

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 June 2012

Public Authority: Medway Council
Address: Gun Wharf
Dock Road
Chatham
Kent
ME4 4TR

Decision (including any steps ordered)

1. The complainant has requested information regarding the professional and vocational qualifications and relevant experience of staff regarding Autistic Spectrum Disorder. Medway Council ('the council') refused to provide this information to the complainant on the grounds that it did not consider it reasonable to provide the information being requested.
2. The Information Commissioner's ('the commissioner's') decision is that the council did not deal with the request for information in accordance with the FOIA in the following way:
 - It failed to provide an adequate refusal notice in response to the request.
 - It has not provided sufficient reasons for applying the section 40(2) exemption.
3. The Commissioner requires the council to take the following steps to ensure compliance with the legislation:
 - To respond to the request in accordance with the requirements of the FOIA.
4. The council must take these steps 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 pursuant to section 54 of the FOIA and may be dealt with as a contempt of court.

Request and response

5. On 28 August 2011, the complainant wrote to the council and requested information in the following terms:

"I require proof of the vocational and professional qualifications and also relevant experience regarding Autistic Spectrum Disorder, language disorders and Sensory Processing Disorders of the following Medway Council and Medway NHS staff. This must include dates of attaining these qualifications and the relevant examination board and the passing grade. It must also list any vocational training such as 1 day courses or relevant talks. Particularly regarding (two named employees) but also the other staff listed including yourself.

(15 named employees)."

6. The council responded on 6 September 2011 refusing to provide the information. It did not cite any provisions of the FOIA for not disclosing the information but stated 'I do not consider it reasonable, or indeed entirely relevant, to provide the full list of information requested. For example, my name is included in the list but, given my role, I do not possess specific qualifications pertaining to ASD, etc.'
7. The complainant wrote to the council again on 29 September 2011 making a further request for this information.
8. The council responded to the complainant on 3 October 2011. It stated that the request had been sent to the relevant officer to be considered. However, the complainant confirmed on 4 November 2011 that he had not received any further response from the council.

Scope of the case

9. The complainant contacted the Commissioner on 6 September 2011 to complain about the way his request for information had been handled.
10. The Commissioner considers whether the council has responded in accordance with the FOIA.

Reasons for decision

11. 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."

12. It is clear to the Commissioner that the council has not provided an adequate response in accordance with section 17 as per paragraph 6.

13. In correspondence with the Commissioner, the council sought to rely on section 40(2) but have not provided sufficient arguments as to why this applies. It explained that if the information requested was held, it would be exempt under section 40(2) as it forms third party personal data which would breach one or more of the data protection principles if it was disclosed.

14. However, the Commissioner expected a more detailed explanation of why this exemption would apply including what the reasonable expectations are of the third parties to the disclosure of the information, the consequences of the disclosure of the information and whether the council considers any disclosure to be unfair and/or unlawful.

Right of appeal

15. 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

16. 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.
17. 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
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF