

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 May 2013

Public Authority: St Helens Metropolitan Borough Council

Address: Wesley House
Corporation Street
St Helens
WA10 1HF

Decision (including any steps ordered)

1. The complainant requested information about the reasons for the suspensions of two senior members of staff at a particular school. The council refused to provide the information, citing section 40(2) of the Freedom of Information Act 2000 ("the FOIA"), the exemption relating to third party personal data.
2. The Commissioner's decision is that the council incorrectly relied on the exemption under section 40(2) in relation to the information that it withheld. The Commissioner also decided that the council held more information that fell within the scope of the request. He found breaches of section 1(1)(a), 1(1)(b) and 10(1) of the FOIA for the failure to identify and provide information within 20 working days.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Disclose the first sentence of the second paragraph from the two suspension letters and
 - Either disclose the two reports to the complainant that resulted in the suspension of the principal of the school or cite an exemption for withholding the information along with appropriate rationale in accordance with section 17 of the FOIA.
4. The public authority 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 Act and may be dealt with as a contempt of court.

Request and response

5. On 14 July 2012, the complainant requested information from the council relating to a particular school in the following terms:

"Could you please under the freedom of information act provide me with the details of the reasons for which the head teacher and one of the deputy head teachers were suspended from their posts earlier this year".

6. The council responded on 10 August 2012 and refused to provide the information, citing the exemption under section 40(2) of the FOIA.
7. The complainant requested an internal review on 3 September 2012.
8. The council completed an internal review on 21 September 2012. The council said that it wished to maintain the refusal.

Scope of the case

9. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He specifically asked the Commissioner to consider whether the council had correctly relied on the exemption under section 40(2).

Reasons for decision

Section 1(1) - What information was held?

10. Section 1(1) of the FOIA provides a general right of access to recorded information. It states that when a valid request is made for recorded information, public authorities should confirm or deny whether they hold information falling within the description specified by the request and if so, they should provide it unless there is a valid reason for not doing so under the FOIA.
11. In this case, the council identified that it held a limited amount of recorded information falling within the scope of the request contained within two suspension letters written to the principal and vice principal.

It withheld this information using section 40(2) of the FOIA and this has been considered further below by the Commissioner.

12. During the course of the Commissioner's investigation, the council made comments about the background to these issues that led the Commissioner to consider that it was also likely to be the case that the council held more information falling within the scope of the request than it had initially identified. The council referred in particular to two reports which led to the suspension of the principal. However, the council maintained throughout the Commissioner's investigation that these reports did not fall within the scope because they did not in the council's view concern "the details of the reasons" for the suspensions. The Commissioner disagrees with the narrow and artificial manner in which the council has interpreted this particular request. It seems reasonable in the circumstances to include the two reports in the scope of this request when the council has conceded that the contents of the reports formed the basis for the suspension. The Commissioner has ordered steps for the council to take in this decision notice relating to this aspect since the council would not agree to include the two reports within the scope of the Commissioner's investigation.
13. The council also made comments relating to an additional reason for the suspension of the principal and the reasons for the suspension of the vice principal. However, the council confirmed that no recorded information was held relating to these issues and it said it was not unusual for suspensions like this to occur following verbal discussions between the council and a school.

Section 40(2) – Third party personal data

14. This exemption provides that third party personal data is exempt if its disclosure would contravene any of the Data Protection Principles set out in Schedule 1 of the Data Protection Act 1998 ("the DPA").

Is the withheld information personal data?

15. Personal data is defined by the DPA as any information relating to a living and identifiable individual. The withheld information relates to two members of staff at a particular school who can be identified. The information is clearly their personal data.

Would disclosure breach the Data Protection Principles?

16. The Data Protection Principles are set out in Schedule 1 of the DPA. The first principle and the most relevant in this case states that personal data should only be disclosed in fair and lawful circumstances. Since there was no reason for the Commissioner to consider that the disclosure of the information would otherwise be unlawful, the

Commissioner's considerations below have focused on the issue of fairness. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the individual and the potential consequences of the disclosure against the legitimate public interest in disclosing the information.

Reasonable expectations

17. The council argued that the individuals concerned would not have expected the information to be disclosed. It argued that information of this nature carries a strong expectation of confidence because of its nature. It also said that the suspensions were a "neutral act", and there was no further action. The individuals concerned subsequently resigned and the council argued that in these circumstances, disclosure would not be expected.

Consequences of disclosure

18. The council said that disclosure would have led to complaints from the individuals concerned in respect of data protection breaches. The council also said that the disclosure would have been harmful to the individuals because it would cause damage to their reputation.

Balancing the rights and freedoms of the data subject with the legitimate interests in disclosure

19. There is always some legitimate interest in the disclosure of information held by public authorities. This is because disclosure of information helps to promote the aims of the legislation to bring about greater transparency and accountability in public bodies. In turn, this may help to increase the public's understanding of decisions and encourage greater public engagement. Additional factors favouring disclosure in this case are the fact that the information relates to the two most senior individuals at the school and that it relates to their professional roles. However, the most significant factor favouring disclosure is the information that was already in the public domain by the time of the request.
20. The council specifically confirmed that it did not wish to rely on the "neither confirm or deny" provision provided by section 40(5) of the FOIA. In other words, it accepts that it is publicly known that the staff members were suspended. The council said that it was reported in the local press that the suspensions were made because of concerns over the leadership and management of the school and that it was subsequently reported that the staff members had resigned for personal reasons. The council also provided to the Commissioner a copy of a

letter from the Chair of Governors addressed to parents and carers explaining that the principal of the school had been suspended because of concerns over the leadership and management of the school. It confirmed that there would be an investigation and the outcome would be reported in due course. The council said that it was not able to confirm what may have been said about the vice principal because the Chair of Governors no longer worked at the school.

21. The fact that the above information was already in the public domain by the time of this request had a significant bearing on the Commissioner's decision that disclosure would not be unfair to the individuals concerned. The Commissioner considered the nature of the withheld information itself and its generic, innocuous nature against this background. The Commissioner pressed the council to explain why, given the nature of the information already in the public domain and the actual nature of the withheld information, disclosure of the information would cause any unfairness since it appeared to the Commissioner that the contents of the withheld information would already be obvious. The council did not present any specific rationale for this position other than reiterating arguments it had already made and pointing towards the Commissioner's general guidance indicating that disclosure of information relating to suspensions may be unfair. The Commissioner explained to the council that the Commissioner's guidance is only ever guidance and is not to be taken as an expression of "rules" in respect of any given type of information. Indeed, the Commissioner's guidance is framed in such a way so as not to imply a definitive position since whether disclosure is appropriate will always be considered on a case by case basis and it is important to take into account the full circumstances.
22. In the Commissioner's view, the council failed to give adequate consideration to the full circumstances of the particular case in this instance, which led it to withhold information which in the Commissioner's view, added little or nothing to what was already known. For these reasons, the Commissioner was not persuaded that disclosure of the withheld information would be unfair and that it would breach the first data protection principle. The Commissioner therefore does not accept that section 40(2) was engaged.

Would the disclosure be necessary?

23. For clarity, when a disclosure would be fair, the Commissioner must consider whether it would be necessary to disclose the information in accordance with Condition 6 in Schedule 2 of the DPA. The full wording of Condition 6 is as follows:

"The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject".

24. As already noted in the analysis above, the Commissioner considers that the information adds little or nothing to the information that is already in the public domain. However, there is a legitimate public interest in accountability and transparency, and in the council complying with the FOIA unless there is a valid reason for not doing so. No such reason exists in this case and in line with the specified interests, the Commissioner considers that the disclosure should take place since it would not be unwarranted by reason of prejudice to the rights or legitimate interests of the data subjects.

Procedural issues

25. As the Commissioner considers that the council failed to identify all the recorded information that it held falling within the scope of the request, he has found breaches of section 1(1)(a) and 10(1) of the FOIA. These sections oblige public authorities to identify recorded information within 20 working days of a request.
26. The Commissioner did not agree that section 40(2) was engaged and he has therefore found further breaches of section 1(1)(b) and 10(1) for the failure to provide this information within 20 working days.

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

Andrew White
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