

Freedom of Information Act 2000 (Section 50)

Decision Notice

9 January 2007

Public Authority: Rotherham Metropolitan Borough Council
Address: Eric Manns Building
45 Moorgate Street
Rotherham
S60 2RB

Summary

The complainant requested a copy of the "James Report" from the public authority. This report was the result of an investigation into recruitments made in the Community Regeneration Department there. The public authority provided the complainant with a redacted version of the report, citing the exemptions at sections 40(2) and 41 of the Freedom of Information Act ("the Act"). These exemptions were applied in respect of names of individuals, as well as job titles from which individuals could be identified. The people involved were a mixture of those who were the subject of the report and individuals who had provided information to substantiate the report. As the complainant expressly did not require the latter, the exemption at section 41 was not given further consideration. The Commissioner does not uphold the complaint in respect of section 40(2). It was decided that that information requested does constitute personal data and this exemption was correctly applied.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Act. This Notice sets out his decision.

The Request

2. The Complainant has advised that on 2 February 2005 the following information was requested from the public authority in accordance with section 1 of the Act:
3. *"I refer to the James Report which the council launched several years ago under the Whistle Blowers charter... I now request under the new Freedom of Information Act that this report be released to me for my inspection."*

4. In a letter dated 8th March 2005, the public authority responded to the request, providing a copy of the requested information with some of the contents redacted. The letter explained that the redactions related to personal information exempt under section 40(2) and information provided in confidence exempt under section 41 of the Act.
5. The complainant asked the public authority to review its decision by undated letter specifically requesting that the names be provided (not including those of the whistleblowers). The review was conducted and the public authority informed the complainant by letter dated 7th July 2005 that the decision to withhold the information was upheld. A further review was later conducted and the decision upheld again.

The Investigation

Scope of the case

6. On 27 December 2005 the complainant contacted the Commissioner to complain about the refusal to release all of the information requested.

Chronology

7. The Commissioner wrote to the public authority on 14 March 2006 to inform it that his investigation had commenced. He also wrote to the complainant on 22 March 2006 to confirm that the investigation would focus on the public authority's decision not to release all of the information requested.
8. The public authority sent a letter to the Commissioner on 24 March 2006 enclosing a letter dated 24 February 2006 (with personal details redacted) to another individual that had requested the same information. This letter explained in detail the reasons for the redactions in the information. As in the review of the decision sent to the complainant on 7 July 2005, the public authority cited the exemption at section 40(2) of the Act. The consideration of the exemption is detailed: it is felt that the information that has been withheld constitutes personal data within the meaning of section 1(1) of the Data Protection Act 1998 and to release the information could lead to individuals being identified. This would be unfair processing and therefore would contravene the data protection principles, specifically the first principle.
9. Following a telephone discussion with the Commissioner and letter of 23 June 2006, the public authority provided a copy of the information requested to assist with his investigation. The accompanying letter of 14 July 2006 further explained the prejudice that the public authority felt may be directed at the individuals concerned if the information was released. This is given further consideration below. It also informed the Commissioner that during criminal proceedings involving some Councillors of the public authority, the defendants applied for a

copy of this information and the trial Judge ruled that disclosure would not be in the public interest.

Analysis

Procedural matters

10. The refusal notice of 8 March 2005 from the public authority to the complainant cited exemptions but did not fully explain the reasons that they applied and did not provide the details of the Information Commissioner should the complainant not be satisfied with the outcome of an internal review. The requirements for a refusal notice are contained in section 17 of the Act, details of which are included in the legal annex attached to this Decision Notice.

Exemption

11. Section 40 of the Act contains an exemption for personal information. It provides, among other things, that information is exempt if it is the personal data of a person other than the applicant (as is the case in this instance) and if disclosure to any member of the public would breach one or more of the data protection principles. The text of the exemption contained at section 40 of the Act is contained within the attached legal annex.
12. In this case, the most relevant of these principles is the first principle which provides that

“Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –

 - a) at least one of the conditions in Schedule 2 is met, and
 - b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.”
13. The Commissioner is of the view that names are personal data within the meaning of the Data Protection Act (DPA).
14. Although some of the information that is redacted is the job titles, not the actual names of individuals, the Commissioner is satisfied that these could easily be used to identify members of staff either now or in the recent past. This information would therefore constitute a disclosure of personal data, as the applicant in this case would be able to deduce who a particular individual was, based upon that person's job title.
15. The Commissioner further considered that a Judge had decided that this information should not be disclosed. Given the nature of Court proceedings and that generally speaking parties are entitled to any information which may assist the case, the Judge must have felt that there was a strong argument against the release of this information. It is a fundamental principle that those accused of a crime should be able to see all the evidence that might aid their defence. If the

- judge ruled that in this instance, the public interest in not disclosing the information was strong enough that even the defence should not be allowed to see the report, this is an extremely powerful consideration in determining fairness. The Commissioner must presume that the Judge's reasons were sound and release of the unedited report would therefore be unfair. The Commissioner is also satisfied that his own investigation did not discover any information that would give cause to justify reaching a different outcome from the decision made by the Judge.
16. The Commissioner is also aware that disclosing the information would affect people who remain in the job roles in question. Whilst the information requested relates to the professional life of the individuals, disclosure of that information could have a very detrimental effect on their private lives. It is possible that release of the report into the public domain could prejudice the individuals should they come to compete for other job roles, for example.
 17. The report does not apportion blame to any individual it but it is possible that adverse inferences may be drawn about those individuals as a result of being mentioned in it. It is possible therefore, that the fact that individuals are named could result in their reputations being tarnished, even though they have been exonerated by the report. The distress and damage that could be caused to these individuals is tantamount to unfairness within the meaning of the DPA.
 18. The Commissioner has established that there does not appear to have been any expectation on the part of those individuals that the information about them contained in the report would be disclosed. Given the circumstances of the investigation carried out by the public authority and the report being produced, this is reasonable. Disclosure of the names would not serve any useful purpose in the circumstances, given that the report apportions no blame.
 19. To a considerable extent, the effect of the first data protection principle overlaps with the exemption relating to confidential information. Disclosure without consent in this case would, in the Commissioner's view, represent a clear unfairness to the public authority's employees. It may also constitute the unlawful processing of personal data since that processing may entail a breach of the duty of confidence.
 20. The Commissioner is satisfied, in summary, that – taking account of all the factors set out above - the refusal of the applicant's request in this case is consistent with the requirements of the Data Protection Act.

The Decision

21. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:

The exemption under section 40(2) was applied correctly.

However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

The Refusal Notice did not contain all the requirements of section 17.

Steps Required

22. The Commissioner requires no steps to be taken.

Right of Appeal

23. Either party has the right to appeal against this Decision Notice to the Information 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

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

Dated the 9th day of January 2007

Signed

**Richard Thomas
Information Commissioner**

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