

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 November 2023

Public Authority: Oldham Council

Address: Civic Centre
West Street
Oldham
O11 1UT

Decision (including any steps ordered)

1. The complainant has requested information held by Oldham Council (the council) about steps taken following the publication of an Independent Review on historic child sexual exploitation in the Oldham area.
2. The council provided the complainant with some information in response to parts one, two and four of their request. With regard to part three of the request, which asked for information about any disciplinary action that may have been taken against council staff after the Independent Review had been published, the council advised that it was withholding information under section 40(2) – third party personal information – of FOIA.
3. During the Commissioner's investigation, the council issued a fresh response to part three of the complainant's request; the council now confirmed that no disciplinary action was taken against any council employees.
4. The Commissioner is satisfied that the information which has now been provided in response to part three of the complainant's request is an accurate reflection of the information held and that, on the balance of probabilities, the council does not hold any other information that falls within the scope of the request.

5. The Commissioner does not require the council to take any steps as a result of this decision notice.

Request and response

6. On 20 June 2023, the complainant requested information about steps taken by the council following the publication in June 2022, of an Independent Review on historic child sexual exploitation in Oldham. The complainant has raised concerns about the council's response to part three of their request, which is as follows:

"3) The review concluded that the "Statutory child protection procedures in place at the time were on many occasions not being followed." As a result of this finding, have any council employees been subject to disciplinary proceedings? If so, please provide a breakdown of the outcomes (i.e., warning, training, dismissal etc)."

7. On 21 July 2023, the council provided its response to the complainant's request. With regard to part three of the request, the council provided the following information:

"Each of the 10 cases has been scrutinised by a senior manager within Children's Social Care and responded to appropriately. The majority of the professionals involved no longer work for the Council.

Refreshed training has been rolled out to all employees and specialist training is provided to staff who deal directly with victims and survivors of child sexual abuse.

Our Child Sexual Exploitation practice has significantly improved since the period identified within the review and our good progress has been recognised by Ofsted and in Greater Manchester Peer Reviews."

8. On 29 July 2023, the complainant requested an internal review, saying that the council had failed to provide an adequate and full response to part three of their request.
9. On 25 August 2023, the council provided its internal review response. It said that it considered that "the service area provided information it believed fulfilled what was sought for Q3 in its original response."
10. The council went on to confirm that information was held that was relevant to part three of the complainant's request, but that it considered this to be exempt from disclosure under section 40(2) of FOIA. The council advised that, given "the level of details sought" and

the low number of individuals involved, the disclosure of information “could cause potential identification of living individuals”, in a way which would breach data protection law.

11. During the Commissioner’s investigation, the council then issued a fresh response to part three of the complainant’s request. It stated that it was no longer relying on section 40(2) of FOIA (or any other exemptions) to withhold information and now confirmed that:

“No council employees have been subject to disciplinary proceedings.”

12. The council then went on to reiterate the information provided in its original response to part three of the request (as set out in paragraph 7 of this decision notice).

Scope of the case

13. The complainant initially raised concerns with the Commissioner about the council’s decision to withhold information in response to part three of their request.
14. The complainant has now questioned the accuracy of the revised response issued by the council, and believes it likely that further information is held.
15. The Commissioner will therefore decide whether, on the balance of probabilities, the council holds any further information that falls within the scope of part three of the complainant’s request.

Reasons for decision

Section 1 – general right of access

16. Section 1(1) of FOIA provides 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 them.
17. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request,

the Commissioner, following the lead of a number of First-tier Tribunal decisions, applies the civil standard of the balance of probabilities. In essence, the Commissioner will determine whether it is likely, or unlikely, that the public authority holds information relevant to the complainant's request.

18. The complainant has said that they are concerned that the council's responses are contradictory; they say that they would have expected disciplinary action to have been taken against some council employees following the publication of the Independent Review, and that the council's most recent response may therefore not be a reliable and accurate reflection of the information that is held.
19. The complainant has gone on to say that if it is found that the council's most recent response to their request is correct, and that no disciplinary action has been taken, then the council should never have made reference to third party personal information, as this indicated that the requested information was held, and was therefore misleading.
20. Personal data is information that relates to an identified or identifiable individual. Such information should not be released in response to an information request if to do so would breach data protection law.
21. In the Commissioner's view, if providing confirmation about whether disciplinary action was (or was not) taken against a member (or members) of staff would allow for any one individual (or all relevant individuals) to be identified, then this would constitute a disclosure of personal data. Whilst this would not necessarily prevent a public authority from releasing such information, it would need to be sure that when doing so, it is not breaching data protection law. In this case, the council has said that, having conducted a final review, it is now satisfied that it is appropriate in the circumstances of this case to disclose information which confirms that no disciplinary action was taken against any of its employees following the publication of the Independent Review.
22. It is the Commissioner's view that the council's original responses to part three of the request were ambiguous and open to interpretation, and this led the complainant to assume that disciplinary action had been taken. However, having considered all the information available, the Commissioner is satisfied that the council's most recent response is an accurate reflection of the information that is held, and that no disciplinary action was taken against any member of staff following the publication of the Independent review. Given this, it must follow that the council does not hold details of the outcomes of any disciplinary action requested by the complainant.

23. The Commissioner is therefore satisfied that, on the balance of probabilities, the council holds no further information that is relevant to part three of the complainant's request.

Right of appeal

24. 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

25. 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.
26. 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

Suzanne McKay
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF