

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 2 February 2021

**Public Authority:** City and County of Swansea Council

**Address:** [Data.protection@swansea.gov.uk](mailto:Data.protection@swansea.gov.uk)

### Decision (including any steps ordered)

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1. The complainant has requested various information in respect of a review of a number of care plans relating to the City and County of Swansea Council's Social Services department. The City and County of Swansea Council stated that it held no written information falling within the scope of the request. The complainant was not satisfied that the Council had failed to identify any records relevant to his request. The Commissioner's decision is that the City and County of Swansea Council has complied with its obligations under section 1(1) of the FOIA. The Commissioner does not require the public authority to take any steps.

### Request and response

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2. On 21 May 2019 the complainant wrote to the City and County of Swansea Council and requested the following information in respect of a review of Care Plans generated by its Social Services department:
  - i. The officers who undertook the review.
  - ii. The number of care plans they reviewed.
  - iii. The period during which those care plans were prepared.
3. The Council responded on 24 June 2019. It stated that it was refusing to provide the names of the officers involved under section 40 of the FOIA.
4. The complainant contacted the Council on 28 June 2019 and noted the Council's comments about the identity of the officers who carried out the investigation on behalf of the Monitoring Officer. However, he further

commented that the reply made no attempt to provide advice as to how his request could be reframed so that it could be met.

5. He also asked the Council to specifically confirm that there are no documents of any type whatsoever which evidence either the number of care plans that were reviewed, or the period during which those care plans were prepared, adding that it would be quite extraordinary that legal officers having been asked by their head of service who is also the Monitoring Officer did not produce any record or report whatsoever of their work.
6. The complainant further contacted the Council on 5 August, 17 and 24 September 2019 stating that he had not received a reply or even an acknowledgement of his letter of 28 June 2019.
7. The Council responded on 27 September 2019 stating that:  
*"This matter was concluded from a Freedom of Information perspective. Should you wish to request an internal review of that request we can ask the complaints manager to further that on your behalf."*
8. There does not appear to be any further correspondence in relation to this matter from either party.

### **Scope of the case**

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9. The complainant contacted the Commissioner on 1 October 2019 to complain about the way his request for information had been handled. The complainant stated that he had requested documents relating to a sampling exercise undertaken by the Council's Monitoring Officer and the request has not been answered.
10. The Commissioner clarified with the complainant the full nature of his complaint and on the basis of his clarification considers that the scope of her investigation is to determine whether the Council has complied with its obligations under section 1(1) of the FOIA.

### **Reasons for decision**

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#### **Section 1 – General right of access to information held**

11. Under section 1(1) of the FOIA, in response to a request for information a public authority is only required to provide recorded information it holds and is not therefore required to create new information in order to respond to a request.

12. In scenarios where there is some dispute between the information located by a public authority and the information that a complainant believes may be held, the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
13. The Commissioner's judgement in such cases is based on the complainant's arguments and the public authority's submissions and where relevant, details of any searches undertaken. The Commissioner expects the public authority to conduct a reasonable and proportionate search in all cases.
14. In this particular case the complainant does not accept that there are no documents of any type which evidence either the number of care plans which were reviewed or the period during which those care plans were prepared.
15. As part of an on-going complaint, it appears that the complainant had requested that the Council's Monitoring Officer undertake an investigation under section 5 and 5A of the Local Government and Housing Act 1989 as he suspected the Council's Social Services department had failed to complete any care plans since the introduction of the Social Services and Well-Being (Wales) Act 2014.
16. The Monitoring Officer informed the complainant that:

*"Officers have reviewed a sample of care and support plans and note that the outcomes are clearly set out in the plan, as are the actions to be taken."*
17. Based on the above, the Commissioner considers that it would be a reasonable assumption that the Council would hold information relevant to the complainant's request and contacted the Council with a series of questions regarding the sample exercise.
18. The Council confirmed that its Monitoring Officer asked her legal officers to carry out an informal investigation to ascertain if there were irregularities that warranted a formal investigation via a judicial review, with the legal officers reporting back to the Monitoring Officer verbally.
19. The Council further informed the Commissioner that while the Monitoring Officer had no records to provide to the complainant, she did create a response outlining what had taken place although there was no obligation under the FOIA for her to do so.
20. The Commissioner asked the Council what instruction the Monitoring Officer had given her Legal Officers and whether this was in writing or verbal. She also asked the Council whether the Legal Officers had kept

any record of the work undertaken and if not, whether they could recall any details of the work so as to form a fuller picture of the process and consider the likelihood of further information actually being held.

21. The Council contacted the Legal Officers directly. Legal Officer one confirmed that the Chief Legal Officer asked herself and named Legal Officer two if they could review a sample of care plans across the Social Services Department teams. She also confirmed that as they did not have access to the specific system used for the plans, a number of meetings were set up with key Social Services staff to explore sample care plans and to look at different practices across the specialist teams.

22. Named Legal Officer one also confirmed that although she does not have any records of the meetings, or retain any notes, she recalls a meeting with two named individuals and others. She further stated that:

*"It became clear that a consistent template for care plans was not being used across the Authority and we had detailed discussions over several meetings with specific reference to sample care plans, which demonstrated how the information was recorded differently within care plans, across the different social services teams.*

23. Legal Officer one suggested that this was because the Department was using different forms depending on the service being received and differences in practice within specialist teams.

24. The Commissioner then asked the Council to contact the two individuals and 'others' specified in Legal Officer one's statement, for their recollections of the meetings and whether they made/retained any records, both of whom subsequently confirmed that they did not make any notes and stated that they were informal discussions that did not require them. Neither individual could recall any other individuals being involved.

25. Following this correspondence, the Commissioner further contacted the Council asking how and by whom the care plans were selected for the meetings and did that individual, or those individuals, keep/retain any records of the care plans used in the sample exercise.

26. The Council responded as follows:

*"...I agree that the previous information I have provided suggests a sample of care plans were taken for analysis during the meeting...*

*However, it would appear from my follow up conversation with the four officers ...case files were only used singly as exemplars and some may merely have been blank templates."*

27. Having had due regard for the above, the Commissioner accepts that any limited notes taken at the meetings do not appear to have been retained, and as specific care plans do not appear to have been considered as part of the review, the Commissioner has concluded that the Council does not hold information which could answer the complainant's request. She has therefore concluded that the Council has complied with the requirements of section 1(1) of the FOIA.

## **Other matters**

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### **A reasonable and proportionate search**

28. Whilst the Commissioner acknowledges that the Council always responded in a timely and courteous manner to her questions, she is concerned at the number of times it was necessary for her to contact it before she could conclude her investigation. She would not have anticipated that the Council's search would stop at each stage rather than following it through to its logical conclusion and would remind the Council of its obligations under section 1(1) of the FOIA to conduct a reasonable and proportionate search of its records in response to a request for information and point out that this also applies to any searches required by the Commissioner herself.
29. Indeed, had a reasonable and proportionate search been conducted at the time of the request, it would perhaps not have resulted in the complainant exercising his rights under section 50 of the FOIA and the considerable resources utilised by the Commissioner in pursuing this investigation. She therefore expects the Council to be mindful of this in respect of future requests for information.

### **Internal review**

30. The Commissioner acknowledges that it is not a formal requirement for a public authority to conduct an internal review under the FOIA. However, the Section 45 Code of Practice recommends that public authorities do undertake an internal review and that it should be done promptly. The Commissioner has also produced guidance in relation to this matter which recommends that it takes no longer than 20 working days in most cases, and in exceptional circumstances, no longer than 40 working days.
31. The Commissioner notes that the complainant requested an internal review on 28 June 2019. However, despite having sent reminders on 5 August and again on 17 and 24 September 2019, it did not respond until 27 September. Even then, it did not recognise the complainant's earlier

correspondence of 28 June, which clearly expressed dissatisfaction with the Council's original response, as a request for a review.

32. The Commissioner expects the Council to deal with requests for an internal review appropriately in future.

## Right of appeal

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33. 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](mailto:grc@justice.gov.uk)

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

34. 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.
35. 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 .....

**Catherine Dickenson**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**