

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 3 August 2009

**Public Authority:** Ealing Council  
**Address:** Perceval House 3:SE  
14-16 Uxbridge Road  
London  
W5 2HL

### Summary

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The complainant requested statistics from the Council on the number of children taken into care, adopted, placed on a special guardianship order and placed on a residence order broken down by age and month. The Council refused to disclose the information under section 40(2) of the Act 'personal data'. The Commissioner has investigated and found that the requested information is not personal data, and that therefore section 40(2) is not engaged. Therefore he requires that the withheld information be released.

### 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. The complainant made the following request to Ealing Council (the Council) on 1 July 2008:

"1. Can I please have a list of all Part 8 Serious Case Reviews as a result of the death of a child commenced by your committee or authority identifying the age of the child and the month and year of the child's death. I am not expecting the name of the child and initials will be sufficient. What I am looking for across England is trends as a consequence of the Common Assessment Framework and other post-Laming changes. I would

be happy to send a copy of my analysis to any Children's Services Authority if requested. I intend collating all the figures for England.

2. Can I please have a figure for each month since 2005 of the number of children "taken into care" meaning on a care order (EPO, ICO or PPO) by the normal age breakdown i.e. 0-0, 1-4, 5-9, 10+. I am quite happy if you stop at March 2008 although would quite like any later figures.

3. Can I please have a figure for each month since 2005 of the number of children adopted by the normal age breakdown i.e. 0-0, 1-4, 5-9, 10+. I am quite happy if you stop at March 2008 but would quite like any later figures.

4. Can I please have a figure for each month since 2005 of the number of children placed on special guardianship by the normal age breakdown i.e. 0-0, 1-4, 5-9, 10+. I am quite happy if you stop at March 2008 but would quite like any later figures.

5. Can I please have a figure for each month since 2005 of the number of children placed on a residency order by the normal age breakdown i.e. 0-0, 1-4, 5-9, 10+. I am quite happy for you to stop at March 2008 but would quite like any later figures."

3. The Council responded on 26 July 2008 providing some information but refusing to disclose the specific statistics requested under section 40 of the Act 'personal data'. In relation to the first part of the request the Council stated it understood that the Department for Children, Schools and Families was responding and so did not respond on this point.
4. On 30 July 2008 the complainant replied and requested an internal review of the decision not to disclose to him the information requested in parts 2-5 of this request.
5. The Council completed its internal review and communicated the outcome to the complainant on 8 August 2008. The internal review upheld the application of section 40(2) to withhold the information requested in parts 2 – 5 of the request.

## The Investigation

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### Scope of the case

6. On 10 November 2008 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 the following points:
  - The data requested is not personal data as the only information requested is the month and age band of the child.

7. The complaint is only in relation to the information requested in parts 2-5 of the request.

### **Chronology**

8. The Commissioner began his investigation by writing to the complainant on 24 March 2009. The Commissioner asked the Council to provide him with a copy of the withheld information and for further arguments to support their reliance on section 40(2).
9. The Council responded on 23 April 2009 providing the Commissioner with a detailed response to his questions and with a copy of the withheld information.
10. The Commissioner wrote again on 24 April 2009 asking the Council to provide further explanation as to how disclosure of the requested statistics could lead to the identification of a child.
11. Having received no response the Commissioner wrote to the Council on 8 June 2009 asking that a response be sent within 10 working days. The Commissioner informed the Council that if no further response was sent he would proceed on the basis of the arguments presented in the letter of 24 April 2009.

### **Findings of fact**

12. The information being withheld is therefore:
  - By month since 2005 to March 2008 the number of children taken into care by the requested age breakdowns
  - By month since 2005 to March 2008 the number of children adopted by the requested age breakdowns
  - By month since 2005 to March 2008 the number of children placed on a special guardianship order by the requested age breakdowns
  - By month since 2005 to March 2008 the number of children placed on a residence order by the requested age breakdowns

### **Analysis**

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#### **Exemptions: Section 40(2) 'Personal Data'**

13. Section 40(2) provides an exemption for information which is the personal data of an individual other than the applicant, and where one of the conditions listed in section 40(3) or section 40(4) is satisfied.
14. One of the conditions, listed in section 40(3) (a) (i), is where the disclosure of the information to any member of the public would contravene any of the principles of the Data Protection Act 1998 (the DPA).

15. The Council believe that the information held is personal data, and that the release of the information would be in breach of the first principle of the DPA. Therefore it believes that section 40(2) applies.
16. The first principle of the DPA requires that the processing of the personal data is fair and lawful and,
  - At least one of the conditions of schedule 2 is met, and
  - In the case of sensitive personal data, at least one of the conditions in schedule 3 is met.
17. In order to reach a view on the Council's use of this exemption the Commissioner initially considered whether disclosure of the requested information would involve the disclosure of personal data.

### **Is the requested information personal data?**

18. Section 1 of the DPA defines personal data as data which relates to living individuals who can be identified:
  - From that data
  - Or from that data and other information which is in the possession of, or is likely to come into the possession of, the data controller.
19. The Council argue that the data being withheld is personal data not because its release could lead to the identification of the individual concerned, but because it relates to individuals who are identifiable by the Council from the data and other information in its possession. The Council also argue that it is possible, given that the data requested is broken down by both age range and by month of the year, that an interested party might be able to confirm, on reading the statistics who the child was and what had happened to them.
20. The Commissioner considers that even where the data controller holds information that can identify the individuals; this does not prevent them from anonymising the information to the extent that it would not be possible to identify the individuals from that information alone and thus the information potentially would no longer be personal data. The test as to whether or not the information is in fact personal data is whether a member of the public could identify individuals by cross referencing the 'anonymised' data with information or knowledge already available to the public. This approach is supported by paragraphs 24 and 25 of Lord Hope's judgement in the House of Lords case of the Common Services Agency v Scottish Information Commissioner [2008] UKHL, where it said:

“.. Rendering data anonymous in such a way that the individual to whom the information from which they are derived refers is no longer identifiable would enable the information to be released without having to apply the principles of the [data] protection ...”
21. This approach is further supported in case reference FS50122432. In this case the Commissioner found:

“the statistical information is so far removed from the information on the Abortion Notification forms that it no longer retains the attributes of personal data. In reaching this view the Commissioner has noted that the DoH accepts that an individual cannot be identified by the requested information alone.”

22. The Council in this case have asserted that someone who had local knowledge of the circumstances of a particular family might be able to identify the individuals from the statistics. The Commissioner is not persuaded by the Council's arguments. The statistical information that has been requested is not personal data to the extent that none of the individuals concerned can be identified by someone who possesses that information alone. The Council have provided nothing to justify this assertion nor have they demonstrated how a member of the public could, from the statistics alone, identify any of the individuals concerned.
23. The Commissioner has considered the Office of National Statistics guidance (ONS) and notes that the ONS guidance states that simply because a cell contains small numbers it is not automatically suppressed. The ONS guidance makes it clear that a public authority should consider each case on its merits before applying the relevant guidance.
24. The Commissioner is of the view that for an individual to use the withheld information to identify a child a considerable amount of additional knowledge about that child would be needed such as gender or ward. There is no reason to suppose that such information is currently available to members of the public. In the Commissioner's view the Council have not demonstrated that there is a reasonable likelihood of a child being identified either from the information requested in this case alone or from the information combined with other information already available to members of the public.
25. Having taken all the points into account the Commissioner has concluded that the requested information is not personal data and as such section 40(2) of the Act is not engaged.

## The Decision

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26. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act. The Commissioner believes that the Council acted in breach of section 1 of the Act in that it wrongly relied upon section 40(2) to withhold the information in question. In failing to disclose the requested information within 20 working days the Council also breached the requirements of section 1(1)(b) and 10(1) of the Act.

## Steps Required

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27. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
  - Disclose to the complainant the information requested in parts 2-5 of this request.
28. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

## Failure to comply

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29. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Right of Appeal

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30. 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@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).  
Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

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 3<sup>rd</sup> day of August 2009**

**Signed .....**

**David 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.