

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 27 June 2011

Public Authority: Cheshire East Council
Address: Westfields
Middlewich Road
Sandbach
Cheshire
CW11 1HZ

Summary

The complainant requested information relating to a former chairman of governors' involvement in the disciplinary appeal panel hearing of the head teacher and the chairman's resignation. The council withheld the information under section 40(2) of the Act as the information was third party personal data, the release of which would breach the fair processing principles contained in the Data Protection Act. The Commissioner considers that section 40(2) by virtue of 40(3)(a)(i) was correctly engaged in this case. The Commissioner requires no 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 1 July 2010 the complainant requested the following information from Cheshire East Council;

"Please provide me with all emails and other correspondence both internal and external concerning:

1. [A named individual's] involvement in the disciplinary appeal panel hearing of [a named individual], and
2. [A named individual's] resignation as chairman of governors at Audlem St James School."
3. The council responded on 27 July 2010 confirming it held a number of emails which would fall into the above categories but it was withholding the information under section 40(2) of the Act as the information was third party personal data, the release of which would breach the fair processing principles contained in the Data Protection Act. The council noted that the complainant already had a number of the documents it had identified as falling into the requested categories as he was the sender or recipient of such emails.
4. On 31 July 2010 the complainant requested an internal review of the council's decision, setting out the reasons why he believes the requested information should be disclosed.
5. The council provided its internal review response on 25 August 2010 upholding the decision to withhold the requested information under section 40(2) of the Act.

Background

6. The council has informed the Commissioner that all matters concerning the functioning of the school are the responsibility of the school governors along with the school staff. The council has no jurisdiction within the school though is available to offer advice and expertise as required. It was at the request of the governors that the Principal Officer from the council's Children's and Families Services prepared an independent investigation of allegations of impropriety, following a complaint made by a parent regarding the inaccurate marking of a SATS paper in December 2009. [A named individual] was the chairman of the board of governors who considered the case; he subsequently resigned following the appeal hearing which re-instated the Head Teacher.

The Investigation

Scope of the case

7. On 9 September 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled.

Chronology

8. The Commissioner wrote to the council on 16 February 2011 requesting a copy of the withheld information.
9. A copy of the withheld information was sent on 11 March 2011 along with background information and the council's reasons for the application of the exemption.
10. On 12 May 2011 the complainant provided further argument for his position.

Analysis

Exemptions

Section 40(2) – personal data

11. 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 DPA.
12. 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.”

13. 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.

14. 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.”

15. As explained above, the first consideration is whether the withheld information in these documents is personal data. The documents consist of emails relating to complaints that led to the disciplinary hearing of [a named individual] (including emails to and from another parent), correspondence relating to that disciplinary hearing and correspondence relating to [a named individual's] resignation as chairman of governors. As these contain expressions of opinion and indications of intentions in respect of named individuals, the Commissioner is satisfied that this information constitutes personal data.

16. 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.

17. In deciding whether disclosure of this information would be unfair, the Commissioner has taken into account 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.

Reasonable expectations

18. The Commissioner recognises that information relating to personnel matters, which includes disciplinary hearings and resignations, carries a very strong general expectation of privacy due to its sensitive nature and the likelihood that disclosure could cause data subjects significant distress and could also cause permanent damage to their future career prospects and general reputation.

19. With the above in mind, the Commissioner considered whether there appeared to him to be any reason why it would be fair to disclose the withheld information in this case. The Commissioner took into account the fact that the data subject in this case had been approached to ask his permission to allow release of the requested documents but, given the confidential personal information the documents contain, he did not want them releasing into the public domain.

20. While the Commissioner acknowledges that the council was not under a duty to regulate the behaviour and actions of the school governors and school itself, he nevertheless recognises that as the council conducted an independent investigation in this case, it would owe a duty of confidence to the data subject in respect of that investigation. The Commissioner believes that disclosure in this case could jeopardise the trust that a school or governing body may have with the council conducting an investigation at their request; a trust that allows a free and frank working relationship and rests on the expectation that the council will protect the personal data of those involving in the investigation.
21. In relation to the reasonable expectations of the data subject the complainant has argued that the information requested concerns the actions of a chair of governors acting in their public life capacity and that senior public figures should recognise that they are accountable for their actions and this cannot be achieved if they are allowed to hide behind the data protection principles. The Commissioner does not doubt that senior public figures should recognise that they are accountable for their actions and acknowledges the position of responsibility held by the chair of governors but, as stated above, cannot disregard the view that information relating to personnel matters, as in this case, carries a very strong general expectation of privacy.

Consequences of disclosure

22. The council have submitted that as [a named individual] is no longer involved with the school, release would re-open old issues and could make him the subject of adverse comments from certain members of the community. The complainant has interpreted this to mean that [a named individual's] actions would provoke criticism and believes that this reinforces the public interest in disclosure.
23. The Commissioner is of the opinion that the risk of adverse comments from the community does not necessarily mean that [a named individual's] actions deserve criticism; rather, it should be recognised that disagreements and differences of opinion can be perfectly valid and merely because some members of a community find cause for criticism does not make an action wrong, nor require it to be exposed.
24. The complainant has also argued that information about a senior official's public life should generally be disclosed unless it would put them at risk, or unless it also reveals details of the private lives of other people. However, as stated above, the Commissioner is of the opinion that disclosure of personnel information could cause data subjects significant distress and could also cause permanent damage to their future career prospects and general reputation which does put the data

subject at risk. In addition, the Commissioner is aware that some of the information held in relation to this request does reveal details relating to the private life of another data subject.

Legitimate interests in disclosure

25. The complainant has cited that transparency and accountability are legitimate interests in disclosure in this case and the Commissioner recognises that these concepts are considerations to be taken into account when assessing fairness.

26. Specifically, the complainant has stated;

"The data requested concerns the actions of a chair of governors acting in their public life capacity. It is in the interests of parents and the wider community that they know how public figures such as chairs of governors have discharged their responsibilities. Senior public figures should recognise that they are accountable for their actions and this cannot be achieved if they are allowed to hide behind the data protection principles. Those principles are there to strike a balance between the interest of the individuals and the interests of the public. In this case, the interests of the public in knowing how a senior public figures has acted upon their behalf is overriding."

27. He has also made the following point;

Disclosure of the data is warranted as "it protects the wider transparency and accountability of the post of chair of governors. It ensures that in the future, only those who are willing to be transparent and accountable in their actions will seek increasingly important community posts such as chair of governors".

28. The council have stated that in considering the documents that have been requested it is not persuaded that there is a benefit to the public at large in disclosure. It has stated that;

"Guidance on this matter states that there must be a genuine public interest at stake, not mere public curiosity. There is already a great deal of information in respect of this matter in the public domain and I am not convinced that the information requested adds materially to what is already known."

29. The council have acknowledged that there is public interest in the suspension and subsequent re-instatement of a Head Teacher and the former Chairman's role in the issue and have stated that consideration was given as to whether the public interest in releasing the information was sufficient to outweigh the council's duty of confidence towards him.

The council believe that the stated public interest does not outweigh the rights of the data subject in this case.

30. The council also submitted the following argument;

"It is now over a year since the incident in question and ...(Head Teacher) has returned to work and the school is returning to a more balanced equilibrium. As far as [a named individual] is concerned the situation has been effectively dealt with and has long since reached its resolution. Release of the information as requested would once again inflame the public debate within the village and this would have a negative effect on the effective functioning of the school, which is clearly neither in the best interests of the school nor the public."

31. The Commissioner is aware that controversy regarding the operation of the school continues within the village and that the council has submitted an application on the 28 February 2011 to the Secretary of State for the Governing Body to be replaced by an Interim Executive Board due to a 'serious breakdown' in the way that the school was being governed which was putting at risk standards of pupil performance. The complainant has argued that this shows that the council's statement that the school is returning to a more balanced equilibrium is misleading and that the school is in a substantially worse situation than when the request was made.

32. Whilst the Commissioner bases a decision under the Act on the circumstances at the time of the request, at which time an Interim Executive Board was not being considered, he believes that any application for an Interim Executive Board should not be a factor in this case as the focus of the consideration should be on the legitimate interests in disclosure of the personal data of individuals.

33. As stated above, transparency and accountability are concepts to be taken into account when assessing fairness. In this case, information relating to the actions of the chair of governors has been requested. The Commissioner believes that the position of chair of governors is an accountable position as the governing body of a school is an elected body and the position of chairman is an elected position. In addition, the council and Diocese have been involved with the circumstances leading to this information request and the situation as far as [a named individual] is concerned has been effectively dealt with.

34. The Commissioner acknowledges that parents have an interest in the disclosure of the requested information but does not believe there is an overriding legitimate public interest in disclosure of information relating to a specific individual's role in a disciplinary process and that individual's resignation. The Commissioner has placed weight on the

council's argument that release of this information would inflame the public debate within the village, having a negative effect on the effective functioning of the school, which is not in the public interest given that [a named individual] is no longer involved with the school.

35. Whilst the Commissioner recognises that the balance of the legitimate interests in disclosure with the rights and freedoms of the data subject in this case is a close argument, and acknowledges that disclosure of the information may enable the public to understand the circumstances surrounding the Chairman's resignation, he believes that there are alternative mechanisms of governance in this case which override the legitimate interests in disclosure.
36. The complainant has also argued that [a named individual] has spoken openly in the village about his resignation and given a version of events which is far from the truth therefore he has forgone his right to refuse permission for disclosure, which is necessary to set the record straight.
37. In relation to the complainant's argument that disclosure is necessary to set the record straight, the Commissioner has not seen any evidence that [a named individual] has provided an incorrect version of events and even if that is the case it is not the Commissioner's role to adjudicate on the reasons for the resignation.
38. In addition, the complainant has submitted that because the council have disclosed the names of 6 governors who were involved in the disciplinary and appeal hearing of the Head Teacher, the council has shown that the governors exercising functions can expect their role in those actions to be published and that disclosure is necessary as there is no information in the public domain on [a named individual's] role in the disciplinary or his resignation.
39. The Commissioner is of the opinion that the disclosure of the names of 6 governors who were involved in the disciplinary and appeal hearing of the Head Teacher should not have a bearing on the consideration of whether disclosure in this case would be fair. The Commissioner believes that a distinction can be made between disclosing the names of governors involved in the process and disclosing all emails and correspondence relating to a specific governors involvement in the process. Furthermore, the Commissioner believes that the previous disclosure of the names of governors involved in the disciplinary process contributes to meeting the legitimate interests in disclosure that the complainant has argued is necessary but does not mean the governors should expect the detail of their role in those actions to be published.

Conclusion

40. Taking all this into account, the Commissioner concludes that it would be unfair to the individuals concerned to release the requested information as he considers that their right to privacy in relation to disciplinary panels and resignations outweighs the interests of the public in understanding the chairman's role in the disciplinary panels and his resignation. The Commissioner has therefore decided that the council was entitled to withhold the information under section 40(2), by way of section 40(3)(a)(i).
41. In addition, the Commissioner notes that some of the personal data in these documents is sensitive personal data under section 2(e) of the DPA as it relates to the health of an individual. As such, by its very nature, this has been deemed to be information that individuals regard as the most private information about themselves. Further, as disclosure of this type of information is likely to have a detrimental and distressing effect on the data subject, the Commissioner considers that it would be unfair to disclose such information and, as above, has therefore decided that the council was entitled to withhold the information under section 40(2), by way of section 40(3)(a)(i).
42. 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.

The Decision

43. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

Steps Required

44. The Commissioner requires no steps to be taken.

Right of Appeal

45. 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

46. 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.
47. 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 June 2011

Signed

**Andrew White
Group Manager – Complaints Resolution
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 –

- (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 2(3) provides that –

"For the purposes of this section, the following provisions of Part II (and no others) are to be regarded as conferring absolute exemption –

- (a) section 21
- (b) section 23
- (c) section 32
- (d) section 34
- (e) section 36 so far as relating to information held by the House of Commons or the House of Lords
- (f) in section 40 –
 - (i) subsection (1), and
 - (ii) subsection (2) so far as relating to cases where the first condition referred to in that subsection is satisfied by virtue of subsection (3)(a)(i) or (b) of that section,
 - (iii) section 41, and
 - (iv) section 44"

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.”