



IN THE FIRST-TIER TRIBUNAL

Case No. Appeal No. EA/2015/0222

GENERAL REGULATORY CHAMBER INFORMATION RIGHTS

ON APPEAL FROM Information Commissioner's Decision Notice FS5056663

Dated 29th September 2015

BETWEEN

Mr Mike Barnes

Appellant

And

The Information Commissioner

Respondent

And

Stoke on Trent City Council

2nd Respondent

Determined on the papers on 24th March 2016

Date of Decision 14TH April 2016

BEFORE

Ms Fiona Henderson (Judge)

Mr Mike Jones

And

Mr Nigel Watson

Subject: s1 FOIA whether information is held

Decision: The Appeal is refused

REASONS FOR DECISION

Introduction

1. This appeal is against the Information Commissioner's Decision Notice FS5056663 dated 29th September 2015 which held that Stoke on Trent City Council (the Council) does not hold information for the purposes of FOIA.

Background

2. S13 of the Children Act 2004 requires each local authority to establish a Local Safeguarding Children Board (LSCB) for their area and specifies the organisations and individuals (other than the local authority) that should be represented on LSCBs. The statutory objectives and functions of LSCBs are set out in full in “*Working together to safeguard children 2015*”¹ and include:
 - i)² a) Co-ordinating what is done by each person or body represented on the LSCB for the purposes of safeguarding and promoting the welfare of children in the area; and
 - b) Ensuring the effectiveness of what is done by each person or body for those purposes;
 - ii)³ a) Developing policies and procedures for safeguarding and promoting child welfare in the local authority area,
 - b) Raising awareness of and encouraging safeguarding,
 - c) Monitoring and evaluating the effectiveness of what is done by the authority and partner organisations,
 - d) Participating in planning of services for children,
 - e) Undertaking reviews of serious cases and advising the authority and partner organisations on lessons to be learned.

The Information Request

3. On 4th November 2014 the Appellant requested:

“Please provide copies of the minutes of the S-o-T Children and safeguarding board meetings and any executive or sub meetings held in the last two years held by LA representatives to that board.

I would be interested in any information held by your organisation regarding my request...”
4. On 18th November 2014 the Council refused the request stating that it did not hold the information for the purposes of FOIA relying upon s3(2) of FOIA.⁴

¹ P67 OB et seq

² S14 Childrens Act 2004

³ Regulation 5 of the LSCB Regulations 2006

5. The Appellant asked for an internal review on 18th November 2014 arguing that he was seeking papers held by Council representatives who sit on the Board who have received those minutes as part of their duties and responsibilities at the Council.
6. The Council's internal review dated 12th December 2014 upheld the original refusal. The Council accepted that it had relevant information physically in its possession but stated that it was held on behalf of the Safeguarding Board (which is not a public authority for the purposes of FOIA).

The Complaint to the Commissioner

7. The Appellant complained to the Commissioner on 5th January 2015. He disputed the Council's assertion that the information was not held for the Council's own purposes and relied upon having had minutes disclosed to him by the Council following an information request relating to the Stoke and Staffordshire Local Enterprise Partnership (SSLEP) a similarly independent body with Council representation.
8. Following an investigation, during which the Council set out the expectations of the LSCB members, confirmed the use and dissemination of the Minutes and referred the Commissioner to the statutory and regulatory provisions surrounding the LSCB, the Commissioner upheld the Council's decision.

The Appeal

9. The Appellant appealed to the Tribunal on 30th September 2015 on the grounds that:
 - i. Officers and Councillors sit on the Board by virtue of their position on the Council.
 - ii. The reason they are represented on the Board is to affect and influence Council policy and resources and those of other bodies.
 - iii. The refusal is inconsistent with the Council's response to a previous information request regarding SSLEP (also a body outside of a direct request

⁴ Information held on behalf of another body

under FOIA) where he was provided with reports and minutes held by post holders of the local authority who sat on the SSLEP.

10. The Council were joined as 2nd Respondent to the Appeal by the Registrar on 18th November 2015 and support the Commissioner's position in opposing the Appeal. All parties have consented to the case being determined upon the papers and the Tribunal is satisfied that it can properly determine the issues without a hearing pursuant to rule 32(1) GRC Rules being in receipt of a bundle of some 331 pages which contains representations from all the parties plus an additional email of final submissions from the Appellant. In reaching this conclusion the Tribunal has had regard to the overriding objective as set out in rule 2 GRC rules.

Scope

11. The Appellant concedes that the Minutes may contain exempt information under the Local Government Act 1972 and clarifies that he is asking for publication under FOIA with redactions where applicable. The Tribunal has not seen the withheld material as the first consideration is to determine the basis upon which it is held by the Council, only if it is held by them for the purposes of FOIA would this become applicable.

Information held

12. s1 FOIA provides:

General right of access to information held by public authorities.

(1) 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 him.

13. However, this is qualified by s3 FOIA which provides:

(1) In this Act "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.

(2) 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.

14. It is not disputed that the LSCB is not a “public authority” for the purposes of FOIA as defined by s3(1) FOIA. The issue between the parties relates to whether the Council is holding the information on behalf of the LSCB. Whilst the Council accept that they are in physical possession of the information, they rely upon s3(2)(a) arguing that they hold it on behalf of the LSCB. The Tribunal is satisfied that unless it is held by the Council for their own purposes it is not disclosable under FOIA

15. From the evidence provided by the Council the Tribunal accepts that the purpose of the minutes is to record LSCB activity for members of the Board. They enable scrutiny and challenge to those members where LSCB activity is not progressing as expected or they highlight evidence of Board activity that has concluded appropriately.⁵ The Tribunal observes that Minutes do not just record decisions but can also be expected to highlight issues of concern, reflect the discussion and process by which a decision is reached and its progress and outcomes.

16. We accept that the LSCB is intended to be independent of the Council and the other partner organisations, it is intended to be in a position to scrutinise inter alia the Council. The Tribunal relies upon the statutory objectives and functions (see paragraph 2 above) which indicate the separate nature of the LSCB in its role in providing oversight, advice, supervision, scrutiny and direction to the local authority and its partner organisations. The Tribunal is satisfied that this requires separation and independence from the local authority this is supported by:

Working Together to Safeguard Children 2015 chapter 3:

12... “in order to provide effective scrutiny, the LSCB should be independent. It should not be subordinate to, nor subsumed within, other local structures”

⁵ p65 letter from Council to Commissioner 1.5.15

13. Every LSCB should have an independent chair who can hold all agencies to account”.

17. It is accepted that the Council’s Children and Young People’s Partnership Support Officer takes the minutes. However, the Tribunal must look at the mechanism by which this takes place. The role exists as defined in the Safeguarding Children Annual Report (half time administration support offered in kind by the local authority and not directly funded by the Board)⁶:

“All LSCB member organisations have an obligation to provide LSCBs with reliable resources (including finance) that enable the LSCB to be strong and effective. Members should share the financial responsibility for the LSCB in such a way that a disproportionate burden does not fall on the small number of partner agencies”.

18. The Tribunal is satisfied therefore that although paid for by the Council the arrangement is equivalent to being “seconded” to a role and the actions undertaken at that time are under the direction of the LSCB and not the Council. The fact that the Council pays for it and thus the officer concerned is a Council employee does not provide the Council with rights over the fruits of that work.

19. The Council’s evidence is that Members’ expectations are that the minutes are held on behalf of the LSCB and purely for the purposes of fulfilling their function as members of the LSCB. However, the Appellant argues that the Council must be able to use the Minutes in their wider work because:

- The decisions of the LSCB as recorded in the Minutes have an impact on the Council,
- The minutes of the LSCB are an integral part of the decision making process of the Council,
- The board attendees use the minutes as a reference point for their own duties and a failure to do so would put them in breach of their obligations for interagency work to safeguard and promote the welfare of children (as described in *Working Together to Safeguard Children 2015*).

⁶ P137 OB Working Together to Safeguard Children 2015 para 19 chapter 3

20. He further argues that this is supported by the seniority and strategic role prescribed for members within that document:

“Members of an LSCB should be people with a strategic role in relation to safeguarding and promoting the welfare of children within their organisation. They should be able to:

- *Speak for their organisations with authority,*
- *Commit their organisation on policy and practice matters; and*
- *Hold their own organisation to account and hold others to account”.*⁷

Their purpose on the LSCB being to disseminate and implement the LSCB’s decisions within the Council and to steer the decision making process on behalf of the Council.

21. The Tribunal takes into consideration the membership and attendance for 2013-14 of Council employees and Councillors as set out in the LSCB annual report for 2013-14.⁸ From this it is apparent that Council representation is wide reaching and senior as required. The Tribunal has also had regard to the contents of the annual report in terms of its summary of the activities of the LSCB. This is detailed and sets out areas of work, achievements, campaigns and specific concerns raised and how they are actioned. It also makes provision for the dissemination of specific information by way of Education programmes, templates, guidance notes, training and multiagency initiatives including those who do not sit on the LSCB.

22. The Council distinguish the demarcation between a member’s Council duties and their role on the LSCB. They accept that they may be tasked with work from the LSCB, or they may need to report back to the LSCB about work they are involved in.⁹ The Tribunal observes that this is reflected in the activities detailed in the annual report. In this respect members of the LSCB are in no different position to a Council officer not on the LSCB who is asked to provide information to the LSCB or undertake a task as part of the LSCB’s oversight of child protection. There is no

⁷ p235 OB paragraph 8

⁸ P300 OB et seq

⁹ p65 letter from Council to Commissioner 1.5.15

evidence that those non member officers would be provided with the minutes in order to action any task. Additionally the Tribunal is satisfied that the scrutiny role of members of the LSCB is an activity that they perform on behalf of the LSCB and not on behalf of the Council. Any use of minutes in that regard would not therefore be evidence that the Minutes are being used as a reference point for their Council duties.

23. The Council's evidence is that the minutes are owned by the LSCB and are ultimately the responsibility of the Chair who is independent of the Council. The Tribunal accepts this and is satisfied that this is consistent with the facts that:

- Minutes are not published on the internet or anywhere else,
- Minutes are not circulated to staff who are not members.¹⁰
- Transparency is provided by the LSCB publishing annual reports.
- There is no evidence that individual members have the authority to distribute the minutes beyond their circulation.

SSLEP and consistency

24. The Appellant argues that the Council is inconsistent in its approach as they disclosed SSLEP minutes and reports pursuant to a FOIA request. The Commissioner observes that SSLEP makes its minutes available online and hence chooses to disseminate them to the public. The Tribunal does not know to what extent associated reports are also placed online.

25. The Council stated that the minutes and reports were disclosed pursuant to Environmental Information Regulations 2004 and not FOIA and are thus distinguishable. They have not expanded these arguments however, the Tribunal is satisfied that SSLEP is not material to the facts in this case. What the Council choose to do in relation to another organisation does not change the position in law in relation to the LSCB on the facts as found by the Tribunal. It is not open to the Tribunal to add an organisation not included under FOIA just because the Appellant believes it should be scrutinised.

¹⁰ p65 letter from Council to Commissioner 1.5.15

Conclusion

26. For the reasons set out above we are satisfied that the information requested is not held by the Council for the purposes of FOIA and the appeal should be refused.

27. Our decision is unanimous.

Dated this 14TH day of April 2016

Fiona Henderson

Tribunal Judge