

Freedom of Information Act 2000 (FOIA)

Decision Notice

Date: 28 July 2022

Public Authority: Kirklees Council
Address: Town Hall
Ramsden Street
Huddersfield
HD1 2YZ

Decision (including any steps ordered)

1. The complainant requested from Kirklees Council ('the Council') a copy of an e-form and the internal process for its referral. The Council dealt with the request as part of a Subject Access Request (SAR) under the Data Protection Act 2018 (DPA) as it considered the information requested was the complainant's own personal data.
2. During the Commissioner's investigation, the Council told him that the request had been dealt with under the provisions of the DPA. As it was already dealing with the complainant's SAR it considered the complainant was requesting a copy of their own referral and how the Council had processed it originally in 2017. Therefore it had not considered the request within scope of FOIA.
3. The Commissioner's decision is that the Council incorrectly dealt with the request and failed to issue a valid refusal notice under section 17 FOIA.
4. By failing to issue such a refusal notice it has also breached section 10 FOIA.

5. With regard to the information requested the Commissioner considers that, on the balance of probabilities, the Council does not hold the requested information.
6. The Commissioner does not require the Council to take any steps.

Request and response

7. On 29 March 2022, the complainant requested the following information:

"I would like to have a copy of the eform please and can I also have a copy of the procedure for requesting a Special Guardianship Order (SGO) assessment, as requested in my previous email."
8. The Council responded on 14 April 2022 with regard to a complaint about how it had dealt with the SAR, but did not answer the specific request for information.
9. On 25 April 2022 the complainant wrote to the Council again. It was in this email that FOIA was specifically mentioned:

"Firstly, I have twice requested a copy of your procedure for requesting a SGO assessment, this is covered by our SAR as it falls under the FOI and you have so far failed to provide the copy, I have also requested a copy of the eform involved in this process, again you have failed to provide a copy."
10. The Council responded on 10 May 2022 and included a link to its current guidance for referral and online application form on its website.
11. On 17 May 2022 the complainant expressed their dissatisfaction and asked for an explanation for why documentation was no longer available on its system.
12. As the Council had not dealt with the request under FOIA it did not conduct an internal review but had advised the complainant to contact the ICO if they remained dissatisfied.

Scope of the case

13. The complainant contacted the Commissioner on 25 June 2022 to complain about the way their request for information had been handled.

14. The Commissioner considers the scope of this case is to determine if the Council dealt with the request under the correct access regime and whether it is likely, on the balance of probabilities, to hold the requested information.

Reasons for decision

Does the requested information fall within the scope of FOIA?

15. In their request of 25 April 2022, the complainant specifically requested a copy of the Councils procedures for requesting an SGO assessment and also a copy of the e-form used.
16. The Commissioners guidance says that:

“The Act covers all recorded information held by a public authority. It is not limited to official documents and it covers, for example, drafts, emails, notes, recordings of telephone conversations and CCTV recordings. Nor is it limited to information you create, so it also covers, for example, letters you receive from members of the public, although there may be a good reason not to release them.”
17. The Commissioner therefore considers given the above, as the requested information is regarding Council procedures and forms it uses for assessments and referrals, the request does fall with the scope of FOIA.

Section 1 – General right of access to information

18. 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.*
19. 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.

20. 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.
21. 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

22. The complainant argues that the Council clearly held the requested information as a referral was made.
23. He also argues that the information should be retained to confirm the Council follow procedures for such assessments which would be something scrutinised by OFSTED.
24. The Council have only provided them with a general public access link and not the e form and the internal assessment process he has requested.

The Council's position

25. The Council argues that it has conducted relevant searches and has not been able to locate the requested information from 2017.
26. It said that the Council's procedures at the time were not prescriptive and were of a 'General Practice' nature. It explained that a Word document would have been completed and emailed to the relevant department by the social worker concerned in order to request an assessment. There was no e form or specific process in place at the time.
27. The Council clarified that due to the nature of processing in 2017 and the likelihood that a verbal request followed up by an email to the relevant department would have been the likely procedure, the searches which it had conducted in order to locate a copy of the information were limited in scope.
28. The Council confirmed that as an assessment had been conducted, although not without its flaws, the procedure had been followed. Unfortunately, the person involved at the time cannot recall exactly what process was followed, and as the Council's retention of emails

would be limited due to size and volume (general practice is 12 months retention), the email and its contents are no longer held on its systems.

The Commissioner's conclusion

29. The Commissioner has considered the Council's position, in conjunction with the request.
30. The Commissioner recognises that the complainant believes that the information requested should be recorded, and that the Council are obliged to hold the information.
31. The Council has confirmed to the Commissioner that after conducting relevant searches, including asking those who would have been involved at the time of the assessment, it has been unable to locate a copy of any recorded information relevant to the specific request.
32. There is no contradictory evidence available to the Commissioner that indicates the Council's position is wrong.
33. On this basis the Commissioner has concluded that, on the balance of probabilities, the requested information is not held.

Section 10 and 17 – time for compliance and refusal notice

34. Section 10(1) FOIA states that responses to requests made under the Act must be provided, "promptly and in any event not later than the twentieth working day following the date of receipt".
35. The complainant requested information from the Council on 25 April 2022. The Council did not provide the information or an exemption under FOIA to withhold the requested information. Therefore, the Council breached section 10(1) FOIA.
36. Section 17(1) FOIA states that where a public authority refuses a request for information, it must provide the applicant with a refusal notice explaining the exemptions relied upon and why they apply (if not apparent), no later than 20 working days after the date on which the request was received.
37. The Commissioner cannot find where the Council applied any exemptions in line with the legislation.
38. The Commissioner therefore finds that the Council breached section 17(1) in its handling of the request.

Other matters

39. The Council has said the request had been dealt with under the provisions of the DPA. As it was unclear from the wording of the request, the Council should have clarified with the requester whether the request was for a copy of their own original assessment and referral of 2017, or if they were requesting a general copy of the information the Council used when a referral for assessment was being made. It is important that the correct access regime is considered as there are specific differences within the legislations.
40. The Council did not make a clear enough distinction between data protection and freedom of information legislation. Although requests involving both can be challenging, because the response was provided without the distinction being made, this resulted in confusion for the complainant. The Commissioner draws the Council's attention to his [Guide to freedom of information | ICO](#) and expects that the Council will improve its practices in line with this.

Right of appeal

41. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

42. 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.
43. 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

Phillip Angell
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