

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 27 July 2009

**Public Authority:** Wakefield Metropolitan District Council  
**Address:** Town Hall  
Wood Street  
Wakefield  
WF1 2HQ

### Summary

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The complainant requested a management investigation report and supporting documents, undertaken in response to allegations made by a whistleblower into the care practices at one of the authority's children's homes. Wakefield Metropolitan District Council refused to supply the reports claiming reliance on section 40(2), 30(2) and in the alternative 31(1). When reviewing its decision, the Council agreed to release some sections of the reports after redaction of information it still believed was exempt. The Commissioner has decided that section 40(2) is engaged in relation to all of the withheld information.

### The Commissioner's Role

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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

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2. On 28 April 200, the complainant emailed Wakefield Metropolitan District Council (the "Council") to request the following information:
  - "A copy of the investigation report into Langthwaite Grange children's home, which was drawn up in connection with its closure;
  - Copies of all other recorded information the council holds specifically in connection with the closure of the home."

3. The complainant emailed the Council again on 25 May 2006 to ask when a response could be expected, and reminded the Council that it should reply to a freedom of information request within 20 working days.
4. The Council responded in an email dated 25 May 2006 and informed the complainant that the twentieth working day was 30 May 2006 as the Council had not received the request until 2 May 2006. The Council also told the complainant that it would be posting the information the following day as the documents could not be sent by email.
5. On 31 May 2006, the complainant again emailed the Council to enquire as to why he had received no response. The Council's reply on 1 June 2006 indicated that the information had been sent and, should it not arrive, the complainant should let it know and the information would be sent again.
6. The complainant received a letter from the Council dated 26 May 2006. In this letter, the Council contended that there was no report relating to the closure of Langthwaite Grange Children's Home. It said that the property was occupied on a short-term lease and was only ever used on a temporary basis. It was registered as a children's home from 1999 to 2005 and most recently used as a placement for one young person. The young person had been moved to alternative accommodation and the home was closed. Due to these circumstances, there was no need for a report into the closure. The Council attached emails and letters relating to the closure but told the complainant that some information had been withheld as it consisted of third party personal information, exempt under section 40(2) of the Act and its release would breach the Data Protection Act 1998.
7. The complainant emailed the Council on 5 June 2006 and expressed his belief that there must have been some confusion regarding the request. The complainant informed the Council that the report sought was written following an investigation carried out by Dr Chris Hobbs, Consultant Community Paediatrician at St James University Hospital, Leeds. The investigation concerned the care of the young person while in the Langthwaite Grange home and that redaction of personal information was only to be expected. However, the complainant reminded the Council of the Information Commissioner's advice that personal information relates to private lives rather than public ones.
8. On 7 June 2006, the Council emailed in response and told the complainant that it would make enquiries about the investigation mentioned but that it would have to be treated as a new request and that a response could be expected by 30 June 2006.
9. A letter was sent to the complainant on 29 June 2006. In this letter, the Council said that it did hold a report into the care practices at Langthwaite Children's Home. However, the Council state that the exemption in section 30(2)(a)(iii) and (b) of the Act applied, investigations and proceedings conducted by public authorities. The Council also indicated that if it were found that section 30 did not apply, it would seek to rely on section 31(1)(g) of the Act, law enforcement. The Council also referred to section 40(2) and that a large majority of the information

- in the report constituted the personal information or sensitive personal information of third parties, disclosure of which would contravene, at least, principle one of the Data Protection Act 1998.
10. On 24 July 2006, the complainant appealed the Council's decision. In his letter of appeal, the complainant challenged the public interest test arguments put forward by the Council.
  11. The Council acknowledged the complainant's appeal in an email dated 25 July 2006. On 11 September 2006, the complainant emailed the Council to ask whether the appeal decision had been sent, as it could not be found, and if so, could it be re-sent. The Council's reply was sent on 13 September 2006; it apologised for the delay and promised a response by 15 September 2006. On 2 October 2006, the complainant requested an electronic version of the appeal decision.
  12. The appeal decision was dated 15 September 2006. The Council informed the complainant that the decision had been reviewed and the exemptions claimed had been reassessed. It had been decided that large parts of the document contained personal data and sensitive personal data in relation to the young person placed at the home. This information was therefore, exempt under section 40(2) and more specifically section 40(3)(a)(i). The Council also expressed the belief that some information constituted the personal data of employees and other professionals involved in the care of the child and that this information was also exempt.
  13. The Council then addressed the issue of section 30 and, in the alternative, section 31. The Council reassessed the application of the two documents and disclosed to the complainant the information it found could now be disclosed. However, the remaining information was withheld under section 30 and, in the alternative, section 31.

## The Investigation

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### Scope of the case

- 14 The Commissioner received the complaint on 9 January 2007. The complainant contacted him to complain about the way the request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
  - The identity of the child should be protected, and information relating to the child should rightfully be withheld through redaction.
  - However, it is clear from what has been released that the thrust of the report is about the care given to the child and the failings in that care.
  - That information relating to the staff at the home should not be withheld. The officers were operating in a work environment and the Information Commissioner's guidance states that this should not be considered personal

data. Although the complainant stated that the names of the staff members were of no interest, he felt that substantial parts of the report had been withheld on this basis.

- In respect of the public interest, the complainant pointed out the importance of the issues surrounding the services provided for children in care and that failings in this service should be highlighted and openly discussed.

## Chronology

15. The Commissioner wrote to the public authority on 23 April 2007, asking the Council to send him copies of the information, indicating clearly, which parts of the information had been released to the complainant and which exemptions had been applied to the parts withheld.
16. The Council sent the information, namely the management investigation report relating to Langthwaite Children's Home and the Addendum Report to the management investigation, on 3 May 2007.
17. The Commissioner wrote to the Council on 20 June 2007 asking specific questions regarding the Council's application of section 30(2) and 31(1). The Commissioner also asked the Council to provide further arguments considered both for and against maintaining the exemptions under the public interest test.
18. The Council replied on 15 August 2007. The Council informed the Commissioner that it sought to rely mainly upon the personal information exemption as set out in section 40(2). In respect of the application of section 30(2)(a)(iii) and (b) and 31(2)(a) of the Act the Council provided further arguments to support its reliance on these exemptions. Furthermore, the Council informed the Commissioner that it also believed sections 31(2)(c) and (d) to be relevant and provided explanations as to why.
19. The Commissioner telephoned the Council on 12 September 2007 and asked why he had not been sent copies of the appendices as he had asked for all the relevant information to be sent to him. The Council apologised and promised to send copies straight away. The Commissioner received copies of the appendices on 15 September 2007.
20. The Council wrote again on 6 November 2007. The Council informed the Commissioner that the Council and the whistleblowers had agreed a settlement and a compromise agreement had been entered into. The agreement prevents the Council from disclosing any relevant information apart from when required by law or for the purpose of obtaining legal advice. Therefore, the Council requested that the Commissioner make a formal decision in this matter. The Council stressed its concern that the individuals subject to the investigation and the subsequent report and those that know them would be able to identify those involved and that this would cause them harm.

## Findings of Fact

21. The information requested consists of a Management Investigation into the Care Practices at Langthwaite Children's Home, the Addendum to the report and the reports Appendices.
22. The Council have disclosed to the complainant the following information from the Management Investigation report:
  - Title Page
  - Preamble
  - Acknowledgements
  - Confidentiality and Structure
  - Methodology
  - Process of Investigation
  - Executive Summary
  - Summary
  - Recommendations
  - Conclusions

The Council also disclosed the following information from the Addendum to the Management Investigation report:

- Title Page
  - Preamble
  - Conclusion (with personal data redacted)
  - Recommendations
23. The following information has been withheld under section 40(2), 30(2) and 31(1).

### Management Investigation Report

- Principle Allegations
- Background
- Section 3 – Looked after period and Implemented Care Regime
- Section 4 – Allegations and Evidence
- Section 5 – Other Agencies
- Section 5 – Checks and Safeguards

### Addendum to Management Investigation

- Background to main investigation
- Background to this Addendum report
- Allegations
- Further Management Interviews
- Evaluation of Evidence
- Personal data from the conclusion
- Recommendations

### Appendices 1-61

## Analysis

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### Exemptions: Section 40 'Personal Data'

24. Section 40(2) provides that information is exempt if the information is the personal data of someone other than the applicant, 'third party data', and disclosure of the information would breach any of the data protection principles. The term 'personal data' includes information about a living individual from which that individual can be identified.
25. In order for the Commissioner to reach a decision as to whether section 40(2) has been applied correctly the Commissioner must first consider if the information is personal data and then decide if disclosure would breach any of the data protection principles. The Commissioner has considered the definition of personal data as defined in the Data Protection Act 1998:

*'...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 intention of the data controller or any other person in respect of the individual.'*

26. The Commissioner considers that all of the withheld information is the personal data of the child who was resident at the care home. The remaining withheld information contains details of the child's background; the allegations against the staff responsible for the child's care; the investigation of those allegations including meeting notes and transcripts; and details of the care provided to the child. All of this information, including the allegations against the individual staff members relates back to the care provided to the child.
27. The Commissioner does not consider that it is possible to separate out the personal data of the child from any of the information as all of the documents in some way, relate back to the child's care within the home and the failings in its provision. He further does not consider that it is possible to anonymise the information. At the time of the investigation and incidents there was only one child residing at the home and therefore the Commissioner does not consider that it would be possible to redact the information so that the child could not be identified. As the whole investigation itself focuses on the care of this one child the withheld information in its entirety is the child's personal data.
28. The Council have argued that disclosure of withheld information would breach the first data protection principle. The first data protection principle has two components:
1. Personal data shall be processed fairly and lawfully and

2. Personal data shall not be processed unless at least one of the conditions in DPA schedule 2 is met.
29. In considering whether disclosure of the information would be unfair and therefore contravene the requirements of the first data protection principle, the Commissioner has taken into consideration the following factors:
- The reasonable expectations of the child as to what would happen to their personal data;
  - Whether disclosure would cause any unnecessary or unjustified damage or distress; and
  - Whether the individual consents to the disclosure of the requested information.
30. The Commissioner does not consider that disclosure of the withheld information would be fair and lawful. As mentioned above, all of the information relates to the provision of the child's care and supervision at the care home and details the child's background. The Commissioner does not believe that the child in question would have had any expectation that the personal data concerning their care would be disclosed. He further considers that disclosure would cause the child considerable distress because of the very personal nature of the information and its level of detail.
31. The Commissioner therefore finds that section 40(2) is engaged in relation to all of the withheld information.

## The Decision

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32. 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 Council also correctly applied the exemption set out in section 40(2) in relation all of the withheld information

## Steps Required

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33. The Commissioner requires no steps to be taken.

## Other Matters

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34. The Commissioner regrets the delay that has occurred in issuing his final decision in this case. This was due to the volume of casework at the Commissioner's office and relevant changes in personnel while the matter was under consideration.

## Right of Appeal

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35. 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: .  
Website:

If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

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 27<sup>th</sup> day of July 2009**

**Signed .....**

**Graham Smith  
Deputy Commissioner**

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



## Legal Annex

### **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) the 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.