of another person, and is not held at all for that public authority's own purposes.

15. In relation to this request, the Council argued that the information was not held for its own purposes and was therefore not held for the purposes of the FOIA by virtue of section 3(2)(a). The Council has cited a decision of the Information Commissioner in support of its position,

¹ <http://www.legislation.gov.uk/ukpga/2004/31/section/13>

namely that the Safeguarding Children Board is not a public authority for the purposes of the Act. The decision notice is referenced FS50368110.²

16. The Commissioner put a series of questions to the Council in order to clarify its position in respect of the information in question. He sought to determine whether the Council used the information for its own purposes and drew attention to a point raised by the complainant. This was that Council attendees at the Board appear to use the Board's minutes as a reference point for their own duties. He also sought copies of any protocols or other documents that set out the relationship between the Council and the Board and explained where any demarcation lay.

17. Referring to the document Working Together to Safeguard Children 2015, the Council drew the Commissioner's attention to paragraph 12 in Chapter 3 which states:

"in order to provide effective scrutiny, the LSCB should be independent. It should not be subordinate to, nor subsumed within, other local structures"³

18. The Council explained that a member of its staff, the Council's Children and Young People's Partnership Support Officer recorded copies the minutes and held the minutes on behalf of the LSCB. It explained that this officer's role in the LSCB exists as defined in the Safeguarding Children Annual Report. It said there was "half time administration support offered in kind by the local authority and not directly funded by the Board". The Commissioner notes that this explanation accords with paragraph 19 of the national document available via a link at Note 3 which states:

"All LSCB member organisations have an obligation to provide LSCBs with reliable resources (including finance) that enable the LSCB to be strong and effective. Members should share the financial responsibility

² https://ico.org.uk/media/action-weve-taken/decision-notices/2011/639676/fs_50368110.pdf (The Council gave particular emphasis to paragraph 11)

³

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/419595/Working_Together_to_Safeguard_Children.pdf

for the LSCB in such a way that a disproportionate burden does not fall on a small number of partner agencies.”

19. The Council went on to explain that members (i.e., Councillors) have the expectation that the minutes are held on behalf of the Board and purely for the purposes of fulfilling their function as members of the Board. It said:

“The minutes of meetings are therefore only held on behalf of the Board. These minutes are not published on the internet, and they are not published or circulated to staff who are not members of the Board either. However, the Board does publish annual reports, for example, please see the following link:

http://webapps.stoke.gov.uk/uploadedfiles/Annual_Report_Final_Version_31_07_14_to_Publish.pdf

20. Although the Commissioner is not bound by his previous decision, he is satisfied that the information is not held by Stoke-on-Trent City Council for its own purposes such that it is caught by the requirements of the FOIA. He accepts that officials of the Council do carry out duties which relate to safeguarding matters. He is not satisfied, however, that this means that the requested information is held by the Council for the purposes of the FOIA.
21. He notes the complainant’s assertion that he, the complainant, was able to obtain minutes of the Stoke and Staffordshire Local Enterprise Partnership from the Council. He gave no further detail about this. The Commissioner has checked the website of the Stoke and Staffordshire Local Enterprise Partnership. He recognises that the Partnership includes councillors and officials on its board as does the LSCB. He also notes that the Partnership makes its minutes available online – the most recent being from early 2014.⁴ The Commissioner does not agree that this undermines the Council’s position with regard to the requested information. If the Partnership chooses to make minutes available, that is a matter for them and does not create a precedent under FOIA for all other minutes of meetings which are attended by the Council.
22. The Commissioner accepts that bodies that carry out even the most sensitive work are not above scrutiny or audit. The information available via Note 3 explains more about the scrutiny and audit of LSCBs. However, the fact that all organisations should expect greater scrutiny

⁴ <http://www.stokestaffslep.org.uk/documents/minutes/>

and regular audit, this does not mean that all organisations are subject to the FOIA. There is a wider trend towards openness and transparency which the Commissioner naturally welcomes. However, this does not mean that he can make organisations or information subject to the requirements of the FOIA as part of a general trend to promote openness. That remains a matter for Parliament.

Conclusion

23. In light of the above, the Commissioner has concluded that the requested information is not held by the Council for the purposes of the Act. He has considered his previous decision but is not bound by it. He has considered the submissions of the Council and the complainant and has reached his conclusion after having done so.
24. The Commissioner has not seen the requested information but would make the general observation that even if it were held by the Council for the purposes of the FOIA, it may well be subject, in whole or in part, to exemptions under the FOIA. For example, the health and safety exemption, the law enforcement exemption or the exemption which protects against the unfair disclosure of personal data may be applicable.

Other Matters

25. The Commissioner notes that the Council provided him with information about the work of Local Safeguarding Boards, much of which is in the public domain. While he has not made a finding as regards the application of section 16 (duty to provide advice and assistance to requesters), he would note that it may have helped the complainant to have provided this information to him.

Right of appeal

26. 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

27. 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.
28. 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

Gerrard Tracey
Principal Adviser
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF