

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 August 2012

Public Authority: Cardiff Council

Address: County Hall
Atlantic Wharf
Cardiff
CF10 4UW

Decision (including any steps ordered)

1. The complainant requested records of attendance for two specific meetings. Cardiff Council ('the Council') disclosed a copy of the attendance register indicating the names of the persons who attended, but withheld the signatures of the individuals under section 40(2) of the FOIA. The Commissioner's decision is that the Council correctly applied section 40(2) to the remaining information held relevant to the request. He does not require any steps to be taken.

Request and response

2. On 20 May 2012, the complainant wrote to the Council and requested the record of attendance for two Planning Committee Hearings on 7 March 2012 and 18 April 2012.
3. The Council provided a copy of the official record of Members attendance at the two Planning Committee meetings, but withheld the signatures on the two documents, under section 40(2) of the FOIA.
4. On 10 June 2012 the complainant wrote to the Council and asked to see the "unedited attendance sheets for both meetings".
5. The Council responded on 11 June 2012 re-iterating its position that it considered the signatures in question to be exempt under the provisions of the FOIA as disclosure would breach the first data protection principle of the Data Protection Act 1998 ('the DPA').
6. On 12 June 2012 the complainant wrote to the Council and asked whether he would be able to view copies of the un-redacted attendance

registers for both meetings. The Council responded on the same day and upheld its position that the signatures in question were exempt under the FOIA.

7. On 21 June 2012 the complainant requested an internal review of the Council's handling of the request.
8. The Council provided the outcome of its internal review on 7 July 2012 and upheld its decision that the remaining information (ie the signatures) was exempt under section 40(2) of the FOIA.

Scope of the case

9. The complainant contacted the Commissioner on 9 July 2012 to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner whether the Council should either provide copies of the un-redacted attendance registers, or allow him to view the original documentation at Council offices.
10. The Commissioner considers this complaint to be about whether the Council should disclose the outstanding information (signatures of Council Members who attended the Planning Committee meetings on 7 March and 18 April 2012) or whether it was correct in withholding the information under section 40(2) of the FOIA.

Reasons for decision

Section 40 – personal information

11. 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 FOIA would breach any of the data protection principles or section 10 of the DPA.
12. In this case, the Council argued that the requested information is the personal data of the Councillors who attended the meetings in question referred to in the request and that disclosure under the FOIA would breach the first data protection principle.

Is the requested 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. The withheld information in this case comprises of signatures of named Councillors on documents recording attendance at two specific meetings of the Council's Planning Committee. It is clear that the individuals are identifiable from their signature, which is linked on the documents to their surname, or full name. The Commissioner is therefore satisfied that the information requested constitutes personal data, within the definition at section 1(1) of the DPA.

Would disclosure breach one of the data protection principles?

15. Having accepted that the information requested constitutes the personal data, of a living individual other than the applicant, the Commissioner must next consider whether disclosure would breach one of the data protection principles. He considers the first data protection principle to be most relevant in this case. The first data protection principle has two components:

- personal data shall be processed fairly and lawfully; and
- personal data shall not be processed unless at least one of the conditions in DPA schedule 2 is met.

Would disclosure be fair?

16. In considering whether disclosure of the information requested would comply with the first data protection principle, the Commissioner has first considered whether disclosure would be fair. 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 individual. He has then balanced against these the general principles of accountability, transparency as well as any legitimate interests which arise from the specific circumstances of the case.

Expectations of the individuals concerned

17. The Commissioner has considered the reasonable expectations of the individuals in terms of what would happen to their personal data. These expectations can be shaped by factors such as the individuals' general expectation of privacy and also the purpose for which they provided their personal data.

18. When considering what information third parties should expect to have disclosed about them, the Commissioner considers that a distinction should be drawn as to whether the information relates to the third party's public or private life. The Commissioner's view is that information which relates to an individual's private life (i.e. their home, family, social life or finances) will deserve more protection than information about them acting in an official or work capacity (i.e. their public life). In this case, it is clear that the context of the withheld information, if not the information itself, relates to the individual's public lives as it relates to their roles as Elected Members of the Council.
19. When considering the Councillors' reasonable expectations, the Commissioner has been conscious of their public roles as Elected Members and that the public can expect real accountability to enable democracy to thrive. He has also considered that Elected Members play a key role with regard to the Council's business and that they have direct responsibility for overseeing how public money is spent.
20. The Commissioner acknowledges that some personal information about Councillors is readily available, for example, their names and addresses, the Committees on which they sit and meetings attended and details of their allowances. However, the Commissioner considers that this does not mean they would necessarily have expected their signatures be disclosed, in essence, into the public domain. The Commissioner also notes that, at the time of the request, due to recent local elections, some of the Councillors who attended the meetings in question were no longer Elected Members, as a result of recent local elections.

Consequences of disclosure

21. The Council is of the view that disclosure of the Councillors' signatures would amount to unfair and unlawful processing of their personal data. It argues that, disclosure could encourage fraudulent activity by individuals falsifying signatures for financial gain, particularly in view of the other information which is already publicly available in relation to Councillors, such as their home addresses.
22. Following receipt of the Council's initial response indicating that it believed disclosure could encourage fraudulent activity by falsification of signatures, the complainant asked the Council if it would allow him to view the documents in question as opposed to providing copies. The Council responding by re-confirming its position that the signatures were exempt under section 40(2) of the FOIA.
23. The Commissioner accepts that, to an extent, it would be more difficult for any individual having only viewed signatures to subsequently engage in criminal activity by forging a signature. However, information disclosed under the FOIA is essentially disclosure into the public domain,

regardless of the method by which the information is communicated. Therefore, if a public authority allows an individual to view information in response to a request for information, it would also have to provide the same information to any other individual in hard copy format, if requested. Under the provisions of the FOIA, information is either exempt under one of the exemptions within part II of the FOIA or it is not. Whether information is exempt is not dependent on the method of communication.

24. The Commissioner is satisfied that release of the withheld information would not only be an intrusion of privacy but could potentially cause unnecessary and unjustified distress to the individuals in this case.

General principles of accountability and transparency

25. Notwithstanding a data subject's reasonable expectations or any damage or distress caused to them by disclosure, it may still be fair to disclose the requested information if there is a more compelling public interest in disclosure.
26. The complainant stated that he requires copies or sight of the original attendance records to ascertain if the Councillors signed in as per Council procedures.
27. The Council has argued that the only legitimate interest in favour of disclosing the signatures in this case would be so that the applicant (and other members of the public) could validate that signatures are indeed on the documents in question. The Council has already confirmed to the applicant that the signatures exist on the document. Whilst the Commissioner's role is not to validate signatures on documents, he can confirm that there are signatures of those Councillors who attended the meetings on the two attendance registers.
28. The Commissioner accepts that, to a large extent the legitimate interests of the public have been satisfied through disclosure of the redacted attendance registers. However, it could be argued that disclosure of the signatures of the Councillors who attended the meetings would further promote openness and transparency.
29. The Commissioner's position is that signatures of individuals should not, as a matter of course, be disclosed into the public domain. The Commissioner accepts the Council's argument that placing the signatures on the attendance registers into the public domain would pose a risk of identity theft which would be both damaging and distressing to the individuals concerned.
30. In view of the above, the Commissioner is satisfied that the withheld information is personal data and that disclosure would breach the first data protection principle as it would be unfair to the individuals

concerned. As the Commissioner has determined that it would be unfair to disclose the requested information, it has not been necessary to go on to consider whether disclosure is lawful or whether one of the conditions in Schedule 2 of the DPA is met. The Commissioner therefore upholds the Council's application of the exemption provided at section 40(2) of the FOIA.

Right of appeal

31. 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

32. 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.
33. 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

Anne Jones
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