

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 02 June 2011

Public Authority: Isle of Anglesey County Council
Address: Council Offices
Llangefni
Anglesey
LL77 7TW

Summary

The complainant requested information about the academic and professional qualifications relating to a number of named Council employees. The Council initially refused to provide all of the requested information under section 40(2). In its internal review, the Council provided the information for one of the named individuals, but continued to withhold information relating to other named individuals by virtue of section 40(2). The Commissioner has investigated and determined that the Council correctly applied section 40(2) to the remaining withheld information. In failing to provide the information which was disclosed at the time of the internal review, the Council breached section 10(1) of the Act. The Commissioner does not require any remedial steps to be taken.

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 6 August 2010, the complainant wrote to the Council and requested:
"...the academic (including subject) and professional qualifications of the following Council officers:

1. [name of Officer]
 2. [name of Officer], [position]
 3. [name of Officer], [position]
 4. [name of Officer], [position]
 5. [name of Officer], [position]
3. The Council responded on 10 September 2010 confirming that it held information relevant to the request. The Council stated that it considered the information to be exempt under section 40(2) as the information constituted personal data and disclosure would breach the first data protection principle. In this response, the Council also advised that it considered the reference to academic qualifications to be open to more than one interpretation.
4. On 17 October 2010, the complainant wrote to the Council requesting an internal review of its decision in relation to the request. He also provided clarification in relation to the information being sought, stating that:
- “‘academic’ means first degree and above’ ‘professional’ means an accepted professional body such as ICA, RTPI, RICS etc”
5. The Council provided the outcome of its internal review on 18 November 2010. It provided information in relation to one member of staff, who occupied a position of Head of Service, but upheld its decision that information relating to the other named Council officers was exempt under section 40(2) of the Act.

The Investigation

Scope of the case

6. On 26 November 2010 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 whether the information he had requested should be disclosed.
7. The Commissioner has investigated the Council's refusal to disclose the information requested under section 40(2) of the Act and whether the exemption has been applied correctly. The information relating to the officer numbered (1) in the original request has been disclosed. This information relates to a member of staff occupying a position of Head of Service. The outstanding information comprises the academic and professional qualifications of four Council officers, referred to in the original request as number (2) to (5). These officers will be referred to throughout the remainder of this Notice as Officer 2, Officer 3, Officer 4 and Officer 5.

Chronology

8. The Commissioner wrote to the Council on 9 March 2011 asking for copies of the withheld information and further representations in relation to its application of section 40(2) of the Act.
9. The Council responded to the Commissioner's letter and provided the withheld information on 5 April 2011.
10. On 18 April 2011 the Commissioner telephoned the Council to clarify a number of points relating to the case. The Council responded by email the same day.

Analysis

Section 40

11. Section 40(2) of the Act provides an exemption for information that is the personal data of an individual other than the applicant, and where one of the conditions listed in sections 40(3) or 40(4) is satisfied. In this particular case the condition in question is contained in section 40(3)(a)(i), which applies where the disclosure of the information to any member of the public would contravene any of the data protection principles as set out in Schedule 1 to the Data Protection Act 1998 ('the DPA'). All relevant sections of the legislation are reproduced in the attached legal annex.
12. The Council considers that the information requested constitutes the personal data of the individual officers, that disclosure would be unfair and unlawful and would therefore breach the first data protection principle. The Commissioner agrees that the relevant principle here is the first principle; the requirement that any processing should be fair and lawful.

Is the information personal data?

13. In order to rely on the exemption provided by section 40, the information being requested must constitute personal data as defined by section 1 of the DPA. It defines personal information as data which relates to a living individual 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.

14. In considering whether the information requested is “personal data”, the Commissioner has taken into account his own guidance on the issue¹. The two main elements of personal data are that the information must “relate to” a living person, and that person must be identifiable. Information will “relate to” a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them, has them as its main focus or impacts them in any way.
15. The withheld information in this case comprises the academic and professional qualifications of four named Council officers. The Commissioner is satisfied that living individuals (ie the Council officers) can be identified from the information. The withheld information clearly comprises data which relates to those individuals as it represents biographical information about them. The Commissioner therefore accepts that the information in the context of this request is personal data as defined by the DPA.

Would disclosure contravene any of the principles of the DPA?

16. As the Commissioner is satisfied that the information requested constitutes the personal data of the individual Council officers, he has gone on to consider whether disclosure would breach any of the data protection principles. As stated in paragraph 12 above, the Council claimed that disclosure of the withheld information in this case would breach the first data protection principle.

The first data protection principle

17. The first data protection principle has two main components. They are:
- the requirement to process all personal data fairly and lawfully; and
 - the requirement to satisfy at least one DPA Schedule 2 condition for the processing of all personal data.
18. Both requirements must be satisfied to ensure compliance with the first data protection principle. If even one requirement cannot be satisfied, processing will not be in accordance with the first data protection principle. The Commissioner’s general approach to cases involving personal data is to consider the fairness element first. Only if he believes that disclosure would be fair would he move on to consider the other elements of the first data protection principle.

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http://www.ico.gov.uk/upload/documents/library/data_protection/detailed_specialist_guides/personal_data_flowchart_v1_with_preface001.pdf

Would disclosure of the information be fair?

19. In assessing fairness, the Commissioner has considered the reasonable expectations of the individuals concerned, the nature of those expectations and the consequences of disclosure to the individuals. He has then balanced these against the general principles of accountability, transparency and legitimate public interest.

a) Expectations of the individuals concerned

20. The Commissioner's Awareness Guidance on section 40² 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 life. 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.'

21. The Commissioner's guidance therefore makes it clear that where the information relates to the individual's private life (ie their home, family, social life or finances) it will deserve more protection than information about them acting in an official or work capacity (i.e. their public life).

22. The Commissioner considers that employees of public authorities should be open to scrutiny and accountability and should expect to have some personal data about them released because their jobs are funded by the public purse. In his guidance on the section 40 exemption, the Commissioner suggests 'if the information requested consists of names of officials, their grades, jobs or functions or decisions made in their official capacities, then disclosure would normally be made'. However, the Commissioner also considers that information which might be deemed 'HR information' (for example details of pension contributions, tax codes, etc) should remain private, even though such information relates to an employee's professional life, and not their personal life.

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http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/personal_information.pdf

23. The Commissioner considers that an individual's attainment of any academic or professional qualification has an impact on their private lives. It refers to the qualifications and experience of an individual, is likely to appear on their curriculum vitae, and may have an effect on their future employment prospects and opportunities.
24. The Commissioner's guidance also states that the seniority of the individual acting in a public or official capacity should be taken into account when personal data about that person is being considered for disclosure under the Act. This is because the more senior a member of staff is, the more likely it is that they will be responsible for making influential policy decisions and/or decisions relating to the expenditure of public funds. In previous decision notices the Commissioner has stated that he considers that occupants of senior public posts are more likely to be exposed to greater levels of scrutiny and accountability and there should therefore be a greater expectation that some personal data may need to be disclosed in order to meet that need.
25. In its internal review the Council considered the issue of seniority and reached the view that Directors and Heads of Service could not expect the same degree of protection in relation to disclosure of personal data as more junior members of staff. As a result, the Council disclosed information relating to one of its Heads of Service.
26. The Council confirmed that the remaining four members of staff who are the subject of the request have limited public facing roles in relation to dealing with specific issues and cases involving members of the public, for example dealing with particular planning casework and complaints from members of the public. The Council confirmed that none of the individuals are responsible for policy development. Any recommendations or decisions made by the individuals about particular issues or cases are signed off by more senior officers or via a committee. In relation to Officer 2, the Council confirmed that, whilst he or she is not responsible for policy development, the individual is responsible for making decision which affects their team. Officer 2 also has limited responsibility for the budget for their department but reports to a senior officer. In relation to Officer 5, the Council advised that the officer does refer to "MSc" in outgoing correspondence, but does not specify the subject area of this qualification
27. The Council confirmed that all officers were consulted at the time of the request and all refused consent to disclosure. In particular two officers expressed concern at disclosure of the information requested, due to previous contact with the complainant. The Commissioner has been advised by the Council that the complainant has made a number of complaints relating to planning matters, and he has made previous complaints about the individuals who are the subject of this request.

28. The Commissioner notes that, in this case, the individuals in question are not senior members of staff within the Council. The Commissioner has taken into account the fact that: the individuals in question occupy positions with a limited public facing role, they do not have responsibility for the more material decisions made in the course of their duties, nor any responsibility for policy development. With the exception of Officer 2, who has limited responsibility for his departmental budget, none of the officers have any responsibility for expenditure of public funds.
29. The Commissioner acknowledges that the individuals concerned have specifically refused consent to disclosure. However, the Commissioner considers the fact that consent has not been provided by the data subjects in this case, does not, on its own, make any disclosure unfair

b) Consequences of disclosure to the individual

30. The Council has provided the Commissioner with details of the consequences of disclosure to the individuals. The Council has referred to previous contact with the complainant, in particular the fact that he has made complaints about the individuals who are the subject of this request. In the Council's view, the complainant has made this request to cast doubt on the findings of the complaints he has made by implying that the individual officers are not sufficiently qualified. The Council's view is that qualifications are only one element in establishing the suitability of an individual for a specific post. Given the focus of the request and the history of contact with the complainant, the Council believes that disclosure of qualifications alone could be taken out of context as it would not take into account any experience and skills of the individuals, which play an equal part in determining suitability for a post.
31. The Council believes that publishing the information relating to these four officers would single them out as similar information is not generally published about staff, and there is no intention to do so in the future. The Council is of the view that disclosure would be contrary to the reasonable expectations of the individuals concerned
32. Given the relatively junior role of the individuals in this case, the Commissioner considers that they would have had a reasonable expectation that details of their academic and professional qualifications would not be disclosed into the public domain and that to do so would be unfair. The Commissioner is persuaded that disclosure of the withheld information in question would be unwarranted since such information is, by its nature, private to the individual in question and not information that he or she would want to be disclosed into the public domain.

33. When considering the consequences of disclosure of the withheld information, the Commissioner has also considered how this data could be used by the public. Disclosure under the Act represents disclosure to the public at large. In his request for an internal review, the complainant indicated that the Council's refusal to disclose the information requested implied that the officers do not have appropriate qualifications which, in turn, suggests that the Council is employing staff of poor quality. In this case, the Commissioner considers that there is a strong possibility that, should the information be disclosed, it could expose the officers to unjustified harassment.
34. The Commissioner has considered the submissions made by the Council and the nature of the withheld information and he is satisfied that disclosure of the information to the public and the associated loss of privacy has the potential to cause unnecessary and unjustified harm to the individuals in this case.

Legitimate public interest and the general principles of accountability and transparency

35. The complainant indicated that he considered disclosure of the withheld information necessary to enable individuals to assess whether the Council employs suitably qualified staff to carry out specific roles. The complainant believes that the Council should maintain a public register of the academic and professional qualifications of all of its elected members and professional staff above the grade of typist, secretary and other similar posts.
36. The Commissioner believes there is a legitimate public interest in disclosure of information which would promote accountability and transparency in the spending of public money. In particular, the Commissioner believes there is a legitimate interest in knowing that staff are suitably qualified to perform their roles.
37. The Council has confirmed that every post is associated with a job description and person specification. The person specification details the experience, characteristics and qualifications relevant to a particular role as being essential or desirable criteria. The shortlist process for each post requires that all essential criteria are met by each applicant. The shortlist of candidates is then drawn up on the basis of suitability of candidates when measured against the person specification. The Council have pointed out that qualifications are only one aspect in establishing the suitability of an individual for a particular role. In this case, the Council is satisfied that the individuals in question are suitably qualified and experienced to carry out the posts in which they are employed.

38. The Commissioner considers that any employment checks performed by the Council and its assurances that the individuals are suitably qualified and experienced to carry out their roles should provide some degree of reassurance to the public. He is also satisfied that the release of the academic and professional qualification of individuals at the levels of Director and Head of Service and above provides the accountability which is expected and meets the legitimate interests of the public. These are the senior employees of the Councils, are likely to have public facing roles and be responsible for decision making and policy development.
39. Therefore, in light of the reasons set out above, the Commissioner has come to the conclusion that the disclosure of the requested information would be unfair to the individuals concerned.
40. As the Commissioner has decided that disclosure would be unfair, there is no need for him to go on to consider the other elements of the first data protection principle. The Commissioner therefore upholds the Council's application of section 40(2) because disclosure of this information would breach the first data protection principle.

Procedural Requirements

Section 10

41. During its internal review, the Council disclosed some information relevant to the request, namely the academic and professional qualifications relating to one of its Heads of Service. As the Council determined that this information was not exempt under section 40(2), it should have been provided to the complainant in line with the duty at section 1(1)(b). As the Council failed to provide this information within twenty working days of the date of the request, the Council breached section 10(1).

The Decision

42. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:
 - It correctly applied section 40(2) of the Act to information relating to Officers 2, 3, 4 and 5.

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 10(1) for failing to provide information relating to one of its Heads of Service within 20 working days of the request.

Steps Required

43. The Commissioner requires no steps to be taken.

Right of Appeal

44. 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: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

45. 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.
46. 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 2nd day of June 2011

Signed

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

Legal Annex

General Right of Access

Section 1(1) provides that -

"Any person making a request for information to a public authority is entitled

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- (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."

Time for Compliance

Section 10(1) provides that –

"Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."

Refusal of Request

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."

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).”

Data Protection Act 1998

Section 1 - Basic interpretative provisions

- (1) In this Act, unless the context otherwise requires—
“data” means information which—
 - (a) is being processed by means of equipment operating automatically in response to instructions given for that purpose,
 - (b) is recorded with the intention that it should be processed by means of such equipment,
 - (c) is recorded as part of a relevant filing system or with the intention that it should form part of a relevant filing system, or

(d) does not fall within paragraph (a), (b) or (c) but forms part of an accessible record as defined by section 68;

“data controller” means, subject to subsection (4), a person who (either alone or jointly or in common with other persons) determines the purposes for which and the manner in which any personal data are, or are to be, processed;

“data processor”, in relation to personal data, means any person (other than an employee of the data controller) who processes the data on behalf of the data controller;

“data subject” means an individual who is the subject of personal data;

“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;

“processing”, in relation to information or data, means obtaining, recording or holding the information or data or carrying out any operation or set of operations on the information or data, including—

(a) organisation, adaptation or alteration of the information or data,

(b) retrieval, consultation or use of the information or data,

(c) disclosure of the information or data by transmission, dissemination or otherwise making available, or

(d) alignment, combination, blocking, erasure or destruction of the information or data

Schedule 1

The first data protection principle

“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.”

Schedule 2

Conditions relevant for purposes of the first principle: processing of any personal data:

- "1. The data subject has given his consent to the processing. 2. The processing is necessary-
- (a) for the performance of a contract to which the data subject is a party, or
 - (b) for the taking of steps at the request of the data subject with a view to entering into a contract.
3. The processing is necessary for compliance with any legal obligation to which the data controller is subject, other than an obligation imposed by contract.
4. The processing is necessary in order to protect the vital interests of the data subject.
5. The processing is necessary-
- (a) for the administration of justice,
 - (b) for the exercise of any functions conferred on any person by or under any enactment,
 - (c) for the exercise of any functions of the Crown, a Minister of the Crown or a government department, or
 - (d) for the exercise of any other functions of a public nature exercised in the public interest by any person.
6. - (1) 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.
- (2) The Secretary of State may by order specify particular circumstances in which this condition is, or is not, to be taken to be satisfied."