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**Freedom of Information Act 2000 (FOIA)**

**Decision notice**

**Date:** 10 October 2017

**Public Authority:** Sheffield City Council

**Address:** Town Hall  
Pinstone Street  
S1 2HH

**Decision (including any steps ordered)**

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1. The complainant requested minutes of the closed meetings of the Sheffield Executive Board and the Sheffield City Partnership Board. The public authority withheld the minutes in reliance on the exemption contained at section 41(1) FOIA.
2. The Commissioner has concluded that the public authority was not entitled to rely on this exemption.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Provide the complainant with copies of the minutes of closed meetings of the Sheffield Executive Board and the Sheffield City Partnership Board between 1 April 2015 and 30 October 2016.
4. 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.

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**Request and response**

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5. The complainant submitted a request for information to the public authority on 30 October 2016 in the following terms:  
  
“...Could you please instruct to email the minutes of the CLOSED meetings of: The Sheffield Executive Board and The Sheffield City Partnership Board.”
6. On 2 November 2016 the complainant advised the public authority that it could restrict its searches for the minutes within the scope of his request to those held from 1 April 2015 up to the date of the request.
7. The public authority responded on 28 November 2016. The information held within the scope of the request was withheld in reliance on the exemption at section 41(1) FOIA.
8. The complainant requested an internal review of the public authority's decision on 29 November 2016.
9. The public authority wrote back to the complainant on 17 March 2017 with details of the outcome of the internal review. The review upheld the original decision.

**Scope of the case**

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10. The complainant contacted the Commissioner on 17 March 2017 to complain about the way his request for information had been handled. He disagreed with the public authority's decision to withhold the requested information.

**Reasons for decision**

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Section 41(1) – Information provided in confidence

11. Section 41 states:
  - 1) “Information is exempt information if—
    - a) it was obtained by the public authority from any other person (including another public authority), and

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- b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.
- 2) The duty to confirm or deny does not arise if, or to the extent that, the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) constitute an actionable breach of confidence."
12. Therefore, information may be withheld in reliance on this exemption if it meets the following criteria: it was obtained by the public authority from any other person<sup>1</sup>, and its disclosure would constitute an actionable breach of confidence.<sup>2</sup>

Was the withheld information obtained by the public authority from another person?<sup>3</sup>

*Public authority's position*

13. The public authority clarified that Sheffield Executive Board (the SEB) and Sheffield City Partnership Board (the SCPB) are one and the same body. The name change from the SEB to the SCPB occurred during the period of the complainant's request.
14. Having noted from the withheld minutes that officers of the public authority attended and contributed at meetings of the SCPB, the Commissioner asked the public authority a number of questions in order to clarify the basis upon which it had concluded that the withheld information meets the criterion in section 41(1)(a).
15. The public authority's explanation in response to the Commissioner's queries is summarised below.
16. The SCPB has no statutory framework. Its focus and priorities are not run, managed or led by the public authority. It is run independently by and for all its members. These members include public authorities, the voluntary sector and private sector commercial organisations. The Chairmanship of the SCPB is an independent position and generally the

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<sup>1</sup> Section 41(1)(a). This covers both natural and legal persons.

<sup>2</sup> Section 41(1)(b)

<sup>3</sup> The criterion in section 41(1)(a).

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only members of the public authority who sit as members of the SCPB are the authority's Chief Executive, and Leader of the council.

17. The SCPB's make up is a legacy of the old Local Strategic Partnerships approach which did previously have mechanisms to manage local development funds but these are no longer funded by government. As a result it is financed by contributions by individual members who finance its administration including salaries of staff, and cover events and associated expenses.
18. "This does highlight a slight quirk in the management of the board and its specific relationship to the Council [the public authority]". The public authority currently employs two members of the SCPB's staff. One is paid in full by SCPB, and the other for whom part of their role is focused on and paid for by the SCPB. The public authority acts as employer but does not set the focus of their work for the SCPB. In this respect, some of the SCPB's documentation, including minutes and presentations, are held on a secure area of the public authority's ICT system so only these two members of staff can access and work on SCPB's materials.
19. The public authority's Chief Executive and Leader of the Council do act as representatives of the public authority on the board (SCPB). However, the framing of the closed sessions can allow any member of the board to express a personal opinion which may not reflect that of their employer. The Chief Executive and Council Leader do not prepare, publish or dispatch minutes to members of the SCPB. These functions are completed by the staff employed by the council but being paid by the SCPB for their work.
20. The Chair and members of the SCPB are specific in regard to the notification in meetings where sections or the whole of meetings are closed and afford a level of confidentiality. As a result, the public authority considers that the minutes are also covered by this confidentiality as they are produced by staff working for the SCPB and supplied to members who are aware of the sensitivities and confidentiality placed on these records.
21. The SCPB does not make decisions for or on behalf of the public authority or the respective organisations involved. Its role is to assist in policy development and to assist in strategic and senior level review/discussion of issues relevant to the City of Sheffield.
22. In response to a query as to whether the public authority has pursued or taken any particular course of action following SCPB's meetings, the public authority provided the following explanation.

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23. The public authority is likely to bring information about policy development(s) via the Council Executive Management Team through to its policy development teams and then presentation and review through the Council Cabinet. The Cabinet process is where ideas considered by the SCPB may be reflected into Council policy. This will be publicly accessible and transparent through normal publications.

*Commissioner's finding*

24. The Commissioner considers that there are two key issues for her to determine in relation to whether the withheld information was obtained by the public authority from the SCPB. First, whether the relationship between the SCPB and the public authority is such that the authority is part of the SCPB by virtue of the membership of its Chief Executive and Council Leader. If that is the case, the public authority cannot be considered "any other person" (ie a third party) within the meaning of section 41(1)(a). Consequently, whether any part of the withheld information has been generated by the public authority and/or the SCPB. If that is the case, the relevant information cannot be said to have been "obtained" from any other person within the meaning of section 41(1)(a).
25. The Commissioner has concluded that the public authority obtained the withheld information by virtue of its formal input into the SCPB through the roles of its senior staff and elected representative, specifically the Chief Executive and the Leader of the Council, rather than the information being provided to the authority as a separate and distinct body from the SCPB.
26. The fact that the Chief Executive and the Leader of the Council do not prepare, publish or dispatch minutes to members is materially insignificant. The fact is they are members of the SCPB representing the interests of the public authority, as are other members representing their interests. The public authority cannot be considered "any other person" within the meaning of section 41(1)(a).
27. Consequently, any information in the withheld minutes which was generated by the public authority and/or the SCPB (as a body) cannot be said to have been "obtained" by the public authority within the meaning of section 41(1)(a).
28. The Commissioner notes that parts of the withheld minutes contain submissions by the Chief Executive and at least one other senior officer of the public authority (acting on behalf of the authority). These cannot be exempt on the basis of section 41(1) unless they contain information given to the SCPB by another person, and/or, would reveal the content of information obtained from the SCPB from another person. It is

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noteworthy that the public authority has not submitted that is the case. Rather, it has argued that although the authority is a member of the SCPB, it is nonetheless completely separate from it for the purposes of section 41(1)(a). The Commissioner strongly disagrees with this position in the circumstances of this case.

29. Therefore, she has concluded that any information in the withheld minutes which was generated by the SCPB and/or the public authority is not exempt on the basis of section 41(1).
30. She has however concluded that the remaining information was obtained by the SCPB from other persons and thus satisfies the criterion in section 41(1)(a) because it was provided by members (and other persons) other than the public authority.

Would disclosure of the withheld information obtained from other organisations/persons constitute an actionable breach of confidence?<sup>4</sup>

31. The Commissioner next considered whether disclosure of the information she has concluded meets the criterion in section 41(1)(a) would constitute an actionable breach of confidence.
32. The Commissioner considers that a breach will be actionable if<sup>5</sup>:
  - i. The information has the necessary quality of confidence. Information will have the necessary quality of confidence if it is not otherwise accessible and if it is more than trivial; information which is of importance to the confider should not be considered trivial.
  - ii. The information was communicated in circumstances importing an obligation of confidence. An obligation of confidence can be expressed explicitly or implicitly. Whether there is an implied obligation of confidence will depend upon the nature of the information itself, and/or the relationship between the parties.
  - iii. Unauthorised disclosure would cause a specific detriment to either the party which provided it or any other party. Generally, the

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<sup>4</sup> The criterion in section 41(1)(b).

<sup>5</sup> Adopting Judge Megarry's position in *Coco v A N Clark (Engineers) Limited* [1963] FSR 415.

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Commissioner expects that the "detriment" suffered should be in the form of some tangible loss (such as financial loss) to the confider<sup>6</sup>.

*Does the withheld information have the necessary quality of confidence?*

33. The public authority argued that the information is not trivial because it relates to closed discussion and members (ie of the SCPB) involved in the discussions were aware that the closed meetings were for free and frank exchange of ideas and considerations of issues which affect Sheffield. The split of sessions from open to closed allowed the SCPB to identify what content is suitable for discussion and disclosure for public consumption.
34. The Commissioner is satisfied that the information is not trivial. The discussions clearly relate to issues of importance to the people of Sheffield such as the economy, education, promotion of fairness and equality.

*Was the information communicated in circumstances importing an obligation of confidence?*

35. The public authority submitted that the expectation of all individuals involved in the discussions was that it will be protected and not disclosed to the public. Members were briefed before each closed session that the meetings will be closed and details will not be published.
36. The Commissioner is satisfied that the discussions were held in circumstances importing an obligation of confidence. As the public authority has explained, members were briefed in advance that the sessions would be closed to the public and details would not be published. It is also clear from the minutes that the discussions were held in a closed session.

*Would unauthorised disclosure of the information cause a specific detriment to either the party which provided it or any other party?*

37. The public authority has argued as follows:

"...the detriment of disclosure of the closed minutes may affect a number of parties are noted below: [sic]

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<sup>6</sup> Save in the loss of privacy resulting from a disclosure of private and personal information. The Commissioner considers that this can be viewed as a form of detriment in its own right.

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Individual members of the board: Those members who have contributed to these sessions and provided open and frank commentary may see information considered private, placed into the public domain. This may lead to further enquiries around proposals, comments or considerations that were never intended for public consumption. Problems as a result of disclosure may in the worst case cause disassociation with the Boards (ie SCPB) or make the individual engage less or limit their contribution to the board.

The Sheffield Executive Board/Sheffield City Partnership Board:<sup>7</sup> As noted above the Board may lose member representation or the ability to run a free and frank closed session will be stymied by the considerations of members that discussion points may subsequently be disclosed.

Sheffield City Council [ie the public authority]: We may also alienate or disenfranchise the board to involve the Council in the boards.

In the circumstances above we believe the individual members or the Boards themselves would be in a position to action a breach of confidentiality should a disclosure of closed minutes be made....."

38. The Commissioner is not satisfied from the public authority's submission above that disclosure of the withheld information would cause a specific detriment which would be successful as a cause of action for breach of confidence.
39. The public authority has not identified any tangible detriment to itself, members, or the SCPB. The Commissioner does not consider that the likely loss of candour by members would be successful as a cause of action for breach of confidence in this case. There has to be an identifiable tangible loss to any of the relevant parties resulting from the disclosure of the withheld information.
40. She has therefore concluded that the remaining information obtained from the other members of the SCPB does not satisfy the criterion in section 41(1)(b).
41. Therefore, her decision is that the public authority was not entitled to withhold the minutes of the closed meetings of the SCPB from 1 April 2015 to 30 October 2016 held by the authority, in reliance on the exemption at section 41(1).

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<sup>7</sup> As mentioned earlier in the Notice, now known as Sheffield City Partnership Board.



## Right of appeal

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42. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

43. 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.
44. 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**