

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 December 2017

Public Authority: Surrey County Council
Address: County Hall
Penryhn Road
Kingston Upon Thames
Surrey
KT1 2DN

Decision (including any steps ordered)

1. The complainant made a request to the Council for information relating to the care of his late father. The Council refused to comply with the request under section 14 FOIA as it considers it to be vexatious.
2. The Commissioner's decision is that the Council correctly applied section 14 FOIA to the request.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 24 July 2017 the complainant made the following request for information under the FOIA for:

"I would like all information that you hold supplied to the local government ombudsman, and Oakhurst Court Nursing Home between 26th May 2010 until 27th June 2010 and all investigations that took place after this date."
5. The Council responded on 9 August 2017 and refused to comply with the request under section 14 FOIA as it considers it to be vexatious.
6. The complainant requested an internal review. The Council provided an internal review on 14 September 2017 in which it maintained its original position.

Scope of the case

7. The complainant contacted the Commissioner on 16 September 2017 to complain about the way his request for information had been handled.
8. The Commissioner has considered whether the Council correctly applied section 14 FOIA to the request.

Reasons for decision

Section 14

9. Section 14 of FOIA states that a public authority is not obliged to comply with a request for information if it is vexatious.
10. The Commissioner's guidance¹ on the application of section 14(1) FOIA, refers to an Upper Tribunal decision² which establishes the concepts of 'proportionality' and 'justification' as central to any consideration of whether a request is vexatious.
11. The guidance suggests that the key question the public authority must ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. Where this is not clear, the Commissioner considers that public authorities should weigh the impact on the authority and balance this against the purpose and value of the request. Where relevant, public authorities will need to take into account wider factors such as the background and history of the request.
12. The Council explained that the complainant's request relates to Adult Social Care records held in respect of his late father relating to safeguarding. It clarified that his father was not a social care client of Surrey County Council but had been placed in a care home by Kent County Council. The care home was in the county of Surrey but was not

¹[http://www.ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx](http://www.ico.org.uk/for_organisations/guidance_index/~/media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx)

² *Information Commissioner vs Devon County Council & Dransfield [2012] UKUT 440 (AAC) (28 January 2013)*

owned or managed by Surrey County Council. When there were safeguarding concerns raised by the complainant about his father's care, they fell to be considered by Surrey County Council. These concerns were raised after his father's death. However, the main social care records for his father were held by Kent County Council.

13. It went on that although the complainant looked after his father in his home for some years, he was not the personal representative of his father's estate. It said that when a request is made for social care records of a deceased individual, such a request is ordinarily refused under Section 41 FOIA as information supplied in confidence. This does not mean that the Council would not disclose this type of information to a member of the family outside of FOIA but it would take into account the recorded wishes of the deceased and it would require the consent of the personal representative(s) of the deceased. In this case, the latter was not forthcoming.
14. The Council received both subject access requests and freedom of information requests from the complainant and it said he has been supplied with all the recorded information to which he is entitled. The Council said that the complainant has been telephoning members of staff at the Council regarding this matter and engaging individuals in lengthy phone calls where he appears to want to re-visit the requests made to the Council but more particularly those requests he made to Kent County Council. It said that the complainant has been provided with the information he is entitled to in response to subject access requests made under the Data protection Act 1998 (DPA) on 4 May 2011 and 20 August 2014. The complainant has made three previous FOIA requests for the same or similar information as that being considered in this case dated 25 March 2011, 15 February 2013 and 19 December 2013. All three previous FOIA requests were refused under section 41 FOIA.
15. The Council also referred the Commissioner to the Tribunal decision (Appeal No. EA/2015/0017) relating to his late father's social care records held by Kent County Council:

[http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i1606/Baldwin,%20Joseph%20\(EA.2015.0017\)%20\(27.07.15\).pdf](http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i1606/Baldwin,%20Joseph%20(EA.2015.0017)%20(27.07.15).pdf)
16. In that case the Tribunal upheld Kent County Council's application of section 41 FOIA, as such, the complainant is no longer able to make requests to Kent County Council and has therefore turned to address his request to Surrey County Council. The Council reiterated that any records that it did hold were of a limited nature (relating to the safeguarding issue) as his father was not the Council's social care client and it only became involved after his father's death.

17. It said that this matter has also been the subject of a Local Government Ombudsman case. The Local Government Ombudsman did disclose some additional safeguarding information to the complainant.
18. The Council concluded that it considers that sufficient time has been spent on this matter and that the complainant is attempting to re-open an issue which has been considered and addressed by both Kent County Council and Surrey County Council and by the Local Government Ombudsman which demonstrates as unreasonable persistence. The Council considers that it is now time to draw a line under this matter which is why it applied section 14 FOIA to this request. It considers that the request is now of only limited public interest in the wider sense.
19. The Commissioner considers that in this case the complainant has previously made three FOIA requests for the same or similar information which were refused by the Council under section 41 FOIA. The previous requests refused by Surrey County Council were not heard by the Tribunal. However as the complainant has had an FOIA case heard at the Tribunal again relating to the same or similar information however with Kent County Council in which the Tribunal upheld the application of section 41, this diminishes the purpose or value behind this request given the precedent relating to the specific information he has requested and more generally in relation to social care records. The complainant has however been provided with all information to which he is entitled via his subject access requests and his complaint has been considered by the Local Government Ombudsman which did disclose some further information to the complainant. Furthermore the Commissioner is aware that the complainant does engage members of staff at the Council in lengthy telephone discussions, reopening his grievance with both Kent County Council and Surrey County Council which is causing an unjustified level of disruption to the Council. As the complaint has been considered by an independent body and because the complainant is no longer able to pursue this information from Kent County Council, this does demonstrate an unreasonable persistence and an attempt to continue to keep this matter open. In this case given the context and history to the request and the nature of the information being requested, the Commissioner does consider that this request is vexatious under section 14 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: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.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

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