

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 27 July 2010

Public Authority: Cambridgeshire County Council
Address: Shire Hall
Castle Hill
Cambridgeshire
CB3 0AP

Summary

The complainant requested the name of each recipient and individual amounts of compensation paid from the £1.8 million settlement reached in the Ellindon School v Various case. The Council responded to this request by refusing to disclose the requested information as it considered that it was exempt from disclosure under section 40(2) of the Act. As the complainant remained dissatisfied, he approached the Commissioner to request that the matter be given formal consideration. During the Commissioner's investigation the Council decided to release the individual amounts of compensation in isolation to the complainant. In respect of the name of each recipient, the Commissioner concluded that the Council was correct to withhold this information under section 40(2) of the Act.

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 contacted the Council on 18 September 2008 to request a list of the recipients of compensation from the £1.8 million

settlement paid in the Ellindon School v Various case and a breakdown of the amounts paid to each recipient.

3. The Council responded on 30 September 2008 refusing to disclose the requested information citing section 40 of the Act.
4. The complainant requested an internal review on 3 November 2008. He informed the Council that he would be prepared to accept a list of the names of recipients without any further information attached.
5. The Council's internal review was not completed until 1 July 2009. According to this response this was due to the fact that the complainant's initial request for internal review dated 3 November 2008 was never received by the Council. The request for internal review was not brought to its attention until the complainant chased the matter up in May 2009. The Council's internal review dated 1 July 2009 was not then received by the complainant until 8 October 2009, as it was alleged that the original letter of 1 July 2009 got lost in the post. The internal review informed the complainant that the Council remained of the opinion that the requested information was exempt from disclosure under section 40 of the Act.

The Investigation

Scope of the case

6. On 15 November 2009 the complainant contacted the Commissioner to complain about the way his request for information had been handled. In subsequent correspondence, the complainant confirmed that he specifically required from the list of recipients the name of each claimant and the amount of compensation they received. He therefore asked the Commissioner to consider whether the Council was correct to withhold this information under section 40(2) of the Act.
7. During the Commissioner's investigation the Council decided to disclose to the complainant the individual amounts of compensation paid. The remainder of this Notice will therefore focus on the first element of the request which is the complainant's request for:
 - The name of each recipient of the £1.8 million settlement in the case of Ellindon School v Various.

Chronology

8. The Commissioner wrote to the Council on 4 December 2009 to request a copy of the withheld information and further explanations to support its application of section 40(2) of the Act.
9. The Council responded on 29 December 2009 providing some useful background to the complaint and the settlement reached in the *Ellindon v Various* case. It stated that it was reluctant to provide a copy of the withheld information to the Commissioner due to the highly sensitive nature of the requested information.
10. The Commissioner wrote to the Council on 15 February 2010 to request further more detailed arguments in respect of its application of section 40(2) of the Act. Concerning a copy of the withheld information, he informed the Council that he would not seek a copy at this stage, as he felt it was possible to investigate and reach a decision based on the nature and description of the requested information.
11. The Council responded on 10 March 2010 providing the additional information requested.
12. During the investigation the Commissioner also received correspondence from the complainant; letters dated 18 February, 24 February and 26 April 2010. This correspondence contained further background to this information request and detailed the reasons why the complainant believes the requested information should be released into the public domain. The complainant also forwarded copies of correspondence he had received from other bodies relating to this case.

Analysis

Exemptions

Section 40 – personal data

13. Section 40(2) of the Act states that information is exempt from disclosure if it constitutes the personal data of a third party and its disclosure under the Act would breach any of the data protection principles or section 10 of the Data Protection Act 1998.

14. In this case, the Council argued that the requested information is the personal data of a number of third parties and that disclosure under the Act would breach the first data protection principle of the DPA.

15. Firstly, the Commissioner must consider whether the requested information is personal data. Personal data is defined in Section 1 of the DPA as follows:

“personal data” means 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.”

16. It is the Commissioner’s view that the name of each recipient is quite obviously personal data. It is therefore now necessary for him to establish whether disclosure of that data would breach any of the data protection principles under the DPA. As stated in paragraph 14 above, the Council claimed that disclosure would breach the first data protection principle.

17. The first data protection principle states 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.”

18. The Council argued that disclosure under the Act would not only release the name of each recipient into the public domain but would also reveal sensitive information about those individuals; the fact that they have been a victim of abuse and have/had special educational needs. It also argued that the recipients would have a reasonable expectation that this information would only be used for the purposes of the claim and would remain confidential. For these reasons, it stated that disclosure would be unfair and therefore in breach of the first data protection principle.

19. The Commissioner has given the matter careful consideration. He accepts that disclosure would not only release the names of individuals but would also reveal that these individuals were victims of abuse and have or had special educational needs. It is the Commissioner's view that releasing such information into the public domain would be unfair and cause those individuals concerned further unnecessary distress.
20. The Commissioner notes from the Council's submissions that the individuals concerned were not publicly named during the claim process, as the case was settled out of court. He is therefore satisfied that the individuals concerned would have a reasonable expectation that their identity will not be released into the public domain and that such information will remain private and confidential.
21. It is also the Commissioner's view that as the settlement was made in April 2008, the recipients concerned would consider the matter closed and would wish to move on from a possibly painful and stressful experience in their lives. Disclosure of the requested information at this stage would be likely to reopen such experiences for the recipients concerned and this would be unfair and likely to cause them unnecessary distress.
22. The Commissioner accepts that there is a legitimate public interest in this information being released as the case at the time generated substantial public interest and involved a substantial amount of public money. He also notes that there are more recent allegations that false claims were made and that, in this case, the complainant has a significant personal interest in obtaining this information. However, the Act is applicant blind and therefore any personal interests the complainant may have cannot be taken into account unless they are also public interests. Furthermore it is the Commissioner's view that there are more appropriate means of pursuing these issues rather than seeking public disclosure under the Act. Disclosure under the Act would be an unwarranted intrusion into the private lives of those individuals concerned.
23. For the reasons explained above, it is the Commissioner's decision that the name of each recipient is exempt from disclosure under section 40(2) of the Act, as disclosure would breach the first data protection principle as outlined in the DPA.

Procedural Requirements

24. The Commissioner notes that the Council failed in cite in its refusal notice to the complainant the relevant subsection of section 40 of the Act on which it relied. In this case, the Council should have stated that it was relying on section 40 subsection (2) of the Act. As it failed to do

so, the Commissioner has found that the Council was in breach of section 17(1)(b) of the Act in this case.

The Decision

25. The Commissioner's decision is that the Council dealt with the following aspects of the request for information in accordance with the Act:
 - the Council acted appropriately by withholding the name of each recipient of the settlement reached in the *Ellindon School v Various* case under section 40(2) of the Act.

26. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
 - the Council breached section 17(1)(b) of the Act by failing to cite the relevant subsection of section 40 in its Refusal Notice dated 30 September 2008.

Right of Appeal

27. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

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 sent.

Dated the 27th day of July 2010

Signed

**David Smith
Deputy Commissioner**

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

Legal Annex

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 17(1)

Provides that -

“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.”

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).”