

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 May 2013

Public Authority: Wiltshire Council
Address: County Hall
Bythesea Road
Trowbridge
Wiltshire
BA14 8JN

Decision (including any steps ordered)

1. The complainant requested information about an investigation into the Headteacher of a particular school. Wiltshire Council ('the Council') withheld the information requested under section 40(2). During the course of the Commissioner's investigation the Council disclosed some information but maintained that the remaining information was exempt under section 40(2) of the FOIA. The Commissioner's decision is that the Council has 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 29 June 2012, the complainant wrote to the Council and requested information in the following terms:

"(1) I understand that Wiltshire Council commissioned an independent report into [name of former Headteacher], the head of Abbeyfield School in Chippenham, at some point last year... I would like a copy that report... [and]

(2) Copies of any correspondence, written or emailed on the subject of [name of former Headteacher] in the last year between any council officer and [names of two individuals]"

3. The Council responded on 24 July 2012 stating that it could neither confirm nor deny whether it held the information requested. However, it did not provide details of any exemption(s) considered applicable.

4. On 27 July 2012 the complainant requested an internal review of the Council's handling of his request. He pointed out that he knew that the report existed and as such he did not accept the Council's refusal to confirm nor deny whether it was held. The complainant stated that he believed it was in the public interest to have access to the report in question.
5. The Council provided the outcome of its internal review on 12 August 2012. It confirmed that it had originally relied on the provisions of section 40(5) to refuse to confirm or deny whether the requested information was held. The Council confirmed that it was withdrawing its reliance on section 40(5) and confirmed that the requested information was held, but the information was considered exempt under section 40(2) as the information constituted third party personal data and disclosure would contravene the data protection principles.

Scope of the case

6. The complainant contacted the Commissioner on 14 August 2012 to complain about the way his request for information had been handled. He asked the Commissioner to consider whether the information he had requested should be disclosed.
7. During the course of the Commissioner's investigation the Council disclosed some information relevant to the request. The scope of this complaint is therefore to consider whether the Council was correct to apply section 40(2) to the remaining withheld information.

Reasons for decision

Section 40 – the exemption for personal data

8. 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 Data Protection Act 1998 ('the DPA').
9. In this case, the Council argued that the requested information is the personal data of the Headteacher and other third parties referred to in the withheld information and that its disclosure under the FOIA would constitute unfair and or unlawful processing and would therefore breach the first data protection principle.

10. Due to the circumstances of this case and the content of the withheld information, the level of detail which the Commissioner can include in this notice about the Council's submissions to support its position in respect of its application of this exemption and the Commissioner's consideration of those arguments is limited. This is because inclusion of any detailed analysis is likely to reveal the content of the withheld information itself. The Commissioner has therefore produced a confidential annex which sets out in detail his findings in relation to the application of the exemption. This annex will be provided to the Council but not, for obvious reasons, to the complainant.
11. 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.
12. 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 on them in any way.
13. The withheld information in this case relates to an independent investigation commissioned by Abbeyfield School. The Council acknowledge that some parts of the withheld information, if read in isolation, may not constitute personal data. However, the Council believes that disclosure of parts of the withheld information will in the context of being held as part of the investigation report disclose personal data about the Headteacher and other individuals.
14. The Commissioner has considered the withheld information and is satisfied that, in the context of the request, it falls within the definition of 'personal data' as set out in section 1(1) of the DPA as it constitutes the personal data of the Headteacher named in the request, and of other individuals, including witnesses who gave evidence or those who were otherwise involved in the investigation.

Would disclosure breach one of the Data Protection principles?

15. Having accepted that all 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 most relevant principle in this case is the first principle.

The first principle

16. In determining whether a disclosure is fair under the first principle of the DPA for the purposes of section 40 of the FOIA, the Commissioner considers it appropriate to balance the consequences of any disclosure and the reasonable expectations of the data subject with general principles of accountability and transparency, as well as any legitimate interests which arise in the specific circumstances of the case.

Reasonable expectations

17. The complainant argued that the requested information should be disclosed on the basis that it relates to a senior official carrying out public functions. He believes that is in the public interest to see the report "given the controversial circumstances in which it was conducted, the public fall-out from its (limited) publication and the consequences for those involved." The complainant also said that:

"Several careers have been seriously affected by what happened at the school, and its subsequent investigation, and the matter has been widely aired in the local media already: it seems obtuse not to put this report into the public domain where it can be discussed openly – to do otherwise suggests the council has something to hide".

18. The Council argues that there is a strong expectation of confidence in any disciplinary or personnel related matter, and the Headteacher and other individuals involved in the investigation would have formed a reasonable expectation that the information would be treated in confidence, and would only become known to the limited people directly involved in the investigation process, and certainly not put in the public domain.
19. The Commissioner is of the opinion that disclosing personal data is generally less likely to be considered unfair in cases where the personal data relates to an individual's public or professional life rather than their private life. In this case, the Commissioner accepts that the information relates to the Headteacher's public life.
20. The Commissioner believes that an employee who makes decisions which involve expenditure of public funds should expect greater scrutiny about their decisions than junior colleagues; senior officials are paid out of public funds commensurate with their level of responsibility. In this case the Commissioner appreciates that the requested information relates to the School's most senior paid employee, its Headteacher.
21. The Commissioner recognises that regardless of their seniority people have an expectation that an employer, in its role as a responsible data controller, will not disclose certain information and that they will respect

its confidentiality. For example, he considers that information relating to an internal investigation, a grievance or disciplinary hearing will carry a strong general expectation of privacy. The Council confirmed that consent was sought from the Headteacher and was refused.

22. Notwithstanding the fact that the Headteacher was employed in a senior position and the information relates to his public life, based on the nature of the withheld information and the submissions provided to the Commissioner by the Authority, the Commissioner is satisfied that he would have had a reasonable expectation that the requested information would be kept confidential and not passed on to third parties without his explicit consent.
23. The Commissioner is also satisfied that the other individuals involved in the investigation would have also formed a reasonable expectation that the information would be kept confidential and not put into the public domain.

Consequences of disclosure

24. In assessing the consequences of disclosure the Commissioner has considered what those consequences might be and has then looked at other related factors. The Commissioner has taken into account that the data subject's emotional wellbeing may be affected by disclosure even though the distress or damage caused may be difficult to quantify.
25. The Council confirmed that some limited information about the investigation is in the public domain, mainly relating to the fact that an investigation was being conducted. However, it maintained that the detail of the investigation was not and is not in the public domain. It was for this reason that, at the time of its internal review, the Council withdrew its reliance on the neither confirm or deny provisions of section 40(5) and confirmed that the information was held but considered to be exempt under section 40(2).
26. The Council's position is that disclosure of the withheld information would cause damage and/or distress to both the Headteacher and other individuals who contributed to the investigation.
27. In light of the nature of the information and the reasonable expectations of the data subjects, as noted above, 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.
28. In his initial request, the complainant indicated that he was happy for any names or information which would identify individuals to be

redacted. The Council argues that the report itself relates to a specific individual (the Headteacher) so redaction would not be an option in respect of him. In addition, the Council contends that as the report relies heavily on witness evidence and interviews, which are inextricably woven into the fabric of the report, names and other identifying information could not be redacted without rendering the report meaningless.

29. The Commissioner has considered whether the information could be disclosed in a redacted or anonymised form. Taking into account the fact that the information at issue relates to a specific individual who is identified in the request itself and the fact that the focus of the information in its entirety is the same individual, the Commissioner considers that disclosure of any of the withheld information will result in the identification of the individual concerned. In this respect, the Commissioner considers that disclosure of any of the information is likely to result in the same unjustified adverse effects on the Headteacher identified above.

The legitimate public interest in disclosure

30. Notwithstanding a data subject's reasonable expectations or any damage or distress caused to them by disclosure, depending on the circumstances of the case it may still be fair to disclose requested information if there is a more compelling public interest in disclosure.
31. In considering 'legitimate interests', the Commissioner's view is that such interests can include broad general principles of accountability and transparency for their own sakes as well as case specific interests. The complainant has argued that, in view of the council's role as a public authority, the general principles of accountability and transparency apply and the information should be disclosed.
32. The Commissioner notes that the absence of the Headteacher whilst investigations were ongoing has been reported in the media and there has been speculation over the reason for the absence and his subsequent departure from the School. Disclosure of information relating to this matter would assist the public understanding of the relevant circumstances and demonstrate whether the matter has been handled appropriately.

Conclusion

33. Having considered the nature of the withheld information and the facts of this case as outlined above and in the confidential annex, the Commissioner does not consider that the legitimate interests of the public in accessing this information are sufficient to outweigh the

individuals' right to privacy. The Commissioner considers that the individuals had a strong expectation of privacy in relation to the withheld information and that to release this information would be unfair and likely to cause damage or distress to them.

34. In conclusion, the Commissioner finds that disclosure of the information requested would be unfair and would therefore contravene the first data protection principle. The Commissioner upholds the Council's application of section 40(2) to the requested information.

Right of appeal

35. 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

36. 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.
37. 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
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