

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 July 2023

Public Authority: Southend-on-Sea City Council
Address: Civic Centre
Victoria Avenue
Southend-on-Sea
Essex SS2 6ER

Decision (including any steps ordered)

1. The complainant requested information from Southend-on-Sea City Council relating to its general policies on Care Plans and Reviews and Social Care Files.
2. The Commissioner's decision is that Southend-on-Sea City Council breached Section 10(1) of FOIA by failing to provide a valid response to the request within the statutory time frame of 20 working days. No steps are required.

Request and response

3. The complainant initially contacted Southend-on-Sea City Council's (the Council) Multi Agency Safeguarding Hub (MASH) on 4 November 2022 for its general policies on Care Plans and Reviews and Social Care Files. This request was passed on to the relevant department's service manager for action. As the requested information was not made available by the relevant service manager, the complainant decided to contact the Council's Freedom of information department direct.
4. Accordingly, on 17 February 2023, the complainant made the following request for information:

"1) I write in reference to a list of your website, please see attached image. Source: <https://www.southend.gov.uk/childrens-social-care/looked-children-young-people>"

From this list, please can you provide me with the information/policy relating to the bullet point 'Care Plan & Reviews' and 'Your Social Care File'."

5. The Council responded on 3 April 2023 and stated that the requested information was 'in the process of being updated' and the intention was to publish it once finalised. Accordingly, the Council cited Section 22 of FOIA and having carried out a public interest test, declined to disclose the information.
6. On 4 April 2023 the complainant requested an internal review stating her belief that the information should have been disclosed whether or not it was being updated.
7. In the absence of a response, the complainant chased the Council on 1 June 2023.
8. On 13 June 2023 the Council completed its internal review and reiterated that the requested policies were being updated with the intention of publication in the future. However, it stated that the original documents were no longer available either electronically or in hard paper copies. Accordingly, it was upholding Section 22 of FOIA.

Reasons for decision

9. The complainant contacted the Commissioner on 13 and 22 June 2023 to complain about the way the Council had dealt with her complaint. In particular, she was unhappy with the delays in responding to her initial and internal review requests. She was also unhappy with the Council's application of Section 22 of FOIA as she believed the original documents should still exist and therefore be disclosed. Furthermore, she pointed out that the information was first requested on 4 November 2022.
10. The Commissioner contacted the Council on 23 June 2023 in relation to the complainant's concerns.
11. The Council responded on 30 June 2023. It stated that the requested documents were available to download as PDFs from its website prior to February 2021. However, after that date they were removed from the website and requestors were advised to request them from the relevant service area. The Council accepted that copies of the documents should have been made by the relevant service area prior to removal from the website but this appeared not to have been done.
12. In response to the Commissioner's request, the Council confirmed that enquiries and searches of both electronic and hard copy files had been

carried out by several members of staff. However, these did not reveal the requested information.

13. In conclusion the Council stated that as the requested documents were not held at the date of the request the complainant should have been advised of this in its initial response.
14. The Commissioner communicated the Council's revised response to the complainant who then revealed that she was able to access and obtain the requested information via the Council's website.
15. When the Commissioner informed the Council that the complainant was able to access the requested information through its website it initially responded by stating that the documents were actually held by Southend Safeguarding Partnership which was not a public authority covered by FOIA. However, on reflection, it accepted the Commissioner's view that the requested information was held by Southend Safeguarding Partnership on behalf of the Council and was therefore covered by FOIA by virtue of Section 3(2)(b).
16. Accordingly, the Council revised its position to state that it should have applied Section 21 of FOIA on the basis that the information was reasonably accessible by other means.
17. Section 1(1) of 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."
18. Section 10(1) of FOIA states that a public authority must respond to a request promptly and "not later than the twentieth working day following the date of receipt".
19. From the evidence provided to the Commissioner in this case, it is clear that the Council did not deal with the request for information in accordance with FOIA. The Commissioner finds that the Council has breached Section 10(1) by failing to respond to the request within 20 working days.

Other matters

20. Although they do not form part of this Decision Notice, the Commissioner regards it to be appropriate to highlight the following matters of concern.
21. Whilst there is no formal requirement to undertake an internal review under the FOIA, the Commissioner considers it good practice to do so, which is addressed in the code of practice issued under Section 45 of FOIA.
22. The Commissioner considers that, where offered, internal reviews should be completed promptly. Although no explicit timescale is laid down in the code of practice, the Commissioner considers that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances, it may take longer, but in no case should the time taken exceed 40 working days; it is expected that this will only be required in complex and voluminous cases.
23. In this case, the complainant requested an internal review on 4 April 2023. The Council completed its internal response on 22 June 2023 which was more than 40 working days from when it was requested.
24. By failing to complete the internal review within the timescales specified above, the Commissioner considers that the Council did not conform with the Section 45 code of practice.
25. The Commissioner uses intelligence gathered from individual cases to inform his insight and compliance function. The Commissioner aims to increase the impact of FOIA enforcement activity through targeting systemic non-compliance, consistent with the approaches set out in his "Regulatory Action Policy"ⁱⁱ.

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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.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
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Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
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SK9 5AF

ⁱ <https://www.southend.gov.uk/childrens-social-care/looked-children-young-people>

ⁱⁱ <https://ico.org.uk/media/about-the-ico/documents/2259467/regulatory-action-policy.pdf>