

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 October 2011

Public Authority: Bolton Metropolitan Borough Council
Address: Town Hall
Victoria Square
Bolton
BL1 1RU

Decision (including any steps ordered)

1. The complainant has requested the names of Heads or Senior Managers of each department at Bolton Metropolitan Borough Council.
2. The Commissioner's decision is that Bolton Metropolitan Borough Council has not dealt with the request for information in accordance with the FOIA by:
 - Incorrectly withholding information under the personal information exemption.
 - Taking too long to respond and provide the information.
3. However, the Commissioner has decided that the following element of the request was dealt with in accordance with the FOIA:
 - Bolton Metropolitan Borough Council correctly determined that the information in the two specific instances referred to in the confidential annex was correctly withheld under the personal information exemption.
4. The Commissioner requires Bolton Metropolitan Borough Council to take the following step to ensure compliance with the legislation:

- Provide the complainant with the names of Heads or Senior Managers of each department at Bolton Metropolitan Borough Council as at the time of the request.
5. The public authority must take this step within 35 calendar days of the date of this decision notice. Failure to comply 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.

Request and response

6. On 5 October 2011, the complainant wrote to Bolton Metropolitan Borough Council ('the council') and requested information in the following terms:
- "Overall, would it be possible to provide the next tier down, for example, the Heads or Senior Managers of each department?"
7. The council responded on 3 December 2011. It stated that the information is exempt from disclosure under section 40(2) of the FOIA as it constitutes personal data and to disclose it in this context would contravene the principles of data protection. The council considered that it would have to obtain consent to disclose information about individual council officers, other than Chief Officers, as to disclose such information would not constitute fair processing under the Data Protection Act. It stated that the effort to obtain consent from so many senior officers would be disproportionate and as these persons are not Chief Officers this information is exempt under the FOIA.
8. Following an internal review at the request of both the complainant and the Information Commissioner, the council wrote to the complainant on 15 April 2011. It stated that it should have originally refused the request under section 12 as responding to the request would exceed the appropriate limit of £450. It also stated that the information requested constitutes personal data but it was too early to determine whether the exemption under section 40(2) of the FOIA applies as it is not possible to determine the expectations of the employees concerned and what the effect would be on them. Finally, the council stated that the information is now exempt under section 22 of the FOIA as it is information intended for future publication.

Scope of the case

9. The complainant contacted the Commissioner to complain about the way her request for information had been handled.
10. The Commissioner considers whether the council were correct to apply the personal data exemption to the requested information. During the investigation the council confirmed that it wishes to rely on the personal data exemption under section 40(2) of the FOIA. Therefore the Commissioner has not considered the exemption where the cost of compliance exceeds the appropriate limit or the exemption where the information is intended for future publication.
11. The Commissioner notes that during the investigation, the council sought consent of the 69 staff involved in the request and released the names, job titles and upwards reporting line for 31 consenting employees. This decision therefore only relates to the information which has not been released.

Reasons for decision

12. Section 40(2) of the FOIA 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 ('the DPA').
13. In order to rely on the exemption provided by section 40(2), the requested information must therefore constitute personal data as defined by the DPA. Section 1 of the DPA defines personal data 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.”

14. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the data protection principles under the DPA. The Commissioner notes in this case that the council argued that disclosure of third party personal data would breach the first data protection principle.
15. 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.”
16. As explained above, the first consideration is whether the withheld information is personal data. The Commissioner believes that individuals’ names and job titles are personal data as such information relates directly to identifiable individuals.
17. As the Commissioner is satisfied that the withheld information is personal data, he now needs to consider whether disclosure would breach the first data protection principle, as the council has claimed, i.e. would disclosure be unfair and/or unlawful.
18. In deciding whether disclosure of this information would be unfair, the Commissioner has taken into account the nature of the information, the reasonable expectations of the data subjects, the consequences of disclosure on those data subjects and balanced the rights and freedoms of the data subjects with the legitimate interests in disclosure.

Nature of the information and reasonable expectations

19. The council has argued that the staff involved may be at a fairly senior level but they are not responsible for policy decisions affecting the public or the expenditure of public funds and as a result they expect a lesser degree of scrutiny of their role and have a greater expectation of privacy

20. In his guidance 'Access to information about public authorities' employees'¹, the Commissioner states that a factor to take into account when considering whether to release information identifying an employee is whether the information is about the employee's professional or personal life. The threshold for releasing professional information will generally be lower than that for releasing truly personal sensitive information, for example that found in an employee's occupational health record. In this case, the information requested relates to individual's positions within the council.
21. The Commissioner considers that this information relates solely to the individuals' public function, not to their private life. He also considers that individuals at this level of seniority, 'Heads or Senior Managers of each department', should reasonably expect that their name could be released in response to an FOI request as they should be aware of the existence and purpose of the FOIA.
22. In his guidance 'When should names be disclosed?'², the Commissioner comments that it is good practice to have a policy on routinely disclosing names at certain levels, in certain roles or in certain circumstances. The guidance explains that this does not mean that the names of more junior staff should always be withheld as often it will not be unfair to release their names where the context is not be sensitive or controversial. This supports the view that releasing the names of 'Heads or Senior Managers of each department' would not be unfair due to their seniority and the non contentious, professional, nature of the information.

Consent

23. In this case, the council notified the staff involved and sought their consent. The council has argued that it would be unfair to disclose the names and posts of the 31 employees who have not consented, and the seven employees who provided objections, as it would not comply with fair processing. The council has asserted that in the absence of fair processing, processing is unfair and principle 1 of the DPA is breached.

1

http://www.ico.gov.uk/for_organisations/freedom_of_information/information_request/reasons_to_refuse.aspx

2

http://www.ico.gov.uk/for_organisations/freedom_of_information/information_request/reasons_to_refuse.aspx

24. The issue of consent is dealt with in the Commissioner's specialist guidance 'Consent'³. The guidance states that the Commissioner will take the data subject's comments into account insofar as they represent an expression of the views of the data subject at the time of the request had they given any thought to the issue at that time. These views will help to inform the analysis of fairness. This is because the data subject may have provided additional and valuable information about the impact of the disclosure on them including any circumstances unique to the data subject.
25. However, an employee's objection to the disclosure of information does not necessarily mean that it cannot be released. It is important to consider whether it is reasonable for the data subject to object to the disclosure.
26. A distinction needs to be made here between the employees who have not consented and those who have made specific objections.
27. In the cases where the employees have simply not provided their consent rather than made objections, the Commissioner does not consider that the data subject's expectations that their information will remain private have been reinforced because the public authority has returned to the data subject claiming to be seeking their 'consent'. In these instances, the Commissioner's view, as per his guidance 'Access to information about public authorities' employees'⁴, is that the employees' objection, in the form of not specifically providing consent, does not necessarily mean that the information cannot be released.
28. The Commissioner accepts that it may also be possible for the data subject to provide details of the reasons why their individual circumstances may affect fairness, or shed light onto the circumstances which may lead the public authority to conclude that the data subject had a reasonable expectation that the information would remain confidential. This is relevant in the cases where the employees have provided specific objections.
29. However, in this case, none of the specific objections raised by the seven employees would lead the council to conclude that they had a

³ <http://icoportal/foikb/PolicyLines/FOIPolicyConsent1.htm>

⁴

http://www.ico.gov.uk/for_organisations/freedom_of_information/information_request/reasons_to_refuse.aspx

reasonable expectation that the information would remain confidential. Instead, the objections were concerned with the consequences of disclosure and as such, will be taken into consideration when assessing the impact of the consequences of disclosure on fairness below.

30. Taking the above into account, the Commissioner's view is that releasing the requested names and job titles should not be outside the reasonable expectations of those individuals.

Consequences of disclosure

31. In order to assess the impact of the consequence of disclosure on whether disclosure would be fair, it is necessary to consider whether disclosure of the information would cause unwarranted damage or distress to the employee.
32. The Commissioner considers that the release of names and job titles would not have a damaging affect on the employees. The information relates purely to the individual's professional role in the council. Disclosing such information would not be an unfair infringement into the private lives of the employees involved. An example of such an infringement is releasing the private contact details of employees, which in decision notice FS50351498 was exempt from disclosure. In that decision notice it was also ruled that information relating to individual's salary grades should be disclosed which is far more of an intrusion into private life than merely disclosing a job title.
33. However, the Commissioner has considered the specific objections made by seven employees in order to assess whether disclosure would be fair. In five of these cases there is no suggestion that disclosure of the requested information would be damaging to the individuals or have an adverse consequence. Therefore the Commissioner considers that disclosure would not be an unfair infringement into the private lives of the employees involved.
34. In two of the specific objections, the employees have raised concerns relating to personal safety. In one case the employee is involved in sensitive and contentious reviews of social care and has provided examples of previous harassment from family members of service users. In the other case, the employee is responsible for the service that manages the allocation of school places and is concerned for their own and their family's safety in light of previous incidents where parents have contacted the employee at the home address. Both employees express concerns that due to their uncommon names it would be

relatively easy to trace their home addresses which could cause unwarranted distress.

35. In the two specific instances above, the Commissioner's view is that release of the information could cause unwarranted damage of distress and therefore disclosure would be unfair.
36. In these two specific instances, as the Commissioner has decided that the disclosure of this information would be unfair, and therefore in breach of the first principle of the DPA, he has not gone on to consider whether there is a Schedule 2 condition for processing the information in question.

Legitimate interests in disclosure

37. The Commissioner accepts that in considering 'legitimate interests', such interests can include broad general principles of accountability and transparency for its own sake along with specific interests which in this case is the legitimate interest in knowing who carries out functions at a senior level in a specific council. The Commissioner accepts that employees of public authorities should be open to scrutiny and accountability because their jobs are funded by the public purse.
38. The Commissioner is therefore satisfied that there is a legitimate public interest in disclosure in this case.
39. Apart from the two specific instances above, as the Commissioner considers that disclosure of the names and job titles should not be outside the reasonable expectations of those individuals, he is not of the opinion that there would be any substantial harm or distress to the data subjects, and is satisfied that there is a legitimate public interest in disclosure, he has concluded that disclosure would not be unfair. The Commissioner has therefore gone on to consider Schedule 2, condition 6 of the DPA.

DPA Schedule 2 condition

40. The Commissioner considers that the relevant condition in Schedule 2 in this particular case is the sixth condition which states that:

"The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject."

41. The Commissioner's guidance on 'Personal information'⁵ states that following the former Information Tribunal decision in *Corporate Officer of the House of Commons v Information Commissioner and Leapman, Brooke and Thomas (EA/2007/0060 etc.; 26 February 2008)* public authorities should approach Condition 6 as a three-part test:
1. there must be a legitimate interest in disclosure;
 2. the disclosure must be necessary to meet that public interest; and
 3. the disclosure must not cause unwarranted harm to the interests of the individual.
42. The Commissioner has already highlighted in paragraph 37 of this decision notice that there is a legitimate interest in disclosure of the withheld information.
43. The council has argued that disclosure is not really necessary to meet the legitimate interest as that interest is sufficiently met by disclosure of the first and second tier names and posts within the organisation all of whom have an appropriate level of responsibility. The council argues that these officers can be the public's first port of call should the public have an enquiry to make or if they wish to know who is responsible for a certain service. The council has also stated that there are already contact procedures/general email addresses set up for information requests which are sufficient in terms of allowing the public to get in touch with the relevant service or department.
44. The Commissioner does not accept the council's arguments for two reasons. Firstly, the Commissioner considers that the 'Heads or Senior Managers of each department', whilst not necessarily being solely responsible for policy decisions affecting the public or the expenditure of public funds, at are a level of seniority which will certainly influence such decisions and carry out a relatively senior public function. In the Commissioner's own policy 'Disclosure of information about ICO employees'⁶, it has been considered normally appropriate to disclose the name and job titles of staff at a level significantly lower than 'Heads or Senior Managers of each department'.

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http://www.ico.gov.uk/for_organisations/freedom_of_information/information_request/reasons_to_refuse.aspx

⁶ http://www.ico.gov.uk/about_us/policies_and_procedures.aspx

45. Secondly, the legitimate interest relates to knowing who carries out functions at a senior level in the council which is distinct from the council's argument which relates to the public getting in touch with specific services or departments.
46. The Commissioner has considered whether disclosure in this case is necessary to meet the legitimate interest and is of the opinion that disclosure is necessary as there is no alternative mechanism to meet the interest. The Commissioner is aware of the existence of the councils organisation chart on its website but this only provides the details for the first two tiers of employees. The Commissioner is not aware of any publically accessible document that details the next tier down, namely the 'Heads or Senior Managers of each department'.
47. The Commissioner has already weighed the consequences of disclosure in this case against the legitimate public interest in disclosure in paragraphs 32 to 33 and 37 to 39 of this Notice. As he is also of the opinion that disclosure is necessary to meet the legitimate public interest he has concluded that condition 6 of Schedule 2 of the DPA is met in this case and has therefore concluded that section 40(2) of the FOIA is not engaged. This information should therefore be disclosed.

Other matters

48. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:

Internal review

49. Paragraph 39 of the Code of Practice issued under section 45 of the Act (the 'Code') recommends that complaints procedures should:

"....provide a fair and thorough review of handling issues and of decisions taken pursuant to the Act, including decisions taken about where the public interest lies in respect of exempt information. It should enable a fresh decision to be taken on a reconsideration of all the factors relevant to the issue."
50. Paragraph 40 of the Code states that in carrying out reviews:

"The public authority should in any event undertake a full re-evaluation of the case, taking into account the matters raised by the investigation of the complaint."
51. As he has made clear in his published guidance on internal reviews, the Commissioner considers that internal reviews should be completed as

promptly as possible. While no explicit timescale is laid down by the Act, the Commissioner's view of a reasonable time for completing an internal review is 20 working days from the date of the request for review. In this case the Commissioner notes that the public authority took over four months to provide an internal review. The public authority should ensure that internal reviews are carried out promptly in future.

Right of appeal

52. 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,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

53. 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.
54. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Andrew White
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Reference: FS50363088