

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 15 August 2019

**Public Authority:** Surrey County Council  
**Address:** County Hall  
Penrhyn Road  
Kingston on Thames  
Surrey  
KT1 2DN

#### **Decision (including any steps ordered)**

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1. The complainant has requested information about the "Responsible Person" as defined in section 2(1) of The Local Authority Social Services and National Health Service Complaints (England) Regulations 2009. Surrey County Council disclosed some information and explained that it did not hold the remainder.
2. The Commissioner's decision is that Surrey County Council was correct to state that it does not hold some of the requested information. The Commissioner therefore considers that it has not breached section 1 (right to information) of the FOIA.
3. However, the Commissioner does consider that Surrey County Council has breached sections 10 (Time for compliance) and 17 (Refusal of a request) of the FOIA.
4. The Commissioner does not require Surrey County Council to take any steps as a result of this decision.

## Request and response

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5. On 13 May 2018, the complainant wrote to Surrey County Council (the council) and requested information in the following terms:

*" section 2(1) The Local Authority Social Services and National Health Service Complaints (England) Regulations 2009 defines 'responsible body' as a local authority, NHS body, primary care provider or independent provider. Therefore, Surrey County Council is a responsible body under these regulations.*

*Section 4(1) requires a responsible body to designate - (a) a person, in these Regulations referred to as a responsible person, to be responsible for ensuring compliance with the arrangements made under these Regulations, and in particular ensuring that action is taken if necessary in the light of the outcome of a complaint; and (b) a person, in these Regulations referred to as a complaints manager, to be responsible for managing the procedures for handling and considering complaints in accordance with the arrangements made under these Regulations.*

*Section 4(2) of the regulations allows the functions of the responsible person to be performed by any person authorised by the responsible body to act on behalf of the responsible person.*

*Section 4(3) of the regulations allows the functions of the complaints manager to be performed by any person authorised by the responsible body to act on behalf of the complaints manager.*

*Section (4)(b) designates the responsible person is to be the chief executive officer of the body.*

*In light of the above please provide the following:*

*1. The number of persons, if any, that Surrey County Council has authorised to perform the functions of the Responsible Person under the Regulations.*

*a) the date or dates that these persons were authorised to carry out the functions of the Responsible Person.*

*b) a copy of the written authorisation given to any persons authorised to carry out the functions of the Responsible Person and a copy of any other record created detailing the authorisation.*

*c) a copy of the job description and objectives from the annual reports showing details of the relevant responsibilities of any persons authorised to carry out the functions of the Responsible Person.*

*d) details of the training received by any persons authorised to carry out the functions of the Responsible Person and copies of any training or other material provided to these persons detailing their responsibilities and explaining how they should carry out these functions.*

- e) details of any assurance programme or other reporting used by Surrey County Council to make sure that any authorised persons carry out the functions of the Responsible Person correctly.*
- f) a copy of any records showing what action was taken as a result of complaints under the Regulations over the last year.*

*2. The number of persons, if any, that Surrey County Council has authorised to perform the functions of the Complaints Manager under the Regulations.*

- a) the date or dates that these persons were authorised to carry out the functions of the Complaints Manager.*
  - b) a copy of the written authorisation given to any persons authorised to carry out the functions of the Complaints Manager and a copy of any other record created detailing the authorisation.*
  - c) a copy of the job description and objectives from the annual reports showing details of the relevant responsibilities of any persons authorised to carry out the functions of the Complaints Manager.*
  - d) details of the training received by any persons authorised to carry out the functions of the Complaints Manager and copies of any training or other material provided to these persons detailing their responsibilities and explaining how they should carry out these functions.*
  - e) details of any assurance programme or other reporting used by Surrey County Council to make sure that any authorised persons carry out the functions of the Complaints Manager Person correctly.*
- Please note:*

- 1. I do not require any personal information relating to officers or employees of Surrey County Council.*
- 2. I am happy to receive this material in electronic format - please send to this email address."*

6. The council responded on 12 June 2018. It answered question 1 explaining that the definition of the 'Responsible Person' under regulation 4(4)(a) was its chief executive. It confirmed that the scheme of delegation sets out the specific delegation to officers and that there is no set number of persons authorised to perform the functions of the Responsible Person; the responsibility for agreeing a response to a complaint is delegated to team managers. The council also explained that the scheme of delegation was available as a public document on its website and provided a link to it. The council also answered questions 1(a)-(b). In relation to question 1(c) the council provided a copy of its annual complaints report for 2016/17 and confirmed that the annual report for 2017/18 was not available. It also provided the job description for team managers and confirmed that there are no specific objectives from the annual report. The council answered questions 1(d)-(e) and in relation to 1(f), it referred the complainant to its answer to 1(c).

7. The council also answered questions 2 and 2(a). In relation to questions 2(b) and 2(e) it withheld information and cited section 40(2) (Personal information) of the FOIA. In relation to questions 2(c) the council referred the complainant to its response to question 1(c) and it answered question 2(d).
8. The complainant responded on 13 June 2018. She submitted her understanding in relation to questions: 1, 1(b), 1(e), 1(f), 2(b) and 2(e) and asked the council to confirm whether her understanding of its responses were correct.
9. In relation to questions 1(c) and 2(c), the complainant explained that the council had not attached the annual report for 2016-2017 and also asked when the 2017-2018 annual report would be available.
10. On 20 June 2018 the council responded. It explained that a further review was being carried out and that it would provide a more substantive response within 20 working days.
11. On 11 July 2018, the council contacted the complainant. It apologised for not responding to her request within the 20 working day limit. It also explained that it had revisited its previous response format. In relation to question 1(b) it referred the complainant to its response to question 1. In relation to question 1(c) the council attached a copy of the 2016-2017 annual report that had not been attached in its response of 12 June 2018. In relation to questions 1(d) it provided additional information and in relation to 1(e) it reiterated its original response. In relation to 1(f), the council, provided a link to information.
12. The council also answered questions 2 and 2(a) again. In relation to question 2(b) it upheld its application of section 40(2). In relation to questions 2(c) and 2(d) it answered them, again. In relation to question 2(e) it reiterated the answer already provided on 12 June 2018.
13. On 15 July 2018 the complainant responded to the council asking further questions. The council responded on 10 August 2018. It upheld its responses of 12 June and 11 July 2018 and also provided further information.
14. On 12 August 2018 the complainant requested an internal review and submitted a further request for information. There was further correspondence between the parties.
15. Following an internal review the council wrote to the complainant on 21 November 2018. In relation to question 2(b), it confirmed that it was no longer relying on the section 40(2) exemption, as it did not hold the requested information. It also explained that there is no post called

"complaints manager" in Adults Social Care. It confirmed that the post title is customer relations manager and any references to complaints manager were to that post. The council also explained that the customer relations manager is also a team manager. Additionally, the council explained that, with reference to the handling of complaints in the context of the "Responsible Person" it had referred to and included a link to its external website and scheme of delegation which delegates the statutory role to team managers.

16. The council also provided the relevant extract from the schedule and explained that: *"It follows that the authorisation for the Customer Relations Manager to deal with Complaints is as a Team Manager under the Scheme of Delegation rather than the Manager's own Contract of Employment."*

### **Scope of the case**

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17. The complainant contacted the Commissioner on 17 December 2018 to complain about the way her request for information had been handled. The complainant explained that she wanted an explanation for why the council did not provide a prompt response to her request. The complainant also explained that she wanted to know why the formal review response took 73 working days (over 4 months), when the Commissioner considers that a reasonable time for completing an internal review is 20 working days from the date of the request for review and in no case should the total time taken exceed 40 working days.
18. The complainant also explained that the council had confirmed that it would be conducting the internal review within 20 to 40 working days. However, it did not carry out the internal review within the stated time frame, nor did it contact her about the delay.
19. Additionally, the complainant explained that she wanted to know why her requests for an update to the council regarding the internal review were ignored. The complainant also complained that the council ignored the Commissioner's recommendation that it should have provided her with a response by 13 November 2018.
20. Furthermore, the complainant explained to the Commissioner that the following four points were outstanding:  
  
*"1. a copy of the written designation of the role of the Complaints Manager in accordance with section 4(1)(b) of the Regulations. – If this does not exist then please just say so."*

*2. a copy of the written authorisation given to any persons authorised to carry out the functions of the Complaints Manager and a copy of any other record created detailing the authorisation. – this will probably not exist if, as the Council has previously stated, only one person has been authorised to carry out the functions of the Complaints Manager.*

*3. details of the party, or parties (job titles and roles) whose responses the Team Manager is delegated to approve. – I suspect this may be the members of the team who may be drafting replies.*

*4. details of any target date set for the publication date of the 2017/2018 Annual Report. – If one was not set then please just say so."*

21. The complainant also explained that the council ought to be able to explain why there had been delays in responding to her and that the Commissioner had produced guidance about this.
22. During her investigation, the Commissioner asked the council whether points 1 and 3 of the outstanding issues fell within the scope of the request. The council explained it believed that the requester considered that she was simply re-wording her original request and it had clarified/provided additional information rather than reviewing the request.
23. The Commissioner will therefore consider the four outstanding issues identified by the complainant. She will also consider the way in which the council handled the request under the FOIA, including the length of time taken to deal with it.

## **Reasons for decision**

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### **Outstanding issues**

*"1. a copy of the written designation of the role of the Complaints Manager in accordance with section 4(1)(b) of the Regulations. – If this does not exist then please just say so."*

24. The council explained to the Commissioner that the scheme of delegation within its constitution is the authorisation for responses to be approved on its behalf by certain officers. It also explained that these officers were team managers, including the customer relations manager. It confirmed that no other recorded information is held.
25. The Commissioner notes that the complainant has asked that if the council does not hold a written designation of the role of the complaints manager in accordance with section 4(1)(b) of the regulations, it should "just say so". Given that the council has confirmed that no other



recorded information is held apart from its scheme of delegation, the Commissioner considers that this point has been addressed by it.

*"2. a copy of the written authorisation given to any persons authorised to carry out the functions of the Complaints Manager and a copy of any other record created detailing the authorisation. – this will probably not exist if, as the Council has previously stated, only one person has been authorised to carry out the functions of the Complaints Manager."*

26. The Commissioner notes that this outstanding issue is worded in a similar way to question 2(b): *"a copy of the written authorisation given to any persons authorised to carry out the functions of the Complaints Manager and a copy of any other record created detailing the authorisation."*
27. Initially, the council exempted the information, citing section 40(2) (Personal information) of the FOIA. However, in its internal review, it explained that it was no longer relying on section 40(2) as it did not hold the requested information. The Commissioner also notes that the council explained that there was no post called complaints manager in Adults Social Care. The council confirmed that the post title in question is customer relations manager and any references to complaints manager were to that post; the council also explained that the customer relations manager is also a team manager. Additionally, the council explained that, with reference to the handling of complaints in the context of the "Responsible Person" it had referred to and included a link to its external website and Scheme of Delegation which delegated the statutory role to team managers'.
28. The council also referred the Commissioner to its comments in relation to the first outstanding issue.
29. The Commissioner notes that the complainant has confirmed that the council had already explained to her that only one person has been authorised to carry out the functions of the complaints manager. She also notes that the complainant acknowledges that the information she has requested in relation to her second outstanding issue, will probably not exist.

## **Section 1 – information not held**

30. Section 1 of FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds the information and if so, to have the information communicated to him.
31. In cases where a dispute arises over the extent of the recorded information held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments.

32. She will also consider the actions taken by the public authority to check whether the information is held and any reasons offered by it to explain why the information is not held.
33. The Commissioner is required to make a judgement on whether, on the balance of probabilities, the requested information is held or not.
34. The Commissioner asked the council what searches it had carried out. The council explained that the requested information was on a very specific role within the council. The officer handling the request liaised with the customer relations manager (Adults Social Care) who would be the individual likely to know the answers to the questions asked as they were to all intents and purposes, about him and his work. By the time the internal review was carried out that manager had left the council. However, when the internal review was carried out it became clear that the contract of employment did not contain the requested information. The council also explained that the details relating to the Scheme of Delegation were supplied by the Caldicott Guardian<sup>1</sup> for Adults Social Care (and also currently head of resources for that directorate) who also approves all responses to FOIA requests, involving Adults Social Care.
35. The officer carrying out the review also liaised with the corporate customer relations and service improvement manager (as the customer relations manager was no longer available) who supplied a copy of the relevant regulations - Local Authority Social Services and National Health Service Complaints (England) Regulations 2009 (as referred to in the request). The reviewing officer looked at these regulations, the approved FOIA responses referred to above, documents supplied to the complainant and paperwork relating to the scheme of delegation. The officer also considered the parts of the customer relations manager's personnel file relating to the role of a customer relations manager and was also supplied with a copy of the contract of employment by its human resources department.
36. The Commissioner also asked if searches included electronic data, to please explain whether these searches included information held locally on personal computers used by key officials (including laptop computers) and on networked resources and emails.
37. The council explained that no searches were carried out as the manager who supplied the information was expected to know the answers to the

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<sup>1</sup> A Caldicott Guardian is a senior person responsible for protecting the confidentiality of people's health and care information and making sure it is used properly.



questions asked as they related to his job and the information would be held by him, if anyone. It also confirmed that the manager's email account was no longer available to search as it had been deleted when he left. Electronic searches of the committee papers for 'Adults Social Care complaints' did not produce any relevant data other than copies of the annual complaints reports.

38. In addition, the Commissioner asked if the information was held, would it be held as manual or electronic records. The council explained that most information is now held in electronic format.
39. The Commissioner asked whether any recorded information ever held relevant to the scope of the complainant's request had been deleted or destroyed. The council explained that there may have been electronic copies of the information supplied, but these would have been deleted when the email account of the customer relations manager was deleted in accordance with standard practice once an individual leaves the council. It confirmed that it did not believe that there was any additional information other than that already supplied.
40. The Commissioner also asked the council if recorded information had been held but was no longer held, when it had stopped retaining it. The council confirmed that this was within a short period following the departure of the customer relations manager. The Commissioner also asked the council whether it had a record of the document's destruction. The council explained that a great many individuals had left over the past year due to a major restructure. It also confirmed that the customer relations manager's email account no longer exists.
41. The Commissioner also asked the council whether there was a business purpose for which the requested information should be held and if there was, what was the purpose. The council explained that the scheme of delegation in its constitution covered the delegation of powers to officers.
42. Additionally, the Commissioner asked whether there were any statutory requirements on the council to hold the requested information. The council explained that it was not aware of any statutory requirements to hold the requested information.
43. Taking everything into account, the Commissioner does not consider that there is any evidence that show that the council holds any recorded information in relation to question 2 of the request.
44. The Commissioner is therefore satisfied that, on the balance of probabilities, the council does not hold any recorded information in relation to question 2 of this request. Accordingly, she does not consider that there is a breach of section 1 of the FOIA.

*"3. details of the party, or parties (job titles and roles) whose responses the Team Manager is delegated to approve. – I suspect this may be the members of the team who may be drafting replies."*

45. The council explained to the Commissioner that the delegation is to approve responses to complaints. It also confirmed that these posts are not listed in its constitution but would apply to any team member managed by a team manager.

*4. details of any target date set for the publication date of the 2017/2018 Annual Report. – If one was not set then please just say so."*

46. The complainant explained to the Commissioner that she did not want a copy of the 2017/2018 annual report, although the council had provided her with one. She confirmed that she wanted to know whether there had been a target date set for its publication and if the council did not have such a date it should *"just say so."*
47. The Commissioner explained to the complainant that she could only consider whether the council held a recorded target date. During her investigation, the Commissioner asked the council about this. The council confirmed that it did not hold a recorded target date for when it was going to publish its 2017/2018 annual report. It also explained that there was no statutory requirement to publish it by a certain date.
48. Given that the complainant wanted the council to say whether it had a set target for publication or not, the Commissioner contacted her about this. She explained that the council had confirmed to her that it did not have a recorded target date. The complainant responded and explained to the Commissioner that she was satisfied that the council did not hold a recorded target date. The Commissioner will therefore not consider this point any further.
49. The complainant submitted her request on 13 May 2018. The council should have responded by the 20<sup>th</sup> working day which would have been 11 June 2018. However, it responded on 12 June 2018.

## **Section 10 – Time for compliance**

50. Section 10(1) of the FOIA provides that a public authority must respond to a request promptly and in any event no later than 20 working days after the date of receipt.
51. The Commissioner considers that the council has breached section 10(1) as it took longer than 20 working days to respond to the request.

## **Section 17 – Refusal of a request**

52. Section 17(1) of the FOIA provides that if a public authority wishes to refuse a request it must issue a refusal notice within the 20 working day time for compliance, citing the relevant exemption(s).
53. The Commissioner considers that the council has breached regulation 17(1) as it took longer than 20 working days to inform the complainant that it was relying on an exemption in relation to some of the requested information.

## **Other matters**

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54. The Commissioner notes that the complainant has referred to guidance<sup>2</sup> she has issued regarding delays in responses by public authorities. The guidance explains that if a public authority responds to a requester on the 20 working day or near this deadline, it should be able to explain why this has occurred. However, in the present case, the Commissioner notes that the council responded on 12 June 2018 and that the 20<sup>th</sup> working day for its response was 11 June 2018. She therefore considers that this is a breach of section 10, as explained in paragraphs 51-52.
55. The Commissioner also notes the complainant's comments about the internal review. The Commissioner considers that there has been some confusion about when an internal review had been requested.
56. The Commissioner notes that in response to the council's initial response of 12 June 2018, the complainant contacted it on 13 June 2018 and asked questions about its response. The council responded substantively to this on 11 July 2018 and also provided further information. However, it did not make any reference to this response being an internal review response.
57. The complainant then requested an internal review on 15 July 2018. The council responded on 10 August 2018. It upheld its responses of 12 June and 11 July 2018 and also provided further information. However, it did not confirm that it was responding to the request for an internal review of 15 July 2018.
58. On 12 August 2018 the complainant requested another internal review and submitted a further request for information. Following an internal

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<sup>2</sup> <https://ico.org.uk/media/for-organisations/documents/1165/time-for-compliance-foia-guidance.pdf>

review the council wrote to the complainant on 21 November 2018, acknowledging that this was its internal review response.

59. Part VI of the section 45 Code of Practice (the code) for the FOIA, makes it good practice for a public authority to have a procedure in place for dealing with complaints about its handling of requests for information.
60. While no explicit timescale is laid down in the code, the Commissioner has decided that a reasonable time for completing an internal review should normally be within 20 working days of receipt of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days.
61. The Commissioner's view is that the council clearly considered that it had provided an internal response to the complainant on 21 November 2018. The council did not provide the Commissioner with reasons regarding exceptional circumstances in relation to its delay in providing the internal review response. However, the Commissioner notes that the council explained to her that it considered that the requester considered that she had been simply re-wording her original request and that the council was clarifying/providing additional information rather than reviewing the request.
62. The Commissioner considers that if a requester contacts a public authority about its response to a request for information, this should be treated as a request for an internal review, even if the requester has not explicitly asked for a review. She therefore considers that the council should have treated the complainant's response of 13 June 2018, as a request for an internal review. She is concerned that it took the council approximately 5½ months to complete the internal review. However, the Commissioner also notes that during this time, the council and complainant were in contact and the council did provide the complainant with additional information.
63. The Commissioner also considers that it is good practice for a public authority to let a requester know if there is going to be a delay in responding to the internal review and the reason(s) why. She also considers that if a requester contacts a public authority about a non-response to a request for an internal review, as in this case, the public authority should respond to the complainant.
64. Additionally, the Commissioner contacted the council about the lack of an internal review and provided a timeframe for it to provide the internal review, which it did not do. In cases where the Commissioner contacts a public authority about a lack of an internal review and provides a timeframe by which it should respond, she expects a public authority to do so.

65. The Commissioner will use intelligence gathered from individual cases to inform her insight and compliance function. This will align with the goal in her draft [Openness by design strategy](#) to improve standards of accountability, openness and transparency in a digital age. The Commissioner aims to increase the impact of FOIA enforcement activity through targeting of systemic non-compliance, consistent with the approaches set out in her [Regulatory Action Policy](#).

## **Right of appeal**

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66. 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: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

67. 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.
68. 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 .....**

**Jon Manners**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**