

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 February 2012

Public Authority: Northern Ireland Housing Executive

Address: 2 Adelaide Street
Belfast BT2 8PB

Decision (including any steps ordered)

1. The complainant has requested the number of complaints made against 3 specific Northern Ireland Housing Executive (NIHE) staff since they began working for the NIHE.
2. The Commissioner's decision is that the NIHE has correctly applied the exemption under section 40(2) by virtue of section 40(3)(a)(i) (personal data of third parties) to the requested information.

Request and response

3. On 11 January 2011, the complainant wrote to the NIHE and requested information in the following terms:

4. "How many complaints have been made against [name redacted] since he/she joined the Dungannon Housing Executive and how many were made against him/her when he/she worked in other offices.

He requested the same information regarding 2 other NIHE employees.

5. The NIHE responded on 28 January 2011. It stated that it was refusing to disclose the requested information and cited section 40 of FOIA as a basis for non-disclosure.

6. Following an internal review the NIHE wrote to the complainant on 5 May 2011. The complainant had sent a further e-mail to the NIHE on 10 March 2011 with the following re-phrased request: -

"How many complaints have there been against [name redacted] since he/she started working for the NIHE?"

Same question on [name redacted].

Same question on [name redacted].”

In the internal review response the NIHE stated that it had considered both the original and re-phrased requests and its response remained the same – that the information was personal data of third parties and was exempt from disclosure under section 40(2) of FOIA.

Scope of the case

7. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
8. The Commissioner has considered the NIHE’s application of the exemption under section 40(2) to the requested information.

Reasons for decision

Section 40(2) of the Act

9. Section 40(2) of FOIA provides an exemption for information which is the personal data of an individual other than the applicant, and where one of the conditions listed in section 40(3) or section 40(4) is satisfied.
10. One of the conditions, listed in section 40(3)(a)(i), is where 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.)
11. In its letter to the complainant dated 28 January 2011 the NIHE stated that the requested information was exempt from disclosure under section 40(2) of FOIA. In its internal review response it clarified that the requested information was personal data from which individuals (other than the complainant) could be identified and that its disclosure would breach the first data protection principle.
12. The first data protection principle states that personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless,
 - at least one of the conditions in schedule 2 is met, and
 - in the case of sensitive personal data, at least one of the conditions in schedule 3 is met.

13. In order to reach a view on whether this exemption is engaged, the Commissioner initially considered whether or not the information in question was in fact personal data.

Is the requested information personal data?

14. Section 1 of the DPA defines personal data as data which relates to a living individual who can be identified:

- from those data,
- or from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller.

15. The Commissioner considers that the requested information is personal data as specific living individuals could be identified from it.

Would disclosure of this personal data be unfair and in breach of the first data protection principle?

16. The personal data in this case would relate to the named individuals in a professional capacity. This is significant in that the Commissioner has made a clear distinction in previous decisions between requests for information relating solely to professional matters and information relating to individuals outside their professional capacity. The Commissioner's position is that he considers it far less likely that disclosure of personal data relating to professional matters would be unfair than would disclosure of information relating to individuals in a non-professional capacity.

Expectations of the data subjects

17. The Commissioner considers that a data subject's expectations regarding what will or might happen to their personal information will be shaped by several factors. In this case, as the information relates to the individuals in their professional capacity, the Commissioner has considered the following specific factors: -

- the seniority of the roles,
- whether the roles are public facing and
- whether the positions involve responsibility for making decisions on how public money is spent etc.

18. The NIHE has advised the Commissioner that the individuals whom the complainant's request concerns are junior members of staff in the

NIHE. Their positions are neither senior nor public-facing and they do not involve any responsibility for making significant decisions such as how public money is spent.

19. It is important to consider what expectation of disclosure the individuals would hold regarding their personal data. The Commissioner would consider it reasonable that junior NIHE staff would have an expectation that information about complaints made against them individually (including whether or not any complaints have been made) would not be disclosed, even without any specific notification of this.
20. In its Annual Report the NIHE publishes on its website statistical information about the complaints it has received and details of how they are dealt with. The Commissioner considers this significant as it demonstrates that the NIHE wishes to be open, transparent and accountable about its work and has attempted to do so as far as possible without disclosing details relating to specific individuals. It can be argued, therefore, that disclosure of the number of complaints made against individual NIHE staff would not be necessary in order to increase the openness and accountability of the NIHE, as this has already been demonstrated through the disclosure of statistical information about complaints and the NIHE's complaints handling procedure.
21. The possibility of detriment to the named individuals through disclosure of information relating to complaints made against them is a significant issue here. The Commissioner's previous decision notice FS50086498 includes this argument about the issue of detriment:

"To release the fact that a complaint has been made against an employee may lead to assumptions being made about that employee's competence. However, the complaint may be unsubstantiated or malicious, or certain employees may be involved more frequently with difficult decisions that are more likely to result in dissatisfaction. Therefore, releasing this information does not aid transparency or accountability but could be misleading and unfair to particular employees."

This argument also applies in this case. There is an argument that any employee of a public body should have an expectation of accountability for his or her actions, however if disclosure of that employee's personal information could cause detriment, as described above, such potential detriment must be balanced against any increase in transparency and accountability which could be achieved by disclosure of that information.

22. The Commissioner considers that public authorities should always be open, transparent and accountable for their actions. The NIHE has demonstrated its commitment to openness and accountability through disclosing statistical information about complaints. The Commissioner considers that such openness and accountability would not be further enhanced by disclosure of information concerning complaints against specific individuals, therefore disclosure would not aid transparency or accountability and could be detrimental to the individuals concerned.
23. As mentioned previously, the Commissioner has taken a clear line that disclosure of personal information relating solely to an individual in a professional capacity would be less likely to be considered unfair than disclosing information about an individual's private life. It can also be argued that employees of public authorities should have an expectation that they will be held accountable for the decisions and actions they take.
24. However, the Commissioner has also previously concluded that disclosure of information about complaints made against individual employees would be unfair, as the employees would have a reasonable expectation that such information would not be disclosed, and because of the potential detriment that could result from disclosure of information of this kind. It is also of significance that the NIHE has demonstrated transparency through disclosure of statistical information about complaints and its complaints procedures.
25. The Commissioner is of the view that the exemption under section 40(2) by virtue of section 40(3)(a)(i) of FOIA is engaged. In making this decision the Commissioner has first concluded that disclosure of the requested information would constitute a disclosure of personal data. The Commissioner considers that it is clear that specific individuals could be identified from the requested information.
26. Secondly, the Commissioner concludes that disclosure of this personal data would be unfair and thus would be in breach of the first data protection principle. In making this decision, the Commissioner has taken into account the lack of expectation on the part of the individuals named in the request that this information would be disclosed, the potential for detriment as a result of disclosure and that the NIHE has disclosed statistical complaint information.

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,
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

28. 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.
29. 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

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