

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 January 2024

Organisation: London Borough of Lewisham
Address: Laurence House
1 Catford Road
London SE6 4R

Complainant: Sofia Lyall
Address: sofia.lyall@fairtrials.net

Decision (including any steps ordered)

1. The complainant has requested information relating to the London Borough of Lewisham's (the council) Multi-Agency Child Exploitation (MACE) subgroup.
2. The council has explained that it does not hold any of the information requested and that Lewisham Safeguarding Children Partnership (LSCP) is not a public authority and therefore is not subject to the FOIA.
3. The Commissioner's decision is that LSCP is not a public authority for the purposes of FOIA. He therefore upholds the council's position and requires no steps to be taken in this case.

Request and response

4. On 25 May 2023 the complainant wrote to the council as follows:

"I write to request information and records under the Freedom of Information Act (FOIA) 2000 regarding the London Borough of Lewisham's Multi-Agency Child Exploitation (MACE) subgroup, including the database(s) or list(s), and any predictive analytic or automated decision-making tools used. Please provide the following information:

 1. Does the MACE subgroup conduct risk assessments or carry out profiling (as under the meaning of profiling in the Data Protection Act

2018) of individuals for general offending or re-offending, or for certain forms of crime or criminal behaviour, such as 'gang' crime, 'county lines', 'serious youth violence', sexual exploitation, knife crime, or violent crime?

If yes, please provide:

- a. The types and/or names of each profiling or risk assessment model;
- b. If known and easily retrievable, the date each profiling or risk assessment model started being used;
- c. The purpose of each profiling or risk assessment model;
- d. What types of data are used to conduct the profiling or risk assessment model (e.g criminal offending history, stop and search data, ethnicity, postcode);
- e. What are the potential or types of outcomes that can occur or which are influenced or informed by the profiling or risk assessment model output;
- f. Data Protection Impact Assessments and/or Equality Impact Assessments that have been carried out in relation to MACE or specific risk assessment or profiling model(s).

2. Does the MACE subgroup hold specific lists or databases of people allegedly involved in specific forms of crime, such as 'gang' crime, 'county lines', 'serious youth violence', sexual exploitation, knife crime, or violent crime? If yes, please provide:

- a. The types and/or names of the database(s) or list(s);
- b. If known and easily retrievable, the date each database or list was first created;
- c. The criteria for inclusion on the database(s) or list(s);
- d. If available in an easily retrievable format, the type of data that is used to assess the criteria for inclusion on the database(s) or list(s);
- e. If available in an easily retrievable format, how many people are on the database(s) or list(s)."

5. The Council responded on 26 May 2023 and stated that it did not hold the information requested. It advised the information owner is Lewisham Safeguarding Children Partnership (LSCP). However, as LSCP is not a public authority it is not subject to the FOIA.

6. In their request for internal review the complainant stated:

"On the LSCP website, it clearly states that the LSCP is comprised of 3 public bodies – the London Borough of Lewisham, the Southeast Basic Command Unit of the Metropolitan Police and Lewisham Clinical Commissioning Group of the NHS South East London. None of these public bodies are exempt from freedom of information requests and therefore Lewisham Council, under their obligations of the Freedom of Information Act 2000, must provide responses to my request.

In addition, following their inspection of the LCSP, Ofsted clearly states in their January 2023 report: "We have determined that the London Borough of Lewisham is the principal authority". This confirms that, as the principal authority, any data owned by the LCSP, will also be owned by Lewisham Council. Equally, this document on MACE states: "The MACE is chaired by a senior Local Authority Manager and Police Chief Inspector of Detective Inspector as a co – chairing arrangement."

As both the principal authority of LSCP and chair of MACE, I therefore have strong reason to believe that Lewisham Council holds the information I have requested, and that the previous response to my request is an attempt at evasion and shifting responsibility."

Scope of the case

7. The complainant contacted the Commissioner on 4 October 2023 to complain that they had not received a response to their request for internal review.
8. The Commissioner considers the scope of the substantive complaint to be whether the council holds any of the information requested for the purposes of FOI and if LCSP is a public authority for the purposes of FOIA.
9. In the recent case of *Fish Legal v Information Commissioner & Others* (GIA/0979/2011 & GIA/0980/2011) (*Fish Legal*), the Upper Tribunal Administrative Appeals Chamber (the UT) ruled that the Commissioner has jurisdiction to both investigate and decide whether a body is a public authority.
10. The Commissioner therefore has jurisdiction to decide this question. The First Tier Tribunal (the FTT) may also hear appeals against the Commissioner's decisions and the UT may hear appeals against the decisions of the FTT.

Reasons for decision

11. FOIA gives members of the public the right to access recorded information held by public authorities and places a duty on public authorities to respond to requests for such information.
12. If a public authority receives a request for information it is usually legally obliged to provide it within 20 working days, unless any of the exemptions contained within FOIA apply. If a public authority believes an exemption does apply to the information that has been requested then the public authority must explain why the exemption applies.
13. The definition of 'public authority' is given in section 3(1) of the FOIA. In particular it states that under the FOIA a 'public authority' means-
 - (a) subject to section 4(4), any body which, any other person who, or the holder of any office which-
 - (i) is listed in Schedule 1, or
 - (ii) is designated by order under section 5, or
 - (b) a publicly-owned company as defined by section 6.
14. Section 5 allows the Secretary of State to designate a public authority by order.
15. Section 6 states that a company is a 'publicly-owned company' for the purposes of section 3(1)(b) if it is wholly owned by the Crown or is wholly owned by any public body listed in Schedule 1 (other than a government department or any authority which is listed only in relation to particular information).
16. Although the MACE sub-group is made up of representatives of individual public authorities, this does not automatically mean the sub-group itself is a public authority.
17. LCSP is not covered by any of the above definitions of 'public authority' and therefore is not subject to FOIA.
18. It is not in dispute that the council is a public authority for the purposes of FOIA, as are the other members of the MACE sub-group. However, the Commissioner considers that FOIA only applies to the information held by public authorities for their public authority functions. For this reason, information held by LCPS is not within the scope of FOIA.

19. The Commissioner accepts the notion that, although a public authority may physically hold information of the nature requested, it does not hold this information for the purposes of FOIA, is a difficult concept.
20. In this case, he is satisfied that the council does not physically hold any of the information requested for its own purposes, or on behalf of LSCP.

Section 16(1) – advice and assistance

21. Section 16(1) of FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45 code of practice¹ in providing advice and assistance, it will have complied with section 16(1).
22. The Commissioner notes that in its response, the council advised the complainant that information "...may be publicly available on their website via the link below. Lewisham Safeguarding Children Partnership - LSCP [Lewisham Safeguarding Children Partnership - LSCP \(safeguardinglewisham.org.uk\)](http://Lewisham Safeguarding Children Partnership - LSCP (safeguardinglewisham.org.uk)) Further information surrounding Multi-Agency Child Exploitation (MACE) Strategy & Resources can be found here"
23. The Commissioner therefore considers that the council has complied with its obligations under section 16 of FOIA.

Other matters

24. Although the council is not obliged to carry out an internal review in such cases, it would perhaps, be courteous to advise a requestor accordingly.

¹ <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

Right of appeal

25. 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

26. 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.
27. 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

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