

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 August 2019

Public Authority: Slough Borough Council
Address: St Martins Place
51 Bath Road
Slough
Berkshire
SL1 3UF

Decision (including any steps ordered)

1. The complainant has requested financial information about payments made by Slough Borough Council ('SBC') to social care providers. SBC disclosed most of the requested information but said that it did not hold financial information in respect of children's services because those services were provided by Slough Children's Services Trust Limited ('the Trust'), which is a separate legal entity. The complainant argued that the Trust held this information on behalf of SBC, and therefore that the information was accessible from SBC, under the FOIA.
2. The Commissioner's decision is that SBC was entitled to state that it did not hold this information for the purposes of the FOIA, as it does not fall within the definition of "held" at section 3(2)(b) of the FOIA.
3. The Commissioner requires no steps.

Background

4. Responsibility for children's services provision was removed from SBC in 2015, and placed with the Trust.

5. The Trust's website¹ states:

"Slough Children's Services Trust (SCST) was established as a not-for-profit trust on 1 October 2015 after intervention by the DfE [Department for Education] to remove children's services from Slough Borough Council, following a series of 'Inadequate' ratings."

6. The Trust is a private company limited by guarantee. Its Article of Association document lists the company's objectives as being to provide social care, special educational needs and youth offending services to children, young people and their families in the Slough area.

Request and response

7. On 13 February 2019, the complainant wrote to SBC and requested information in the following terms:

"I'd like to make a request under the Freedom of Information act for all transactions over £500 from 1st April 2017 to 31st December 2018. As a minimum, please make sure to include the date, value and recipient of each transaction."

If it would help, I am specifically looking for payments to suppliers who provide a service in Health and Social Care. This would include all suppliers falling under the categories :-

- 1. Payments to suppliers who provide fostering and adoption services to the Council*
- 2. Payments to suppliers who provide care services to the council. This would include suppliers who provide care under each of below -*
 - a. Children's Residential/ Nursing Care Providers*
 - b. Adult Residential/ Nursing Care Providers*
 - c. Elderly Residential/ Nursing Care Providers*
 - d. Domiciliary Care Home Providers*
 - e. Supported Living Care Home Providers*
 - f. Care at Home Providers*
 - g. Providers who carry out Homeless Services*
- 3. Payments to suppliers who provide Special Education Services*

In particular I am looking for itemized transactions for suppliers from 1st April 2017 - 31st December 2018 - preferably in CSV format."

¹ <https://www.scstrust.co.uk/who-we-are/our-ofsted-journey/>

8. SBC responded on 11 March 2019. It said that the requested information could be found on the "*Payments to suppliers*" page of its website, for which it provided the web link.
9. The complainant contacted SBC on 12 March 2019 to say that details of fostering payments were not included in the information and asking to be provided with them.
10. SBS responded on 14 March 2019. It denied holding that information, stating that payments made to fostering agencies "*...would not be made by Slough Borough Council as Childrens [sic] services in Slough are run by Slough Childrens [sic] Services Trust who are exempt from the FOIA.*"
11. The complainant wrote again to SBC on 21 March 2019, stating:

"Slough Childrens [sic] Trust have stated "All Freedom of Information requests for the Trust should be directed to Slough Borough Council and Slough Children's Services Trust will support Slough Borough Council in answering requests where they are processing data on behalf of council."
12. He also clarified that the request was for details of payments made to independent fostering agencies, adoption agencies, children's residential care home providers, juvenile agencies to look after homeless children and transactions for fostering, adoption, homeless and children's residential care. He was particularly interested in receiving itemised transactions for suppliers from 1st April 2018.
13. On 25 March 2019, SBC wrote to the complainant and stated that it had not made any payments to:

"Independent Fostering Agencies

Adoption Agencies

Children's Residential Care Home providers

Juvenile agencies to look after Homeless children

Fostering, Adoption, Homeless and Children's Residential Care."
14. SBC referred the complainant to its previous response regarding the Trust and the FOIA.
15. It wrote again to the complainant on the same day, saying:

"Slough Borough Council do not run or manage children's services in Slough. On the 1st October 2015 Slough Children's Services Trust

(SCST) was established as a not-for-profit trust after intervention by the DfE to remove children's services from Slough Borough Council, following a series of 'Inadequate' ratings.

Not all trusts are the same and so not all trusts will fall under the FOIA, it will depend on how the trust is set up.

I can confirm that Slough Childrens [sic] Services Trust do not fall under the FOIA and this has been determined by the ICO who are the UK's independent body set up to uphold information rights. This decision was made by the ICO in April 2018.

The Trust will always strive to assist the council in answering FOI requests where they hold the data and the council are the data controller.

However the financial information that you have requested is not held by or on behalf of the council and the council are not the data controller.

Therefore the council has no authority to instruct the trust to provide this information to the council."

16. On 26 March 2019 the complainant submitted a request for an internal review, on the basis that he believed that SBC exercised control over the Trust to the extent that its information was held on behalf of SBC.
17. SBC responded on 27 March 2019, reiterating that it did not hold the information and that it could not compel the Trust to disclose the information.

Scope of the case

18. The complainant contacted the Commissioner on 29 March 2019 to complain about the way his request for information had been handled. He explained that he believed that SBC exercised control over the Trust and therefore that the Trust held information about its provision of children's services on behalf of SBC. He believed that this information, should be accessible under the FOIA, by means of an information request submitted to SBC.
19. The complainant argued that the Trust had been set up as an arm's-length management organisation (ALMO) to provide children's services on behalf of SBC. He referred the Commissioner to a document issued

by the Centre for Public Scrutiny (CfPS)² which stated that the Trust's Director of Children's Services "*sits within Slough Borough Council*". He also referred the Commissioner to the ICO's Guide to Freedom of Information³ which makes specific reference to ALMO's wholly owned by local authorities:

"...some local authorities have transferred responsibility for services (eg social housing) to a private company (sometimes known as an arm's-length management organisation or ALMO), which is wholly owned by the local authority. This type of company counts as a public authority in its own right and needs to respond to requests for information. Where a company is wholly owned by a number of local authorities it is also now a public authority for the purposes of FOIA."

20. On this point, the Commissioner notes that if the Trust is a public authority for the purposes of the FOIA, the correct procedure for accessing the information it holds would be to submit a request for information directly to it, rather than to SBC. Since the request under consideration here was made to SBC, and not to the Trust, the question of whether or not the Trust is a public authority in its own right is not relevant to the determination of this complaint and the Commissioner has not gone on to consider it in this decision notice.
21. With that in mind, the analysis below considers whether SBC holds information about payments made in respect of children's social care services ("the requested information"), by virtue of the Trust holding it on SBC's behalf.

Reasons for decision

22. Section 1 of the FOIA states that any person making a request for information is entitled to be told whether the public authority holds the information requested and, if held, to be provided with it (unless an exemption applies).
23. Section 3(2) sets out the circumstances in which information is considered to be 'held' by a public authority for the purposes of the FOIA:

² <https://www.cfps.org.uk/wp-content/uploads/CfPS-Scrutinising-alternative-delivery-models-for-children-services-.pdf>

³ <https://ico.org.uk/media/for-organisations/guide-to-freedom-of-information-4-9.pdf>

"For the purposes of this Act, information is held by a public authority if -

- (a) it is held by the authority, otherwise than on behalf of another person, or*
- (b) it is held by another person on behalf of the authority."*

24. The Commissioner must therefore determine whether the requested information is held by the Trust on behalf of SBC.
25. In her consideration of this point, the Commissioner has consulted the ICO's guidance *"Information held by a public authority for the purposes of the Freedom of Information Act"*⁴.
26. The guidance outlines a number of factors that would indicate that information is not held on behalf of a public authority:

- "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."*

27. As countervailing factors, the guidance also states:

"Factors that would indicate that the information is also held by the public authority 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*

4

https://ico.org.uk/media/fororganisations/documents/1148/information_held_by_a_public_authority_for_purposes_of_foia.pdf

- *costs arising from holding the information are included in the authority's overall budget."*
28. SBC has explained to the Commissioner that the Trust was set up under direction from the Department for Education, following unsatisfactory Ofsted inspections. As such, this was not a voluntary outsourcing of its children's services function and the Trust is not a subsidiary of SBC. SBC retained control of the information relating to children's services provision until 30 September 2015. After this point, the Trust assumed responsibility.
29. The Trust holds some data jointly with SBC, and some which both the Trust and SBC consider to be the Trust's own, internal corporate data. The data held jointly with SBC comprises individual child care record data. SBC agrees that this is information which is held on its behalf by the Trust and that as such, it is potentially accessible under the FOIA (subject to the application of exemptions) by means of a request submitted to SBC.
30. Turning to the Trust's corporate data, this includes budgets, strategies, tendering, payments, Human Resources information, payroll, and salaries. It is information falling within this category of data which the complainant has requested and which SBC considers to be the Trust's own information, to which it has no access or control, and which is not held on SBC's behalf.
31. SBC explained that all children's services expenditure is entirely controlled by the Trust. SBC is advised by the Trust only of the total expenditure figure for the services provided by the Trust. The financial information requested by the complainant would have to be extracted from the Trust's own budgetary information, which SBC has no access to, or control over. The Trust controls all expenditure, and decisions on placements and subsequent payments, are made by the Trust from Trust budgets in accordance with the needs of the child that is being supported by the Trust.
32. The Commissioner has considered SBC's response carefully. She has also looked at the Trust's Articles of Association document, which sets out the rules according to which the company must be run and administered. The Articles list the company's objectives as being to provide social care, special educational needs and youth offending services to children, young people and their families in the Slough area. The Articles go into some detail regarding the precise responsibilities of the Trust with regard to service provision. It is clear from this that the Trust assumes responsibility for children's social services provision in the Slough area.

33. The Commissioner has also considered the specific points the complainant made regarding SBC's position. With regard to the suggestion that control of the children's service provision "*sits within*" the council, contained in the CfPS document, it is true that the Trust apparently shares premises with SBC. However, the Chief Executive and senior leadership team appear to be entirely independent of SBC. The Trust's website provides details of the Chief Executive and senior management⁵, none of whom appear to have current or previous connections to SBC. SBC's only formal representation within the Trust at the time of the request was a local councillor who sat as a Non-Executive Director on the Trust's Board of ten Directors⁶. The Board meets quarterly to oversee the work of the Trust. The Commissioner does not consider that the presence of a single non-executive Director to represent SBC at Board level amounts to SBC exercising control over the Trust's service provision.
34. With regard to the complainant's claim that the Trust is an ALMO in respect of which SBC effectively retains control, in cases where local authorities voluntarily outsource functions and services to third parties for administrative convenience or financial advantage, it is to be expected that they may retain full or partial control of the service provision. However, in this case the decision to place children's services with the Trust was one which was imposed on SBC, as a result of prior inadequate service provision. The Department for Education's intention was therefore to remove the responsibility for service provision from SBC, and place it with an independent service provider that could provide an improved service. In view of this, the Commissioner does not accept that the relationship between SBC and the Trust is the same as that between a local authority and a body to which it has voluntarily outsourced services. She considers it clear that the Trust is autonomous with regard to the decisions it takes regarding how children's social services are run.
35. Taking all the above into account, the Commissioner's decision is that the Trust does not hold the requested information on behalf of SBC, as defined by section 3(2)(b) of the FOIA, and that SBC was entitled to assert that it does not hold this information for the purposes of FOIA.

⁵ <https://www.scstrust.co.uk/who-we-are/senior-team/>

⁶ <https://www.scstrust.co.uk/who-we-are/board-members/>

Right of appeal

36. 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

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

37. 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.
38. 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

Samantha Bracegirdle
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Information Commissioner's Office
Wycliffe House
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Wilmslow
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SK9 5AF