

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 3 August 2009

Public Authority: The Governing Body of Holy Trinity Church of England
Primary School
Address: Effra Road
Wimbledon
London
SW19 8PW

Summary

The complainant requested the residential postcodes of all the Holy Trinity Church of England Primary School's (the School) staff and pupils. The request was refused on the basis that the information constituted personal data. Section 40 was cited by the School as the reason for the refusal. The Commissioner has investigated and found that the information withheld is personal data and that disclosure would breach the first data protection principle and is therefore exempt under section 40(2) of the Act. However, the Commissioner has also decided that the School did not fulfil the requirements of section 17(1)(b) in that it did not fully cite the exemption it was seeking to rely upon.

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. On 11 February 2009 the complainant made the following request:

"In order to build up a picture of the true catchment area of the school could I please make a formal request to receive a copy of the postcodes of all the

children who attend, and the staff that work at, the school. I emphasise it is only the postcode details that are requested."

This email was acknowledged on the same day.

3. The School replied on 24 February 2009 stating that personally identifiable information could not be provided. The School was not prepared to provide the postcodes for any member of staff and only the first part of the postcode for the pupils. An enquiry was made as to whether the complainant required the addresses the pupils lived at now or the address they had lived at when the offer was made of a place at the School.
4. On 24 February 2009 the complainant wrote accepting that the postcode information could lead to data protection issues. However, he asked for the postcode information for both pupils and staff. The complainant requested that the nursery be included as a separate group and he also requested the pupils' current addresses and their addresses at the time of admission. The School replied on the same day stating that staff information could not be given and that admission addresses were not all held. The School stated that the information was to be supplied in the form of the first part of the postcode plus the first digit following. The information provided would relate to current nursery pupils, current school pupils, and the September 2009 admissions.
5. The complainant replied on 25 February 2009 emphasising that he was trying to establish the rough area that the staff travel from to get to work and not to identify where they live. He felt that the first part of the postcode plus 1 digit should be extended to the information he had requested regarding the staff. The complainant still required current and admission addresses and he asked for the grounds of refusal under the Freedom of Information Act 2000.
6. On 26 February 2009 the complainant requested the postcode information for current nursery places; 2009 school addresses at the time of admission as of the decision date. On the same day the public authority quoted section 40 and the Data Protection Act 1998 as the reason why the information could not be provided in its entirety. The School would only offer staff information at district postcode level and asked the complainant whether he wanted this level of information. Two lists were attached - the nursery and main school at postcode sector levels but there were exceptions when the numbers per sector were less than 5.
7. The complainant emailed back later the same day asking that the refusal to provide the staff postcode information in the requested detail should be included in an internal review.
8. On 31 March 2009 the complainant wrote to the School:

"You may have fulfilled your interpretation of my request for information, but not to the detail that was originally agreed, which is why I have sought clarification from the Information Commissioner. "

The Investigation

Scope of the case

9. On 2 March 2009 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to investigate the partial withholding of the postcode for each pupil and the withholding of the postcodes for the staff (though reduced information had been offered). The complainant also asked the Commissioner to look at the failure to provide the postcode sector for each pupil when the numbers per sector were below 5.
10. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.

Chronology

11. On 10 March 2009 the School confirmed to the Commissioner that additional information - the postcode information regarding pupils offered places for September 2009 - had been provided to the complainant. Subsequently, on 31 March 2009, during an exchange of emails with the School the complainant said that he wanted to await a decision by the Commissioner:
12. On 3 June 2009 the Commissioner wrote to the complainant and gave his opinion that the School had attempted to resolve the situation and that the likelihood was that the information for which the School had cited an exemption under section 40 of the Freedom of Information Act 2000 would be upheld. Two Tribunal cases were provided to support this view: *Dundas v ICO and City of Bradford Council (EA/2007/0084)* and *Benford v ICO and The Department for Environment, Food and Rural Affairs (EA/2007/0009)*(See paragraph 21).
13. On 10 June 2009 the complainant wrote to the Commissioner confirming that he did not wish to withdraw the complaint.
14. The Commissioner responded on 10 June 2009 by providing his view that we would not ask the public authority to disclose the additional postcode information.
15. The complainant responded on 11 June 2009 with his opinion that the postcode sector data should be released.

Findings of Fact

16. The School offered to disclose to the complainant the first half of the postcodes for staff and additionally, the first half of the postcodes and the first digit of the second part of the postcode for pupils, except where the numbers per sector were

below 5. The first half of the postcode is known as the 'out bound' postcode whilst the second half is known as the 'in bound' postcode.

17. A postcode is a group of numbers and letters that give precise information about an address. Postcodes are comprised of several parts, each of which provides specific information. For example: SO31 4NG breaks down as follows:

Out Bound Code: SO31

SO = the postcode area. One or two letters which identifies the main office the mail initially goes to.

31 = the postcode District. One or two characters, numeric except, occasionally in central London. This helps to sort the item at the main office.

In Bound Code: 4NG

4 = the Sector. A number defining a neighbourhood within a district.

NG = the Unit code. Two letters that identify a group of addresses, and in some cases only one address.

Analysis

Exemptions

Section 40(2) 'Personal Data'

18. Section 40(2) provides an exemption for information which is the personal data of any third party, where disclosure would contravene any of the data protection principles contained in the DPA.
19. In order to rely on the exemption provided by section 40, the information being requested must therefore constitute personal data as defined by the DPA. The DPA defines personal information 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 intention of the data controller or any other person in respect of the individual.'

20. The analysis and conclusions of this case are in line with Decision Notice *FS50169424* which involved a request for the release of the postcodes of the employees of the Information Commissioner's Office.
21. It is also in line with Decision Notice *FS50110885* which involved a request for information concerning successful applicants to the public authority, broken down

by school or college, gender and course. The public authority provided the majority of the information requested, but withheld information showing less than 5 successful applicants to the same course of the same gender and from the same school or college under section 40(2). It was not possible to identify any individual from this information in isolation. However, the Commissioner considered that information may constitute personal data where it is possible to identify individuals if there is previous knowledge, or access to knowledge that, combined with the information in consideration, would enable identification of individuals.

22. The Commissioner considers that the full postcode is personal information as it is information from which an individual can be identified either alone or, more likely, in combination with other information. The Commissioner understands from the guidance produced by the post office that the inbound postcode, which has been withheld, produces on average 15 addresses. In reaching his decision the Commissioner has considered how this information, along with information already in the public domain, could locate the individual addresses of staff working in the School. It is possible that staff members' names could be relatively easily obtained and the Commissioner is satisfied that this, along with the full postcode could, with little effort, lead to the identification of individual staff member's addresses. There is the additional possibility that some postcodes might relate to single addresses.
23. This position was upheld in the Information Tribunal decision *Roy Benford vs. the Information Commissioner and the Department for Environment, Food and Rural Affairs (EA2007/009)* which found that
- “...part of the address can be given without that being sufficient to identify any living individuals. So for example, in an address made up of [farm name]. [road, [place], [county], [out bound postcode (i.e. the first half of the postcode)], and [inbound postcode (i.e. the second half of the postcode)], the farm name, the road and the inbound postcode may constitute 'personal data' but the county and out bound postcode would clearly not.”*
24. The Commissioner is satisfied that disclosure of the full postcode of either pupils or staff would breach the first data protection principle.
25. 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
26. In considering whether disclosure of the full postcode would be unfair and therefore contravene the requirements of the first data protection principle, the Commissioner has taken the following factors into account:
- The individual staff members' and parents' reasonable expectations of what would happen to their personal data;

- Whether the individuals have refused to consent to the disclosure of the requested information;
 - Whether disclosure would cause any unnecessary or unjustified damage or distress
27. Staff provide their postcodes as part of their contract of employment for the purposes of payroll and other human resource processes. The Commissioner is satisfied that, in providing their postcode to the School, staff and parents would have had a reasonable expectation that their postcode would not be disclosed to members of the public. However, simply because an individual has an expectation that information held about them will not be disclosed, does not necessarily mean that this expectation is a reasonable one. The Commissioner's guidance on section 40 suggests that when considering what information third parties should expect to have disclosed about them, a distinction should be drawn as to whether the information relates to the third party's public or private lives. Although the guidance acknowledges that there are no hard and fast rules it states that:
- 'Information which is about the home or family life of an individual, his or her personal finances, or consists of personal references, is likely to deserve protection. By contrast, information which is about someone acting in an official or work capacity should normally be provided on request unless there is some risk to the individual concerned.'*
28. The Commissioner recognises that public sector employees should expect some information about their roles and the decisions they take to be disclosed under the Act. However, in this case, the information requested relates to the home life of the School's employees as it is their home postcode and therefore does not relate to their working life. On this basis the Commissioner considers that whilst staff at the School may have an expectation that some details about them in their work capacity may be disclosed they would not expect that information which relates to their home life be made public.
29. The Commissioner has established that the individuals involved have not consented to the disclosure of their full postcodes.
30. The Commissioner has also considered if disclosure of the information would cause the third parties any unwarranted or unjustified damage or distress. The Commissioner has already established that disclosure of the postcode beyond the Out Bound Code, along with information already in the public domain, could enable the individual addresses of staff and pupils to be identified.
31. Disclosure under the Act represents disclosure to the public at large. Revealing to the public the addresses of staff working at the School or pupils attending the School could lead them to being targeted by individuals such as parents with a grievance or specific marketing campaigns which could well cause them some distress.

32. The Commissioner does not consider that there is any overriding interest in the public disclosure of full postcodes that despite the above considerations would render disclosure fair. The Commissioner is therefore satisfied that disclosure of the full postcodes of the staff and pupils attending the School would breach the first data protection principle and is therefore exempt under section 40(2) of the Act.

Procedural Requirements

Section 17

33. The Commissioner considered whether the School has complied with its obligations under section 17(1) of the Act. The full text of section 17 can be found in the Legal Annex at the end of this Notice.
34. Section 17(1) requires a public authority, which is relying upon an exemption in order to withhold requested information, to issue a refusal notice which
- (a) states that fact,
 - (b) specifies the exemption in question, and
 - (c) states (if that would not otherwise be apparent) why the exemption applies.
35. Although the School informed the complainant on 26 February 2009 that it believed that the information was exempt under section 40 and also stated that it believed that disclosure would be a breach of the data protection principles, it did not go on to cite which of the sub-sections it was seeking to rely upon.

The Decision

36. The Commissioner's decision is that the public authority was correct in its application of section 40(2) of the Act.
37. However the Commissioner also considers that the School failed to meet the requirements of section 17(1)(b) of the Act, in that it did not fully cite the exemption it was relying upon.

Steps Required

38. The Commissioner requires no steps to be taken.

Right of Appeal

39. 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 3rd day of August 2009

Signed

**David Smith
Deputy Commissioner**

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

Legal Annex

Section 17

- (1)** A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -
- (a) states that fact,
 - (b) specifies the exemption in question, and
 - (c) states (if that would not otherwise be apparent) why the exemption applies.
- (2)** Where—
- (a) in relation to any request for information, a public authority is, as respects any information, relying on a claim—
 - (i) that any provision of part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or
 - (ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and
 - (b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2, the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached.
- (3)** A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming -
- (a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or

- (b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
- (4) A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.
- (5) A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.
- (6) Subsection (5) does not apply where –
 - (a) the public authority is relying on a claim that section 14 applies,
 - (b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and
 - (c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.
- (7) A notice under section (1), (3) or (5) must –
 - (a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and
 - (b) contain particulars of the right conferred by section 50.

Section 40

Personal information

- (1) 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.
- (2) 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.
- (3) 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 [1998 c. 29.] 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 [1998 c. 29.] Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.

(4) The second condition is that by virtue of any provision of Part IV of the [1998 c. 29.] 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).

(5) 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 [1998 c. 29.] 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 [1998 c. 29.] 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).

(6) 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 [1998 c. 29.] Data Protection Act 1998 shall be disregarded.

(7) In this section—

- “the data protection principles” means the principles set out in Part I of Schedule 1 to the [1998 c. 29.] 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.