

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 26 July 2007

Public Authority: City of Bradford Metropolitan District Council
Address: City Hall
Bradford
BD1 1HY

Summary

The complainant requested information from the City of Bradford Metropolitan District Council (the Council) relating to a consultation exercise it had carried out on the structure of parish councils. The Council supplied some of the information requested however withheld some of it on the grounds that the section 40 (personal information) exemption applied. The Commissioner has decided that the Council was correct to apply section 40 to some parts of the withheld information, but not to others. As the Council has now provided the complainant with all of the information to which the Commissioner believes he is entitled, it is not required to take any further steps in respect of this complaint.

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 Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. The complainant wrote to the Council on 13 April 2006 and requested information concerning a consultation exercise it had undertaken when reviewing the boundaries of Ilkley Parish Council. The complainant stated that he was:

"...interested in the process and results of the consultation within the now reduced Ilkley Parish, that includes most addresses in the LS29 8, 9 sectors and parts of the LS29 0 sector. I would like to obtain single copies of the following:

- I. Advertisements in newspapers, and their position and dates in those named newspapers, that gave notice of those consultations;
- II. Leaflet or leaflets distributed to households and others in the area;
- III. Lists of streets in the areas described, where leaflets were distributed and confirmation (or otherwise) that the procedure was closely similar to the consultations about Parishes for the Burley and Menston areas;
- IV. Name and address of others that have received consultation leaflets other than by letterbox delivery;
- V. Certificate/confirmation from distributors that leaflets were delivered as contracted;
- VI. Each response to those consultations from within the reduced Parish area and including name and address where given;
- VII. Correspondence/emails with the Electoral Commission about the consultation and Bradford Council's recommendation for the new Parish".

As the request for information was made shortly before local elections were due to be held, the complainant indicated he was prepared to allow the Council to exceed the twenty working day period required under the Act for a response.

3. The Council responded on 15 May 2006. It provided the information it held in response to all but two of the requests, namely requests IV and VI. In response to request IV, the Council stated that the information was exempt under section 40 of the Act, as to release it would "breach the principles of the Data Protection Act". In relation to request VI, the Council provided copies of consultation responses, however redacted the names, addresses and last two letters of the postcodes, where given. It withheld the name and address information in full on the grounds that it was exempt from disclosure under section 40 of the Act.
4. On 26 June 2006 the complainant wrote back to the Council. He asked the Council to review its decision to withhold the information requested in IV and VI.
5. The Council carried out an internal review into the original handling of the complainant's requests, and upheld its decision to apply the section 40 exemption to requests IV and VI. It communicated the outcome of the internal review to the complainant by email on 17 August 2006.

The Investigation

Scope of the case

6. On 17 August 2006 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider whether the Council had correctly applied section 40 of the Act.
7. In a telephone conversation with the Commissioner on 18 April 2007, the complainant explained that he believed the Council had allegedly distributed 25000 questionnaires however received only 27 responses to it. The

Commissioner therefore decided to query with the Council whether it had supplied all of the questionnaire responses it held which fell within the scope of the complainant's request.

8. In the same conversation the complainant explained what he had meant by the term "letterbox delivery". "Letterbox delivery" refers to consultation leaflets distributed by a leaflet distribution company, to recipients' addresses. Therefore, consultation papers received other than by letterbox delivery refers to individuals and/or organisations that contacted the Council directly and asked to be sent consultation leaflets by post.

Chronology

9. The Commissioner reviewed copies of correspondence that had passed between the Council and the complainant, and considered the nature of the information requested. For reasons which will be outlined in the 'Analysis' section of this notice, the Commissioner was satisfied that the full names and addresses of individual respondents should not be supplied. However the Commissioner did have some queries regarding the Council's handling of the request and the application of the section 40 exemption. On 4 May 2007 the Commissioner wrote to the Council. He asked it to clarify the following:
 - i. whether the section 40 exemption applied to all of the information identified as falling within the scope of request IV, or whether any anonymised information (that which cannot be attributable to individuals) could be provided in response to this request;
 - ii. whether any of the recipients of, or respondents to the consultation leaflets were organisations, as for reasons explained in paragraph 32 below, information relating to organisations is not protected by the Data Protection Act 1998 (the "DPA") and is therefore not exempt under section 40 of the Act; and
 - iii. how many consultation leaflets were distributed by and returned completed to the Council.
10. The Council responded on 30 May 2007. It explained:
 - i. that some anonymised information could be provided in response to request IV;
 - ii. that some of the recipients of and respondents to the consultation leaflets were organisations; and
 - iii. the numbers of consultation leaflets it had distributed and received returned and completed in response to this particular survey.
11. Following receipt of the Council's response of 30 May 2007, the Commissioner believed the Council held some information to which the stated exemption did not apply. In order to ensure the complainant had been provided with all of the information to which he was entitled, the Commissioner wrote to the Council on 8 June 2007 and asked it to supply the complainant with any anonymised information it held which was relevant to request IV, the organisations' consultation responses and consultation responses which did not include

postcode details and therefore could not be positively identified as falling within the boundary identified by the complainant.

12. The Council wrote to the Commissioner on 21 June 2007 and confirmed that the complainant would be supplied with further information, as requested by the Commissioner in his letter of 8 June 2007, on 22 June 2007. The complainant contacted the Commissioner by email on 28 June 2007 to confirm he had received this information.

Analysis

Procedural matters

Section 1 – General rights of access

13. The Commissioner has considered whether the Council has complied with section 1 of the Act.
14. **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.”
15. The complainant requested 7 items of information on 13 April 2006. The Council responded on 15 May 2006 and provided information in relation to requests II, III, V and VII, and explained that it did not hold recorded information in relation to request I. The Council applied the section 40 exemption to the information requested in IV and VI. The Commissioner has examined the authority's compliance with section 1(1) against the requests which form the basis of this complaint.

Request IV

16. Request IV concerns the names and addresses of individuals who received consultation leaflets other than by letterbox delivery. The Council withheld this information on the grounds that section 40 of the Act applied to it. For reasons which will be explained below, the Commissioner considers that section 40 of the Act does not apply to this information in its entirety.
17. The Council has now supplied the complainant with a list of addresses to which consultation leaflets were sent other than by letterbox delivery. It has redacted the house numbers from these addresses, along with the last two letters of the postcodes. The Commissioner considers this information should have been

supplied at the time of the initial response and that therefore the Council has breached section 1 of the Act in relation to this part of request IV.

Request VI

18. Request VI concerns the responses received to the consultation, and the names and addresses of the respondents, where given. Initially, the complainant's request was interpreted by both the Commissioner and the Council as an application to be provided with the questionnaire responses together with the names and addresses of the respondents, where given. In correspondence with the Commissioner dated 18 April 2007, the complainant indicated he would be willing to refine his request to include only the names and addresses of those persons who responded to the consultation. The Commissioner has considered whether the Council was obliged to provide information in response to both of these requests.
19. The Commissioner asked the Council to confirm the number of consultation leaflets it had distributed and the number of responses it had received in relation to this exercise. The Council explained that it had distributed approximately 11000 consultation leaflets in total, not the 25000 alleged by the complainant, and received 148 responses. Of these 148 responses, only 27 could be positively identified as falling within the area specified by the complainant. In the absence of evidence to the contrary, the Commissioner can reasonably conclude that only 148 responses were received to the Council's consultation exercise.
- 19A. The Council's consultation leaflet took the form of a sheet of A4 paper, printed on both sides, which set out its proposals regarding the review of parish councils. There was a 'tear off' reply slip at the end of the leaflet which made provision for those wishing to respond to indicate whether they supported the Council's proposals or opposed them, and provided the respondents with the opportunity to make additional comments if they wished. The respondents were given the option of providing their postcode, however they were not obliged to do so, and they were not asked to provide their full addresses.
20. The Council supplied the complainant with copies of consultation responses it had received which could be positively identified as having been submitted from within the boundary he had specified in his request for information of 15 May 2006. There were 27 such responses in total. The Council redacted the last two letters from each of the postcodes provided. One of the 27 respondents had provided their full address to the Council. The Council redacted all of the address information provided, apart from the first four letters of the postcode. As the Council had provided street names and partial postcodes in response to request IV, the Commissioner believes it could have provided the same level of detail in relation to the response which included full address information. However, for reasons which will be explained in paragraph 28 below, the Commissioner does not believe that the full address should be provided. In a telephone conversation with the Commissioner on 9 July 2007, the complainant indicated that he did not wish to be provided with the street name for this single consultation response.

- 20A. Following the Commissioner's intervention, the Council supplied copies of responses received where the address of the respondent was not provided. These responses were therefore anonymous and could not be identified as falling inside, or outside the area specified by the complainant. The Council also supplied copies of responses given by organisations. The Commissioner considers this information should have been supplied at the time of the initial response and that therefore the Council has breached section 1 of the Act in relation to this part of request VI.

Section 10 – Time for compliance

21. Section 10(1) provides that –

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

22. The complainant's request for information was received by the Council on 18 April 2006. The last day for complying with section 1(1) was therefore 17 May 2006. The Council complied with request IV on 30 May 2007 and request VI on 22 June 2007. It has therefore breached section 10(1) in respect of these requests.

Exemption

Section 40 – Personal information

23. The Commissioner has considered whether the Council has correctly applied section 40 of the Act.

24. Section 40(2) provides that –

“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.”

The first condition is satisfied where disclosure of the personal information would contravene either one or more of the data protection principles as set out in Schedule 1 of the DPA, or section 10 of the DPA (the right to prevent processing likely to cause damage or distress).

The second condition is satisfied where the personal information would be exempt from disclosure to the data subject (the person to whom the data relates) under the DPA.

25. In its letters to the complainant of 15 May 2006 and 17 August 2006, the Council stated that the names and addresses of the recipients of and respondents to the

survey were exempt from disclosure under section 40 of the Act. It stated that to release the information requested would “breach the principles of the Data Protection Act”. The Council did not specify which principle(s) of the DPA it believed would be breached, however the Commissioner has assumed that the Council considered the first data protection principle, which states:

“personal data shall be processed fairly and lawfully...”

26. Personal data is defined in section 1(1) of the DPA as:

“data which relate to a living individual who can be identified –

- (a) from those data, or
- (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual”.

Request IV – individuals

27. Names and addresses generally constitute personal data because they identify living individuals.
28. The Council stated to the complainant that it considered the data protection principles would be breached if the requested information was disclosed because:
- i. those consulted would be reasonably entitled to expect their responses to remain confidential; and
 - ii. release of the information may lead to the individuals being contacted, which may be regarded as an unwarranted intrusion into their private lives.
29. Disclosure under the Act is equivalent to disclosure to the public at large. The Commissioner believes disclosure in these circumstances would be unfair, for the reasons outlined by the Council in paragraph 28. If the requested information is released, the individuals who requested consultation leaflets and who responded to the consultation may be contacted simply because of their involvement with it.
30. The Commissioner therefore considers that the Council correctly applied section 40 of the Act in respect of the names and addresses of individuals who received consultation papers other than by letterbox delivery.

Request IV – organisations

31. The Council failed to advise the complainant that three organisations had asked to be provided with consultation leaflets, as it did not differentiate between the names and addresses of individuals and organisations when responding to the complainant’s request. Instead it stated that all of the names and addresses of

those who received consultation responses other than by letterbox delivery were exempt under section 40 of the Act.

32. Names and addresses of organisations do not constitute personal data as they do not relate to “living individuals”. Section 40 does not therefore apply to this information. The Council has now supplied this information to the complainant.

Request VI – individuals

33. Names and addresses generally constitute personal data because they identify living individuals. In this instance, the details of the responses, together with the names and addresses of the respondents, constitute personal data because they identify living individuals and those individuals’ views on the Council’s proposals.
34. The Council has argued that this information should be withheld under section 40 of the Act for the reasons set out in paragraph 28 above.
35. The Commissioner believes it would be unfair to the individuals concerned if either their names and addresses, or their names and addresses together with their responses to the consultation, were released under the Act. This is because the individuals may be contacted simply because they responded to the survey, or because of the response they provided.
36. The Commissioner therefore considers the Council has discharged its duty under the Act by providing anonymised consultation responses to the complainant.

Request VI – organisations

37. The Council withheld responses received from three organisations under section 40 of the Act. As explained in paragraph 32, names, addresses and opinions of organisations do not constitute personal data and therefore the Council has misapplied section 40 of the Act in relation to this element of the complainant’s request.
38. The Council has now provided the organisations’ consultation responses to the complainant.

The Decision

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

Request IV

The Council has complied with section 1 of the Act because it correctly withheld, in accordance with section 40 of the Act, the information requested, namely the names and addresses of those persons who were sent consultation leaflets other than by letterbox delivery.

Request VI

The Council has complied with section 1 of the Act because it correctly withheld, in accordance with section 40 of the Act, the information requested, namely the names and addresses of the individuals who responded to the consultation, and the details of their responses. In addition, it has complied with section 1 of the Act because there is no evidence to suggest the Council holds further consultation responses than the 148 stated.

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

Request IV

The Council has failed to comply with section 1 of the Act in that it incorrectly applied the section 40 exemption to the names and addresses of organisations which were sent consultation leaflets other than by letterbox delivery. Further, the Council failed to supply the information within twenty working days following the receipt of the request.

Request VI

The Council has failed to comply with section 1 of the Act in that it incorrectly applied the section 40 exemption to consultation responses submitted by organisations. Further, the Council failed to supply the information within twenty working days following the receipt of the request.

Steps Required

41. As the Council has now provided all of the information to which he believes the complainant is entitled, the Commissioner does not require further steps to be taken.

Other matters

42. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:

The complainant requested the consultation responses submitted by persons within particular postcode areas. The Council provided 27 responses which could positively be identified as falling within those boundaries, however failed to inform the complainant that some responses did not include postcodes, and therefore it could not say with certainty whether these additional responses were from within the specified area.

The Commissioner considers that, in order to provide the best service to the complainant, the Council should have explained that it could not identify which postcode areas applied to some consultation responses and thus provided the complainant with the chance to state whether he wished to receive this additional information at the earliest opportunity.

Right of Appeal

43. 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 26th day of July 2007

Signed

**Jane Durkin
Assistant Commissioner**

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

Legal Annex

General Right of Access

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.”

Section 1(2) provides that –

“Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.”

Section 1(3) provides that –

“Where a public authority –

- (a) reasonably requires further information in order to identify and locate the information requested, and
- (b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.”

Section 1(4) provides that –

“The information –

- (a) in respect of which the applicant is to be informed under subsection (1)(a), or
- (b) which is to be communicated under subsection (1)(b),

is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request.”

Section 1(5) provides that –

“A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b).”

Section 1(6) provides that –

“In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as “the duty to confirm or deny”.”

Time for Compliance

Section 10(1) provides that –

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

Section 10(2) provides that –

“Where the authority has given a fees notice to the applicant and the fee paid is in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.”

Section 10(3) provides that –

“If, and to the extent that –

- (a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or
- (b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.”

Section 10(4) provides that –

“The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with the regulations.”

Section 10(5) provides that –

“Regulations under subsection (4) may –

- (a) prescribe different days in relation to different cases, and
- (b) confer a discretion on the Commissioner.”

Section 10(6) provides that –

“In this section –

“the date of receipt” means –

- (a) the day on which the public authority receives the request for information, or
- (b) if later, the day on which it receives the information referred to in section 1(3);

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.”

Personal information

Section 40(1) provides that –

“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.”

Section 40(2) provides that –

“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.”

Section 40(3) provides that –

“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), 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.”

Section 40(4) provides that –

“The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data).”

Section 40(5) provides that –

“The duty to confirm or deny-

- (a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and
- (b) does not arise in relation to other information if or to the extent that either-
 - (i) he giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or
 - (ii) by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed).”

Section 40(6) provides that –

“In determining for the purposes of this section whether anything done before 24th October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the Data Protection Act 1998 shall be disregarded.”

Section 40(7) provides that –

In this section-

"the data protection principles" means the principles set out in Part I of Schedule 1 to the Data Protection Act 1998, as read subject to Part II of that Schedule and section 27(1) of that Act;

"data subject" has the same meaning as in section 1(1) of that Act;

"personal data" has the same meaning as in section 1(1) of that Act.

Data Protection Act 1998 – Schedule 1

Principle 1 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.”