

Essex County Council
Transformation Directorate
PO Box 11,
County Hall
Chelmsford
Essex CM1 1QH

Date: 15/10/2012
Our ref: ECC-023325-12
ECC-024440-12

Dear Mr Chilvers

Freedom of Information Requests Numbers ECC-023325-12 and ECC-024440-12

Thank you for your requests under the Freedom of Information Act regarding information governance documentation held by Essex County Council.

We told you that we would respond to you at a later date and we have written to you on several occasions with revised dates for a response to your requests. Please accept the Council's apologies for the fact that you have not received a substantive reply to some of your requests until now. It has taken longer than anticipated to gather the information and consider the Council's legal obligations.

In considering your second request we have determined that the information can be presented to you in combination with the response to your initial request. Please therefore accept this response as fulfilling both of your Freedom of Information requests.

We provided an initial response to your first request on 22nd August. Since that letter another officer group meeting has been identified as falling within the scope of your request – the Social Care Information Governance Steering Group ('SCIGSG').

There was one aspect of your first request that we did not answer in our letter to you of 22nd August. You asked for

Copies of minutes for your governance groups that have responsibility for or contribute to Information Governance with a copy of their Terms of Reference.

The terms of reference for these groups are being supplied to you. The position in relation to the minutes is set out below in this letter.

We are responding to this aspect of your request for minutes in this letter. The scope of your first request was for information going back for 2 years. Your 2nd request was made on 23rd August 2012 and was for the same information but older, going back for 3 years rather than 2. This request is being responded to in this letter also.

There are documents which relate to five separate governance boards which operated within the 3 year period of your 2 requests and fall within the scope of the information governance. The four governance boards are all officer groups and are listed below.

- The Social Care Information Governance Steering Group
- The Information & Information Communications Technology Board (IICTB), which was replaced by:
- The Information Policy Development Group (IPDG).
- Policy and Standards Council (PSC)
- Operations Board

Terms of Reference of Governance Groups.

You were provided with terms of reference of 3 of the above groups in our earlier response to you. I **enclose** a copy of terms of reference for the Policy and Standards Group dated April 2009. This group has now disbanded. I also **enclose** the terms of reference of the Social Care Information Governance Steering Group dated November 2010.

Minutes of Governance Groups.

I confirm that the Council does have minutes of the above officer groups. There are various minutes as listed below.

1. Actions and Decisions Arising from Operations Board.
2. Operations Board Full Minutes.
3. PSC Full Minutes (drafted for consideration of FOI exemptions)
4. PSC Redacted Minutes (drafted for consideration of FOI exemptions)
5. IPDG Full Minutes.
6. IPDG Redacted Minutes. (drafted for consideration of FOI exemptions)
7. IICTB Full Minutes
8. IICTB Redacted Minutes.
9. Social Care Information Governance Steering Group Minutes.

The Council has **attached** to this letter a copy of Actions and Decisions arising from Operations Board and a redacted version of the minutes of the Policy and Standards Council between July 2009 and January 2011.

The Council also holds further information on the other Governance groups, these documents are not going to be released to you as they are exempt from disclosure under Freedom Information Act 2000. The Council's reasons in relation to the various exemptions are explained below. Most of the documents requested have been withheld under the S36 exemption. However other applicable exemptions are also explained for completeness.

Exemption Under Section 30 Freedom Information Act: Investigations and proceedings conducted by public authorities

Part of the information you have requested includes information about Investigations and proceedings and investigations conducted by public authorities. Section 30 is a class based qualified exemption and consideration must be given as to whether there is a public interest in maintaining the exemption which is greater than the public interest in disclosing it.

Public Interest Test

The public interest arguments in favour of disclosure are outlined below.

The information requested relates to an investigation with public and media interest. Disclosure of the requested information could demonstrate how public funds are being spent as part of the Council's responsibilities in respect of this particular investigation and what remedial steps are being taken.

Releasing the information is more transparent and could satisfy the public that the investigation is being properly conducted and suitable actions have been put in place.

The public interest against disclosure is summarised in the paragraph below.

This is an ongoing investigation and disclosing information which has been received could prejudice the investigation. Disclosure of this information could identify any possible offences and could allow an individual(s) to assess whether they and/or their methods have or have not been identified. Armed with this knowledge, individuals may take steps to destroy evidence or avoid detection. It may also affect the independence of any individuals asked to review the case as part of hearing proceedings.

Public Interest Balancing Test.

Whilst there is public interest in this investigation and the enquiries that Essex County Council are carrying out in order to identify any possible wrongdoing or offender(s), it is essential that the investigation process and any potential proceedings are not hindered by disclosure of information via a Freedom of Information request.

It has been decided that the balance of the public interest test favours maintaining the exemption and this information should not be disclosed. Note that this exemption is applicable to part of the information that relates to investigations and proceedings conducted by public authorities.

Exemption Under Section 31 Freedom of Information Act: Law Enforcement

Where the boards provide information that were it to enter into the public domain may divulge security risks which could facilitate criminal activity, we withhold this data to

prevent crime. We have considered both the harm and the public interest aspects of the application of this exemptions as we are legally required to do and have upheld the decision to withhold the information for the reasons set out below.

Prejudice

The prejudice to law enforcement and effective conduct of public affairs would relate to:

Would otherwise prejudice or be likely to prejudice Law Enforcements S.31(1)(a).

It is necessary to ensure that the information processed by Essex County Council is safeguarded in order to provide continuity of service and retain the assurance of those we serve. Disclosure of these meeting minutes at this time may encourage criminal acts that would disrupt vital services with consequences to delivery for vulnerable service users.

Public Interest Test

The public interest in favour of disclosure would relate to:

Accountability

Release of the minutes would promote accountability and transparency and would demonstrate how Essex County Council safeguards information effectively. The purpose of the Act is to make public authorities more accountable and this factor, therefore, may be applied to a wide range of scenarios from how an individual or the Authority fulfils their role or function, to policy decisions that have been taken in relation to investigations or general policy issues.

The public interest against disclosure would relate to:

Prevention

The release of the information will place some of the authority's key systems at risk from criminal activity and could therefore unacceptably disrupt vital services. We consider that on balance the public interest is in favour of not disclosing information that would facilitate crime.

Exemptions Under Section 36: Effective Conduct of Public Affairs

The qualified officer of the Council, the Monitoring Officer, has considered whether this exemption is applicable in relation to all of the minutes requested, and where the exemption is engaged whether it is in the public interest to release the minutes. Her decisions are summarised below.

S36(2)(b)(i). In relation to the minutes from the Operations Board, the IPDG, the IICTB, the PSC and the SCIGSG the view of the Monitoring Officer is that section

36(2)(b)(i) of the Act is engaged. She reviewed the terms of reference for each of these bodies and the membership and items of business considered. The groups are essentially working groups of officers and the meetings are held in private, as one might expect. They are held for the purposes of enabling officers to receive advice, ask questions and engage in discussions about key issues affecting the Council and on operational issues, governance and on emerging strategy and policy. IPDG, Operations Board and SCIGSG groups are still meeting. IICTB has been replaced by IPDG. The Monitoring Officer considers that if minutes of the discussions that take place at those meetings were released this would inhibit the advice given to the Boards by those officers who attend to brief and advise it. Officers are likely to be reluctant to provide detailed and sometimes sensitive advice at officer meetings (which are private meetings) if they knew their advice might be subsequently made public .

S36(2)(b)(ii) is engaged in relation to all of the 9 items listed on page 2. Officers at meetings would be inhibited from the 'free and frank exchange of views for the purpose of deliberation' if these minutes were in the public domain. The minutes relate to officer meetings held in private during which time there are questions, discussions and deliberations about key issues affecting the Council and emerging strategy. Officers are likely to be inhibited from contributing to meetings in a full and open way if minutes are to go in the public domain.

S36(2)(c) is engaged in relation to all of the 9 items listed on page 2 – disclosure would otherwise prejudice the effective conduct of public affairs. Putting minutes into the public domain is likely to result in minutes being produced that are brief, less informative and with less information about the reasons why decisions are taken. It would discourage thorough record keeping / full minute taking. Those not present at meetings would not have a full understanding of decisions. Those present may forget the deliberations and need to review the minutes as a reminder. Officers need a 'safe space' to discuss proposals and concerns without public scrutiny.

Public Interest Test.

Consideration of the Public Interest Test is considered in relation to groups of documents listed below.

Operations Board Schedule of Decisions.

In relation to these documents, it is considered that the balance of the public interest test lies with disclosing these documents and they are therefore enclosed with this letter.

Policy and Standards Council.

In relation to these documents, it is considered that the balance of public interest test lies with disclosing these documents and they are therefore enclosed with this

letter, subject to redactions applicable as a result of exemptions that have been applied from other provisions in the Act.

Operations Board Minutes

Release of the minutes would promote accountability and transparency and would demonstrate how Essex intends to safeguard data and systems. There would be increased public understanding of decision making. Other organisations including other public bodies may be able to benefit from this transparency, for example using advice or ideas to benefit their own organisations.

However these arguments have to be balanced against the impact that release would have on the efficient and effective operations at Essex. Officers need a forum in which to discuss concerns and issues and give advice in confidence. They need to be fully briefed before decisions are made. They need to be able to debate freely about policy and strategy. The giving of advice and deliberating about issues will be inhibited if minutes are to be placed in the public domain. It is in the public interest for officers to engage in debate on policy and strategy and, where appropriate, to produce a full written record of deliberations and reasons and not be inhibited by publication. Without this debate would be stifled and the organisation would stagnate.

The public interest is in favour of withholding release of these documents.

IPDG Minutes and IICTB Minutes (Redacted and Unredacted Versions), SCIGSG Minutes,

As with the Operations Board / PCT, release of the minutes would promote accountability and transparency and would demonstrate how Essex intends to safeguard data and systems. There would be increased public understanding of decision making in relation to information governance. Other organisations including other public bodies may be able to benefit from this transparency, for example using advice or ideas to benefit their own organisations.

However these arguments have to be balanced against the impact that release would have on the efficient and effective operations at Essex. Officers need a forum in which to discuss concerns and issues and give advice in confidence. They need to be fully briefed before decisions are made. They need to be able to debate freely about policy and strategy. The giving of advice and deliberating about issues will be inhibited if minutes are to be placed in the public domain. It is in the public interest for officers to engage in debate on policy and strategy and, where appropriate, to produce a full written record of deliberations and reasons and not be inhibited by publication. It is also a factor that the IPDG / IICTB / SCIGSG are not the main officer decision making body in the area of information governance, they report to (or used to report to) more senior officer groups.

The public interest is in favour of withholding release of these documents.

Exemption Under Section 40: Personal Information.

Some of the data contained within the minutes is personal data and by virtue of Section 40(2) of the Freedom of Information Act, personal data about a third party is absolutely exempt from disclosure if disclosure would contravene any of the data protection principles.

In my opinion, the information you request contains personal data in that it is data which relates to a living individual who can be identified from those data.

Further, in my opinion, for the reasons set out below disclosure of the data would be in breach of the first data protection principle which provides that personal data shall be processed fairly and lawfully.

In my view, disclosure will cause unnecessary and/or unjustified distress or damage to the persons who the information is about, and the persons concerned would not have expected that the information would be disclosed to the public.

Please treat this as a refusal notice covering the following documents which are not being disclosed to you:

1. Operations Board Full Minutes.
2. IPDG Full Minutes.
3. IPDG Redacted Minutes. (drafted for consideration of FOI exemptions)
4. IICTB Full Minutes
5. IICTB Redacted Minutes.
6. PSC Full Minutes (drafted for consideration of FOI exemptions)
7. PSC Redacted Minutes (drafted for consideration of FOI exemptions)
8. The Social Care Information Governance Steering Group Minutes.

I regret that we could not satisfy your request in full. However, should you require anything further, please contact me and I will endeavour to assist you further.

If you are not satisfied with my response to your request, please let me know. If I am unable to resolve the issue immediately, I will explain our complaints procedure.

If, after following our complaints procedure, you are still not satisfied, you are entitled to ask the Information Commissioner to review our decision. You can contact him at Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF, telephone 01625 454700.

Yours sincerely,

Your Right to Know
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