

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 18 May 2009

Public Authority: Salford City Council
Address: Minerva House
Pendlebury Road
Swinton
Salford
M27 4EQ

Summary

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

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 made the following request to Salford City 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 14 July 2008 providing some information but refusing to disclose the specific statistics requested under section 40 of the Act 'personal data'.
4. On 26 August 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 16 September 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

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 16 February 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 19 March 2009 providing the Commissioner with a detailed response to his questions and with a copy of the withheld information.

Findings of fact

10. The Council have provided to the complainant the following information:
 - A table showing the number of admissions into care by year, 2005/6, 2006/7, 2007/8 and 2008/9 to date and by age group under 1 year, 1-4 years, 5-9 years and 10 years plus. For 2008/9 the statistics for age group under 1 year through to 5-9 years were combined.
 - The number of adoptions for 2006/7, 2007/8
 - The number of special guardianships since 2005
 - The number of residence orders since 2005.
11. The information outstanding 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

Exemption: Section 40(2) 'Personal Data'

12. 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.
13. 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).

14. 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.
15. 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.
16. 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?

17. 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.
18. The Council argue that the statistical data requested involves relatively low numbers when broken down into the specific categories and that there is a significant chance that this data, together with other data held by the Council or other organisations could be reconstituted to identify particular children.
19. The Council argue that the statistical data held is taken directly from detailed biographical, personal and sensitive personal data obtained by the Council. Release of the requested data, it argues, could provide significant biographical detail which could, in conjunction with other data available, lead to the identification of a child.
20. The Council explained that in relation to question 2, disclosure would reveal enough biographical details, which could be compiled to form a mosaic of requests which would assist an informed or motivated person, to identify a child. The Council explained that when a child is taken into care, the local authority assumes parental responsibility. The child might be placed with foster carers, relatives, in a residential home or school, either within or outside the Council's jurisdiction. As the Council is now the child's statutory parent, it must inform and work together with any number of internal services and outside agencies. For example, where the child requires access to internal services such as a social worker, the information will be shared. As the local authority now has parental responsibility, the child's school, GP, health visitor, Youth Offending Team and any other relevant agency will need to be informed of the fact. In addition, if the child is placed outside the Council's jurisdiction, the receiving authority will record and share the information accordingly.

21. The Council further stated that the Courts will also hold information in respect of a child subject to a care order. Generally a parent would not know the address of a child subject to a care order. Accordingly, they argue, a determined requestor might be encouraged to seek out information which could assist in locating a child, particularly as the cells requested, are small in numbers. Disclosure of the requested statistics could lead a requestor to start looking and attempting to reveal what else is available (the motivated intruder).
22. Similarly the Council argue that the information requested in 4 and 5 would disclose enough biographical detail, which could be compiled to form a mosaic of requests which would assist an informed or motivated person to identify a child.
23. To provide context the Council explained that a Special Guardianship or Residence Order is usually awarded to a member of the child's family. An assessment is made by the local authority and often a support package is put in place. A special Guardianship provides for enhanced parental responsibility and in the case of a Residence Order, the parental responsibility is usually shared with the parents. The parents will usually know the new address of the child. The Council must inform and work together with any number of internal services and outside agencies such as the child's school, GP, health visitor and Youth Offending team.
24. As with the information requested in part 2 the Council felt that a determined requestor might be encouraged to seek out information which would assist in locating a child as again the cells requested are small in number.
25. In relation to questions 2, 4 and 5 the Council demonstrated how it would be likely that requests such as these could form part of a mosaic of requests, which could lead to the identification of an individual.
 - In the first instance a requestor submits a request for statistical data
 - The data disclosed is a low number i.e. 11 or below
 - The requestor is now able to focus their search in terms of where else the data is held (i.e. courts)
 - A second request could then be sent to a different part of the Council, asking for figures (for the same age breakdown in the year 2008), in respect of gender, and asking which Council wards the placements orders were in and whether any were placed outside the area. This information might then lead the requestor to particular children's homes or school in a particular ward, where the requestor could then ask more pointed questions which would lead to the identity of a child.
 - Requests could be submitted simultaneously to external agencies to establish where children of a particular age range might have been registered and this data could be matched with the other data already obtained.
26. The same arguments also apply to the information requested in part 3 however; when a child is adopted no information about the new placement is supplied to the birth parents or the individuals with previous responsibility. They are not informed of location, the new address nor given any information about the

- adoptive process. The whole process is strictly confidential. Often a child is adopted following care proceedings and against the wishes of the birth parents.
27. The Council stated that it is likely that a birth parent or other relative would wish to locate their adopted child. There have been instances of parents attempting to locate their children via social network sites such as Facebook, posting photographs to the site and enquiring as to whether people know the whereabouts of particular children.
 28. Birth parents and family members will already hold a significant amount of personal data about their children. They will know the gender, date of birth and dates the child was placed.
 29. 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 Commissioner notes that the main thrust of the Council's argument is that a motivated requestor could use the information to try and seek out other information in order to identify the children concerned.
 30. The Commissioner accepts that it could prove to be problematic if several requests made under the Act, which in themselves are focused on non-personal data, are then compiled to form a 'mosaic' of requests, which can lead to personal data being deduced from a number of disclosures of information. He acknowledges that it is possible that an informed individual, with a particular interest may be able to discover personal data about particular individuals by combining apparently anonymous data with other data at their disposal.
 31. Bearing this in mind and given the sensitivity of the withheld information the Commissioner has carefully considered the Council's submissions as detailed above (paragraphs 19-27). Although he acknowledges that it is a viable scenario that a motivated requestor could try and find out further information, he does not believe that this means that the requested information is, in itself personal data. Whilst he is sympathetic to the concerns of the Council regarding 'mosaic' requests, the Council has not provided him with examples of other information which is already in the public domain, which would feed into a mosaic of information and would lead to the identification of individual children.
 32. 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.
 33. 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.

34. The Commissioner has also taken into account the recent judgement of the House of Lords' case of the Common Services Agency v Scottish Information Commissioner (2008) UKHL 47, (14 July 2008), which has some parallels to this case, but is satisfied that – in this case - the representations made by the Council do not indicate a significant risk of direct or indirect identification.
35. 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

36. 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

37. 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.
38. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

39. 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

40. 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.
Website: 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 18th day of May 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.