



Freedom of Information Act 2000 (Section 50)

Decision Notice

Dated 10 April 2006

Public Authority: Newry and Mourne District Council.

**Address: Newry and Mourne District Council
O'Hagan House
Monaghan Row
Newry
BT35 8DJ**

Summary Decision and Action Required

The Commissioner's decision in this matter is that the Newry and Mourne District Council (the Council) has dealt with the Complainant's request in accordance with Part I of the Freedom of Information Act 2000 (the Act) and does not require any further action to be taken.

1. Freedom of Information Act 2000 (the 'Act') – Applications for a Decision and the Duty of the Commissioner

1.1 The Information Commissioner (the 'Commissioner') has received an application for a decision whether, in any specified respect, the Complainant's request for information made to the Public Authority has been dealt with in accordance with the requirements of Part I of the Freedom of Information Act 2000 (the 'Act').

1.2 Where a complainant has made an application for a decision, unless:

- a complainant has failed to exhaust a local complaints procedure, or
- the application is frivolous or vexatious, or
- the application has been subject to undue delay, or

- the application has been withdrawn or abandoned,
- the Commissioner is under a duty to make a decision.

- 1.3 The Commissioner shall either notify the complainant that he has not made a decision (and his grounds for not doing so) or shall serve a notice of his decision on both the complainant and the public authority.

2. The Complaint

- 2.1 The Complainant has advised that on the 09 February 2005 the following information was requested from Newry and Mourne District Council in accordance with section 1 of the Act.

Eight requests (A-H) relating to copies of all correspondence and documents relating to the proposal to assert or assertion of a public right of way from Violet Hill Avenue to Criagmore Road, Newry held by Newry and Mourne District Council.

The Council issued the Complainant with a refusal notice on the 04 March 2005 stating that the information she had requested was exempt under sections 30 (2) (a) (iii), section 31 (2) (c) and section 41 of the Freedom of Information Act 2000. After a further correspondence from the Complainant on the 23 March the Council wrote on the 17th May confirming they would release all of the information requested, but were redacting third party personal details (names and addresses) from the released information. The Complainant wrote to the Council on the 23rd May to request they review their decision to redact this information. On the 20th June 2005 the Council wrote back to the Complainant stating they were exempting the third parties personal details under section 40 (2) and (3) of the Act.

3. Relevant Statutory Obligations under the Act

Section 1(1) provides that –

“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.”*

4. Review of the case

4.1 Scope of the Review

The Commissioner considered whether or not the Council had complied with the requirements of Section 1 (1) and in particular whether it had properly applied the section 40 (2) and (3) to the redacted information it released to the complainant on the 17th May 2005.

4.2 The Commissioner's Investigation

The Commissioner contacted the Council with an explanation of the context of the investigation. In addition the Commissioner asked the Council to clarify a number of points regarding the section 40 exemption the Council were seeking to rely upon; the Commissioner asked the Council to provide evidence for their reliance on the exemption. Specifically the Commissioner enquired as to which particular subsection of the exemption the Council had chosen to rely upon, and their reasons for doing so. The Commissioner provided a general explanation by way of guidance on the application of each subsection of section 40. In addition the Commissioner sought to establish whether a breach of the data protection principles contained within the Data Protection Act 1998 would occur if disclosure of the information were to take place. Notably the Commissioner sought to ascertain whether a breach of the first data protection principle would occur if disclosure were to take place, and, if this were the case to find out the Council's view on why such a breach would occur.

In response the Council provided the Commissioner with answers to his requested questions as well as asserting that they were specifically applying section 40 (3) (b) to exempt this information and that disclosure of the redacted information would be a breach of first and sixth data protection principle. The Council stated they felt that disclosure would be a breach of the first principle of the Data Protection Act as there was an expectation from the individuals concerned that their personal data would be kept confidential. The Council also provided the Commissioner with copies of the user evidence forms generated by the Council in order to gather evidence from members of the public wishing to assert a right of way.

Having considered this initial response from the Council the Commissioner contacted the Council again to clarify its assertion that to disclose the redacted information would be a breach of the sixth data protection principle. The Commissioner supplied the Council with a copy of its legal guidance on the Data Protection Act which pointed to its interpretation of

the sixth principle. The Commissioner invited further comment from the Council on this point and the relevance of its applicability in this case. The Commissioner also requested a copy of the Access to Countryside (NI) Order 1983 and in particular requested the Council highlight the relevant section of the Order they sought to rely upon in order to provide the lawful basis for collecting information in this manner.

In response the Council provided to the Commissioner:

- An internal memo explaining the Assertion Process
- Internal Email
- A copy of the Access to the Countryside (Northern Ireland) Order 1983 with the relevant article marked.

The Council asserted to the Commissioner that its reason for stating that disclosure of the redacted information would result in the breach of the sixth data protection principle of the Data Protection Act 1998 refers to section 10 of the Act, in that the Council may receive section 10 notices from the members of the public whose personal information has been withheld should disclosure be ordered.

The Commissioner again referred the Council to its legal guidance on the Data Protection Act 1998 including section 10 notices, and asserted that such a notice can only apply once it has been served. The Commissioner invited comment from the Council on this point and on the fact that the Council had not received any section 10 notices to date in this case. The Commissioner also asked the Council to clarify its assertion in its correspondence of the 24th October 2005 that “*Council officers feel that intimidation might take place if names and addresses were disclosed.*” The Commissioner asked the Council to provide evidence of this claim and asked it whether it may need to consider additional exemptions if this were the case.

The Council replying accepted the Commissioner’s interpretation on the sixth data protection contained within its legal guidance and no longer felt it could be applied in this case as well as stating that it had no evidence of intimidation occurring and did not feel it needed to consider any further exemptions.

5. The Commissioner’s Decision

- 5.1 The Commissioner’s decision in this matter is that the Public Authority has dealt with the Complainant’s request in accordance with the following requirements of Part I of the Act:

- 5.2 Section 1(1) – in that Newry and Mourne District Council refused the Complainant’s request based on the following exemption

Section 40 (2) (3) (b)

Section 40 (2)

“ Any information to which a request for information relates is also exempt information if –

- (a) it constitutes personal data which do not fall within subsection (1) and*
- (b) either the first or second condition below is satisfied.*

(3) The first condition is

(a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of “data” in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-

- (i) any of the data protection principles, or*
- (ii) section 10 of the Act (right to prevent processing likely to cause damage or distress), and*

(b) “in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.

The Commissioner is satisfied that the information requested is personal data of which the applicant is not the data subject. The Commissioner is also satisfied that the information requested is manual unstructured data of which disclosure would breach the first data protection principle.

The first principle of the Data Protection Act 1998 states that personal data should be processed ‘fairly’ and ‘lawfully’. The requested information consists of names and addresses of members of the public who voluntarily complete user evidence forms generated by the Council under the Access to the Countryside (NI) Order 1983 in order to assert a public right of way. The Commissioner is satisfied that in order to maintain the integrity of this process there is an understanding that information of this nature will not be disclosed without the consent of the provider of the information. The Commissioner is satisfied that there is sufficient expectation from those members of the public who provide their details under this process that they remain confidential and to disclose them would be ‘unfair’ under the meaning of the first principle of the Data Protection Act 1998.

6. Action Required

In view of the matters referred to above the Commissioner hereby gives notice that as Newry and Mourne District Council have already supplied the redacted information to the complainant in its correspondence of the 20th June 2005, the Commissioner requires no further action be taken.

7. Right of Appeal

Either party has the right to appeal against this Decision Notice to the Information Tribunal (the "Tribunal"). Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

7.2 Any Notice of Appeal should be served on the Tribunal within 28 days of the date on which this Decision Notice is served.

Dated the 10 day of April 2006

Signed

**Graham Smith
Deputy Commissioner**

**Information Commissioner
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**