

Freedom of Information Act 2000 (FOIA) Decision notice

Date: 10 November 2022

Public Authority: Worcestershire County Council
Address: County Hall
Spetchley Road
Worcester
WR5 2NP

Decision (including any steps ordered)

1. The complainant has requested information regarding a breakdown of costs of a review published by the Council. The above public authority ("the Council") stated it did not hold the requested information.
2. The Commissioner's decision is that:
 - on the balance of probabilities, the Council holds the information for its own purposes being a lead member of the Safeguarding Adults Board. The Council is therefore not entitled to rely on section 3(2) of FOIA.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
 - to conduct adequate searches of the Councils systems and documents to establish if the requested information is held and issue a fresh response in accordance with its obligations under the FOIA.
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.

Request and response

5. The complainant wrote to the public authority and requested information in the following terms:

"I would like the full costings breakdown of the THEMATIC SAFEGUARDING ADULTS REVIEW REGARDING PEOPLE WHO SLEEP ROUGH which was published by the Worcestershire Safeguarding Adults Board in September 2020."

6. The Council responded on 27 January 2022 and refused to provide the requested information stating:

"I can advise you that we do not hold the information you have requested. The FOIA does not oblige a public authority to create information to answer a request if the requested information is not held. The duty is to only provide the recorded information held.

The document you are referring to is a report from the Worcestershire Safeguarding Adults Board which is a separate organisation to Worcestershire County Council."

7. The Council upheld its original position at internal review.

Reasons for decision

Section 3(2) - information held by a public authority

8. Section 3(2)(a) of FOIA states that information is "held" by a public authority if it is held "otherwise than on behalf of another person."
9. Therefore, if information is held only on behalf of another person, including a "legal person" such as an organisation, it is not "held" for the purposes of FOIA, and does not need to be considered for disclosure in response to a request made under FOIA.
10. His task is to determine whether the Council, as it has asserted, only holds the information on behalf of the Worcestershire Safeguarding Adults Board (WSAB). If the information is held to any extent by the Council for its own purposes, then it will be held for the purposes of FOIA.

11. The Commissioner's guidance, Information held by a public authority for the purposes of FOIA¹, explains that whether information is held by a public authority depends on the facts of each case. There are various factors that assist in determining whether the public authority holds the information for the purposes of FOIA.
12. As the guidance explains, factors that may indicate that the information is held solely on behalf of another person include:
 - the authority has no access to, use for, or interest in the information;
 - access to the information is controlled by the other person;
 - the authority does not provide any direct assistance at its own discretion in creating, recording, filing, or removing the information; or
 - the authority is merely providing storage facilities, whether physical or electronic.
13. Factors that would indicate that the information is also held by the public authority to some extent for its own purposes include:
 - the authority provides clerical and administrative support for the other person, whether legally required to or not;
 - the authority controls access to the information;
 - the authority itself decides what information is retained, altered or deleted;
 - the authority deals with enquiries about the information; or
 - costs arising from holding the information are included in the authority's overall budget.
14. However, as the guidance emphasises, each case needs to be viewed individually to determine whether a public authority holds information for its own purposes, or solely on behalf of another person.

¹ <https://ico.org.uk/media/for-organisations/documents/1148/information-held-by-a-public-authority-for-purposes-of-foia.pdf>

15. The Commissioner notes that the Council explained within its internal review that:

"The WSAB is a statutory multi-agency partnership formed by the Local Authority in compliance with a statutory duty imposed upon it by virtue of the Care Act 2014. The WSAB is not a public authority as defined by Schedule 1 of the FOIA 2000."

And

"The WSAB performs a number of duties in relation to the responsibilities of its partner agencies and, in some cases, these partner agencies, including WCC, may be deemed to hold information in their own right as per the relevant legislation. However, for the purposes of this review, in relation to the financial information requested, I maintain the decision of the original response to your request, in that WCC do not hold the information requested and that the FOIA does not oblige a public authority to create information to answer a request if the requested information is not held."

16. The Commissioner considers that the Council holds the information at least to some extent for its own purposes, most significantly in relation to managing its budget.
17. He has referenced a number of previous decision notices in order to consider his decision: [fs50713121.pdf \(ico.org.uk\)](#), [ic-118747-v7c1.pdf \(ico.org.uk\)](#), [ic-125151-d8k4.pdf \(ico.org.uk\)](#), [ic-48280-n2n3.pdf \(ico.org.uk\)](#).
18. Therefore, his decision is that the information is held by the Council for the purposes of FOIA and that the Council is not entitled to rely on section 3(2) of FOIA to refuse the request.
19. The Council is now required at paragraph 3 of this decision notice to conduct substantive searches for the requested information and issue a fresh response, on the basis that any information falling within the scope of the request is held by the Council for the purposes of the FOIA.

Right of appeal

20. 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

21. 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.
22. 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
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF