

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 June 2014

Public Authority: Staffordshire County Council
Address: Number 1 Staffordshire Place
Stafford
ST16 2LP

Decision (including any steps ordered)

1. The complainant has requested information on the 5 June 2013 and the 19 June 2013 about a privately run care home. Staffordshire County Council (the council) provided some information to the complainant but advised that it did not hold other information. The council then applied section 14(1) at the internal review stage, but subsequently advised the Commissioner that it was not relying on section 14(1) of the FOIA to refuse those two requests, it maintains it has provided the information it holds. The complainant is not satisfied that he has received all the information requested.
2. The Commissioner's decision is that the council has provided all the information it holds.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 5 June 2013 and the 19 June 2013, the complainant wrote to the council and requested information in the following terms:

See appendix 1 for 5 June request

See appendix 2 for the 19 June request

5. On the 3 July 2013 the council responded to the 5 June 2013 request. It provided some information but advised that the majority of the information was not held by the council and refused to provide the

information for question 3 as it considered the information was third party information and so section 40(2) of the FOIA was engaged.

6. The complainant requested an internal review on the 9 July 2013.
7. On 17 July 2013 the council responded to the 19 June request. It explained that as Ivy House is neither owned nor run by the council, the information requested is not held by them, but may be held by Horizon Care.
8. For question 11 it advised that the information may be held by the Borough Council. For question 10, the council advised the information is exempt under section 40(2) of the FOIA, as it considered it to be personal data.
9. For question 4 it provided a Service Specification and advised the National minimum Standards is reflected in the core specification and this is overseen by Ofsted.
10. On 8 August 2013 the complainant wrote to the council as he was not satisfied with its response to the request.
11. The council responded on the 8 August 2013. It advised that it has provided him with the information it holds and is now treating the requests as vexatious under section 14 of the FOIA and will not respond further.
12. The complainant contacted the Commissioner on 8 August 2013 to complain about the way his request for information had been handled.
13. The council then carried out an internal review on the 25 October 2013. It maintained its application of section 14 of the FOIA, its application of section 40(2) for question 3 of the 5 June request and question 10 of the 19 June 2013 request and that it holds no information with regards to the other questions in the request other than what has been provided.

Scope of the case

14. The complainant advised the Commissioner that he is not satisfied that the council has provided him with the information he has requested.
15. During the Commissioner's investigation into the council's application of section 14 of the FOIA, the council submitted its reasons for the exemption but later advised the Commissioner that it was not actually relying on section 14 of the FOIA for the requests dated 5 June 2013 and 19 June 2013.

16. The council has advised the Commissioner that it has provided the information it holds, but as advised in its initial response to the complainant, does not hold the majority of the information requested.
17. The council also determined that it does not hold the information to question 3 of the 5 June 2013 request and question 10 of the 19 June 2013 request, which it had previously applied section 40(2) to. But stated that if it were held, then section 40(2) would be engaged.
18. The Commissioner advised the complainant of the council's position.
19. The Commissioner considers the scope of the case is to determine if the council has provided all of the information it holds with regards to the 5 June 2013 and 19 June 2013 requests, and if the Commissioner determines that the council holds information to question 3 of the 5 June request and question 10 of the 19 June 2013 request, he will go on to consider if section 40(2) of the FOIA is engaged.
20. The complainant in his internal review for 5 June 2013 has not disputed the councils response to question 1, a, b and c, questions 2 a, b, and c, question 6, and question 9. So the Commissioner has not considered these any further.

Background

21. Ivy house is a children's home that is run by Horizon/ Educare which is a privately run company. The council has explained that it purchases services from the home to provide residential placements for children within the authority's care.

Reasons for decision

Section 1 of the FOIA – Held/ Not held

22. Section 1 of the FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information within the scope of the request, and if so, to have that information communicated to him.
23. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions must decide whether, on the civil standard of the balance of probabilities, the public authority holds any information which falls within the scope of the request (or was held at the time of the request).

24. The Commissioner has considered the requests made on the 5 June 2013 and 19 June 2013, which are each made up of several requests.
25. The council has explained to the Commissioner that the home is run by Horizon/Educare which is a private company and regulated independently by Ofsted. The council also explained that it purchases services from the home to provide residential placements for 'looked after' children who are in the councils care.
26. Because Ofsted regulate the home, the council state that it is not necessary for it to independently obtain reports such as audits and suitability criteria's, as these have already been completed by Ofsted.
27. The council state that the only link it has with the home is the contract allowing it to place young people in the home. It acknowledges that it has a duty to monitor the progress of the young people it places in the home and so holds some information, which it has provided, but as the home is an independently run company, it does not have access to the information that the complainant may expect it to hold.
28. The council has confirmed that it does not have a business requirement to hold the majority of the information requested as Ofsted is the regulator not the council.
29. The council has stated that the home is also used by other authorities who place children into care and the amount of children the council can place in the home is 3. But this does not mean that it has 3 children placed in the homes care at all times, sometimes it has none.
30. The Council has advised the Commissioner that it has contacted and discussed these requests in detail with its Heads of Service, County Managers and practitioners who oversee the procurement of places, contracts, placements and social care needs of the children. These are the people and departments who have been dealing with the concerns of the local residents about the home.
31. The council has advised the Commissioner that any information it would have held is held electronically and would be held by the people and departments stated in the above paragraph.
32. The council has also confirmed that no information has been deleted that would have fallen within the scope of the request.
33. The Commissioner accepts that the council purchases the said services from the home, and considers that there may be much information it would not hold about an independently run home.
34. The Commissioner also accepts that the council would not be required to undertake the regulatory checks that the complainant may expect it to

because the home is already regulated by Ofsted. The Commissioner is satisfied that the council would rely on Ofsted reports rather than producing its own.

35. The complainant has advised the Commissioner that the home has a contract with the council. The complainant considers that the contract determines that the home would provide information following a request to the council under the FOIA. The complainant has provided a copy of this section of the contract to the Commissioner.
36. The Commissioner subsequently asked the council about this contract, specifically the Access to Records and Access to Information section found at A6.4 to A6.9 in the contract. The council has stated that this is a standard clause within contracts and the intention of this clause is to provide information about general operations and costs and not to the type of information sought by the complainant in his requests.
37. On considering the contract, the Commissioner sees that this outlines that the home would provide reasonable assistance to enable the council to comply with its obligations under the FOIA. The Commissioner does not see that the contract makes all information held by the home subject to the FOIA.
38. The Commissioner has also considered the below questions where he required some further clarification from the council.
39. For question 4 of the 5 June 2013 request, the council has provided the Commissioner with a copy of a letter that was sent to the complainant on 22 July 2013. It provides a link to the council's policy on missing children in care homes. Which is what the complainant specified he actually required in his internal review request.
40. For question 5 of the 5 June 2013 request. The complainant, although provided with the numbers of children the council can place in the home at any one time, required the section of the contract that stipulates this. The council has advised the complainant and confirmed to the Commissioner that these figures are in the homes registration which is held by Ofsted and not specifically stipulated in the council's contract. The council has stated that the homes registration is available on Ofsted's website.
41. For question 6 of the 5 June 2013 request. The complainant has not disputed the response. In the review request, he has asked if the council would object to him asking the carer for the records. This is not a request for recorded information, so the Commissioner would not be able to look into whether the council would object or not.
42. For question 12 of the 5 June request. The council provided the process, which is for it to complete two forms, and it provided a copy of the

forms they use. The forms being, a request for Service and Impact Risk Assessment. The council has confirmed that this is what it needs to complete for the placements.

43. For question 4 of the 19th June, the council provided the information it held, which was the Service Specification. It confirmed no other information would fall within the scope of this request.
44. In the complainant's 19 June 2013 request, there is a follow up request of his 9a question of June 5 2013, this is at the end of the 19 June 2013 request. This is just a repeat of the 5 June 2013 request. The council already provided the figures in response to the 5 June 2013 request.
45. Lastly, for question 3 of the 5 June 2013 request and for question 10 of 19 June 2013 request, the council originally relied on section 40(2) of the FOIA. It since advised the Commissioner that it does not hold this information. The council explained that it merely intended to highlight that section 40(2) would be engaged if this sort of information, concerning young people, was released under the FOIA.
46. The council has explained to the Commissioner that it does not carry out risk assessments at the home, it only keeps contact records of the children, which would not constitute a risk assessment. It has also told the Commissioner that it does not organise the activities at the home. This is something that would be organised by the home in its capacity as a private company.
47. The council has also stated that it has offered to arrange a meeting with the complainant and the home to see if they can address his concerns in person, but says this offer has not yet been accepted by the complainant. This is recorded in a letter from the council to the complainant, dated 22 July 2013.
48. The Commissioner has reviewed the above, he understands the complainant's expectations on how much information he considers should be held by the council and his reasons for trying to obtain it.
49. However, on considering all of the above, and the council's explanations as to why it would not hold certain information, the Commissioner is satisfied, on the balance of probabilities, that the council has provided all the information it holds within the scope of the two requests and that it is reasonable to accept that it would not hold the other information.
50. As the Commissioner has determined that no further information would be held by the council within the scope of the requests, he has not gone on to consider if section 40(2) of the FOIA is engaged and does not require the council to take any steps.

Right of appeal

51. 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: 0116 249 4253

Email: GRC@hmcts.gsi.gov.uk

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

52. 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.

53. 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

Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Appendix 1: 5 June request

"We require, under the FREEDOM of INFORMATION Regulations, the following;

1. *The Councils criteria and core requirements for the location, and facilities to be provided by a Council Care Home.*

The assessment of this Home at Ivy House, Freehay Road, Mobberley, Stoke on Trent against the criteria.

- a) *The committee and or Councillors who accepted that this premises meet the Councils core criteria*
 - b) *The specific documents showing the Members present*
 - c) *The date of the decision*
2. *The risk assessments undertaken by the Council prior to the decision to set up the Childrens Care Home at Ivy House, Freehay Road, Mobberley, Stoke on Trent which demonstrate due diligence for the councils Duty of Care to both the Young Persons and community.*

Please provide

- a) *The date of the assessment*
 - b) *Who undertook the assessment*
 - c) *The document demonstrating that the assessment was received and accepted by senior staff and Councillors*
3. *Provide copies of subsequent risk assessments and their reviews following the numerous incidents which have occurred over the past 2 years (upon opening of the premises)*
 4. *Provide information on the actions taken following recent incidents to safeguard the young persons in the Councils care and Duty of Care to the community.*
 5. *Please provide information from the Contract with the Appointed Carers which demonstrates that the number of persons resident at the premises will be restricted and what that restriction is.*
 6. *Please provide information relating to each occasion when the number of residents has exceeded the councils and Planning change of use criteria*
 7. *Please provide information to the traffic survey which the Council should have undertaken prior to the opening of the Home and in particular the risks to Young persons on the National speed limit road and the lack of footpaths.*

8. *Please provide the Councils requirements for parking at the Care home allowing for residents, changeover of staff and visitors etc.*
9. *Please provide information on*
 - a. *the number of times Young persons have absconded from the Home*
 - b. *the number of times the Police have been called to respond to the problems either at the Home or in the neighbourhood resulting from the operations at the home.*
10. *Please provide the Councils policy and actions taken with regard to each disturbance and event in 9 above.*
11. *Please provide confirmation from your planning department that the Council are not considered to have communications with Local Councillors and residents prior to the establishment of facilities such as Care Homes.*
12. *Could you please provide information on the Council's process to assess each young person's specific needs prior to sending them to the home. Who undertook this task and the evidence that it was done to ensure the homes facilities could provide for the children."*

Appendix 2: 19 June request:

1. *A list of all incidents (including the damage done) from the outset of Ivy House opening*
 - 1a. *The dates reported by the carers at the home.*
2. *The Councils review of the actions taken following all reported incidents at the home*
 - 2a. *and Outside the home*
3. *The Councils review of the Ofsted report in connection with the training and competence of the staff employed at Ivy House.*
4. *The Councils minimum standards for the training and competence of staff employed by the carers (Horizon Educare) at the home.*
5. *The actions taken by the Council to prevent the children at the home purchasing cigarettes locally.*

6. *The actions the Council took regarding the reporting of complaints (as per the Ofsted report).*
7. *The actions the Council took (as per the Ofsted report) to address shortfalls in risk assessments*
 - 7a. *What reviews the Council had done previously with respect to the adequacy of the risk assessments.*
8. *The Actions the Council took regarding reporting incidents in particular the Ofsted's findings re: reporting of notifiable events and the robust actions recorded.*
9. *The times and dates the Carers/Council/Horizon Educare staff visited the residents to explain or apologise for the disturbances and risk they have suffered.*
 - 9a. *The persons involved in these meetings.*
 - 9b. *The subjects discussed at the meeting.*
 - 9c. *The outcome of this meeting.*
10. *A list of planned activities for the children*
 - 10a. *The precise details of the local activities the young persons utilise.*
11. *Correspondence (emails and letters with times and dates) between Benjamin Hurst, Planning Enforcement Officer and the relevant County Council Officer regarding a report submitted by Nick Bentley dated 9 March, 2013 regarding Problem Parking at Ivy House, Freehay Road, Mobberley, Stoke on Trent.*

Further to our previous email dated 5 June, I would like to expand on question number (9)

 - (a) *the number of times the children have absconded from the home."*