



Information Commissioner's Office
Promoting public access to official information
and protecting your personal information

Freedom of Information Act 2000 (Section 50)

Decision Notice

Dated 26 June 2006

Public Authority: Lancashire County Council

**Address: PO Box 100
County Hall
Preston PR1 0LD**

Summary Decision

The Commissioner's decision in this matter is that Lancashire County Council has not complied with Part 1 of the Freedom of Information Act 2000 and is required to provide the Complainant with the requested information to the extent specified.

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 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- the application has been withdrawn or abandoned,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 27 July 2005 the following information (the requested information) was requested from Lancashire County Council in accordance with section 1 of the Act.

'I request details of successful prosecutions of traders for selling alcohol to underage children following investigations by Lancashire County Council's trading standards officers since new powers were granted to trading standards officers in October 2003. In particular names of the people and businesses prosecuted, full details of the offence and the punishment handed down by the courts.'

- 2.2 Apart from receiving an acknowledgement from the Council dated 4 August 2005 the complainant states that he had to write twice more (on 7 September and 11 October) before he received a substantive response. On 25 October 2005 the Council replied to the Complainant stating that a refusal notice had been sent to him on 17 August 2005. There is no evidence to support or refute the Council's statement that a Refusal Notice was issued at that time. The Refusal Notice (dated 17 August 2005) attached to the letter of 25 October 2005 informed the complainant that the information he had requested was being withheld under section 40 of the Act.
- 2.3 Section 40 exempts information if disclosure would contravene any of the data protection principles.
- 2.4 The complainant appealed against the decision on 2 November 2005. On 5 January 2006 Lancashire County Council informed the complainant that on 23 November 2005 a Council appeals panel had upheld the original decision not to release the requested information.

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

Section 40 (personal information)

4.1 The Council relied upon section 40 of the Act as its basis for withholding the information. This states that:

40. - (1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.

(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 the 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 that Act (right to prevent processing likely to cause damage or distress) ...

4.2 The relevant part of the section is s40(2) and s40(3)(a).

4.3 The Council considered all the requested information to be exempt under section 40 of the Act as it contains personal information about those prosecuted. The Commissioner has examined the withheld information. Those prosecuted include shop assistants as well as shop proprietors. It is the Commissioner's view that removal of all names and dates of birth of those prosecuted from the information would mean that its disclosure would not breach the data protection principles.

4.4 The Commissioner recognises that in the normal course of events some businesses may have changed hands since the prosecutions took place. He is mindful, therefore, of the risk of the reputations of current proprietors being damaged as the result of the disclosure of information about businesses that used to trade from the same address. Accordingly, he has advised the Council to attach a caveat to the released information pointing out that a different business may now

be trading from the address listed. He has further advised that the caveat should state that some of the staff who were prosecuted at the time may no longer be associated with the premises in question.

- 4.5 In the Commissioner's opinion, disclosure of the information in anonymised form, i.e. with personally identifiable information removed, will not breach the data protection principles. Therefore s.40 of the Act provides no basis for exempting the anonymised information from disclosure.

5. The Commissioner's Decision

- 5.1 The Commissioner's decision in this matter is that the Council has not 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 it failed to communicate to the Complainant such of the information specified in his request as did not fall within any of the absolute exemptions from the right of access nor within any of the qualified exemptions under which the consideration of the public interest in accordance with section 2 would authorise the Council to refuse access.

6. Action Required

- 6.1 The Commissioner requires that the Council shall, within 30 days of the date of this Decision Notice, provide the complainant with an anonymised version of the information he requested on 27 July 2005.

- 6.2 The Commissioner requires that:

(i) names and dates of birth of individuals prosecuted be redacted from the information prior to its provision to the applicant

(ii) a caveat is attached to the released information pointing out that a different business may now be trading from the address listed and that some of the individuals who were prosecuted at the time may no longer be associated with the premises in question.

7. Right of Appeal

- 7.1 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 26th day of June 2006

Signed

**Graham Smith
Deputy Commissioner**

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