

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 June 2013

Public Authority: Wirral Metropolitan Borough Council
Address: Town Hall
Brighton Street
Wallasey
Wirral, CH44 8ED

Decision (including any steps ordered)

1. The complainant has requested information relating to calls made to a helpline set up to deal with concerns that care packages had been delayed.
2. The Commissioner's decision is that Wirral Metropolitan Borough Council (the Council) has correctly applied section 40(2) to the information relating to the individuals contacting the helpline. However, he also finds that the Council has incorrectly applied section 40(2) to the names of its employees.
3. The Commissioner further finds that the Council is in breach of section 10 of the FOIA due to the delay in issuing its response.
4. The Council has identified with the Commissioner some information within the scope of the request that it now considers is not exempt under section 40(2) and is now prepared to disclose. The Commissioner requires the Council to disclose the further information it has identified. No steps are required with regard to the breach of section 10.
5. 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.

Background

6. The Leader of the Council was contacted in early 2012 by a member of the public who raised concerns regarding the alleged implementation of a policy to delay the provision of Community Care packages for 4 weeks between October 2008 and August 2010. In order to establish who may have been affected, the Leader established a confidential helpline, between 19 March 2012 and 13 April 2012, for members of the public to call who believed their care packages may have been delayed during this period. The Leader requested regular updates on the number of contacts received by the helpline during this period and the outcome of these contacts.

Request and response

7. On 9 May 2012, the complainant wrote to the Council and requested information in the following terms:

"Please follow this link to the council's website:

<http://www.wirral.gov.uk/news/12-04-2012...>

Within the information held here, the then council leader Jeff Green advised that he would be demanding regular updates from the independent team of social workers set up to deal with the "disgraceful period in adult social services."

Please supply appropriately redacted copies of all the updates that have passed from the helpline team to Jeff Green. If they were not passed to him, please pass copies of them to me.

Please supply appropriately redacted copies of all the findings that have been recorded by the helpline team and its supervising manager.

Please supply the completed, ultimate findings, decisions and planned actions of the helpline team and its supervising manager, redacted if required.

Please provide information to confirm that the change of power at the council will not have had an impact on the work of this helpline team, and that it will be allowed to complete its work.

If it is scrapped, altered or reviewed in any way, please provide

the recorded information describing the reasoning for making these changes, reviewing or scrapping,"

8. The Council responded on 7 August 2012. It refused to provide the requested information stating that an independent report into "Adult Social Services helpline: 4 weeks delay to Community Care packages of support" would be published on the Council's website before the end of the year.
9. The complainant responded on 11 August 2012 stating:

"Thank you for your response (vague as it is). You have not explained why you sat on the information, stayed quiet and did not respond within 20 working days, preferring it seems to breach statutory law and leave the response until August.

Please confirm that you hold ALL of the following information in draft form or whatever form, and that you held it at the time of my original request:

- 1. Copies of all the updates that have passed from the helpline team to Jeff Green. If they were not passed to him, please pass copies of them to me.*
- 2. Copies of all the findings that have been recorded by the helpline team and its supervising manager.*
- 3. Completed, ultimate findings, decisions and planned actions of the helpline team and its supervising manager, redacted if required.*
- 4. Information to confirm that the change of power at the council will not have had an impact on the work of this helpline team, and that it will be allowed to complete its work.*

Numbered responses to each item please.

Please also confirm that the Independent Report you are planning to publish will hold ALL of the following:

- 1. Copies of all the updates that have passed from the helpline team to Jeff Green. If they were not passed to him, please pass copies of them to me.*
- 2. Copies of all the findings that have been recorded by the helpline team and its supervising manager.*

3. Completed, ultimate findings, decisions and planned actions of the helpline team and its supervising manager, redacted if required.

4. Information to confirm that the change of power at the council will not have had an impact on the work of this helpline team, and that it will be allowed to complete its work.

Numbered responses to each item please.

If you did not hold ALL of the above information at the time of my request, or you are not planning to publish ALL of the above information, Section 22 of the Act is not engaged.

Given your tardiness to date, I would appreciate a quick response to these queries. If you fail to respond, or respond in the negative, I will challenge your Section 22 exemption and appeal to the Information Commissioner"

10. On 10 October 2012 the Council responded. It provided some information in response to point 1 stating:

"Wirral Council can confirm this was held at the time; please find redacted copies attached. Please note information provided has been redacted so as not to identify individuals as this would breach the requirements of The Data Protection Act 1998 and leave the Council open to a claim that we have inappropriately disclosed Personal Data.

The Council considers that this information is exempt from disclosure under Section 40(2) of the FOIA as it contains personal data. The council considers that it would be unfair on any individual concerned to disclose this personal data and therefore would be in breach of the 1st principle of the DPA 1998.

11. In response to points 2 and 3, the Council stated that there were no findings recorded by the helpline team and that the findings from the helpline are recorded in the Report as mentioned in its response of 7 August 2012.
12. In response to point 4 of the request, the Council stated *"the change of the Council had no impact upon the work of the helpline. The helpline completed work as planned"*.
13. The Council advised the complainant that he was entitled to request an internal review however the complainant disputed this and stated that he had previously requested an internal review due to the lack of response to his original request.

14. In addition the complainant stated that he was dissatisfied with the response as it was inadequate. No internal review was carried out.

Scope of the case

15. The complainant contacted the Commissioner on 17 October 2012 to complain about the way his request for information had been handled.
16. Following further correspondence with the Commissioner, the complainant stated "*Please concentrate on the .tif file (please see council's response to my request dated 10 October 2012). I would also expect the council to review a whole lot more from the above document, which was basically 80+ pages of BLACK obliteration*".
17. The Commissioner has viewed the withheld information contained in the Director's Brief for Leader (referred to as 'the minutes' in the rest of this decision notice) which is the .tif file referred to by the complainant. The 80+ pages consist of a number of briefs over consecutive weeks between 16 March and 27 April 2012. Redacted copies of these briefs were provided to the complainant.
18. It is the Commissioner's view that these minutes relate to part 1 of the request where the complainant has asked for: *Copies of all the updates that have passed from the helpline team to Jeff Green. If they were not passed to him, please pass copies of them to me.*
19. The Commissioner confirms that the majority of the redacted information does not fall within the scope of the request. It deals with other matters relating to Council business such as updates on projects, IT and resources.
20. Therefore it was appropriate for the Council to redact this information as it was not in any way related to the requested information.
21. The Commissioner has therefore confined this decision notice to the consideration of the redacted information within the scope of the request contained within the minutes.
22. The Commissioner considers the scope of this case to be to determine of the Council has correctly applied section 40(2) of the FOIA to the requested information.

Reasons for decision

Section 40(2) – Third party personal data

23. This exemption provides that any 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?

24. Personal data is defined by the DPA as any information relating to a living identifiable individual.
25. There are seven sets of minutes each containing the names of the individuals who contacted the helpline concerned that there had been a delay in implementing a care package. The minutes also contain information relating to the medical conditions of the caller or those they are calling on behalf of.
26. In addition the minutes contain the names of Council employees who responded to calls and enquiries.
27. Council employees and those calling the helpline would be identified from the data requested. Therefore this constitutes personal data and it is this information which is within the scope of the request and has been redacted from the minutes.

Would disclosure breach the Data Protection Principles?

28. The relevant Data Protection Principle for the purposes of the request is the first. The first principle states that personal data should only be disclosed in fair and lawful circumstances. The Commissioner's considerations here focus on the question of whether disclosure could reasonably be deemed fair in all the circumstances.

Is any of the information sensitive personal data?

29. Section 2 of the DPA defines sensitive personal data as personal data which consists of information on the following:
 - a. an individual's mental or physical health,
 - b. their political opinions,
 - c. their sex life,
 - d. their racial or ethnic origin

- e. their religious beliefs
 - f. whether they are a member of a trade union
 - g. the commission or alleged commission of an offence by them, or
 - h. any proceedings for any offence they have committed or are alleged to have committed.
30. The Commissioner accepts that some of the personal data relating to the individuals in the minutes falls into one or more of the above categories, and therefore constitutes sensitive personal data about them.

Fairness

31. The application of the first data protection principle in respect of fairness involves striking a course between competing interests, specifically one which upholds the right of a data subject to privacy against one which advocates transparency and accountability. To establish what he considers to be the correct path, the Commissioner will be instructed by the following factors –
- i. A data subject's reasonable expectations of what would happen to their personal data.
 - ii. The consequences of disclosure.
 - iii. The balance between the rights and freedoms of a data subject with the public's legitimate interest in disclosure.
32. It is the Commissioner's view that a member of the public calling a helpline with regard to healthcare matters would not have any expectation that this would be disclosed to the world at large.
33. In his guidance "Request for personal data about public authority employees"¹ the Commissioner notes that a factor to be taken into account when considering to release information identifying an employee is whether the information relates to the employees public or private life. The threshold for releasing professional information will

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http://www.ico.gov.uk/for_organisations/guidance_index/~media/documents/library/Environmental_info_reg/Practical_application/section_40_requests_for_personal_data_about_employees.ashx

generally be lower than that for releasing truly personal, sensitive information.

34. In this case, the Council employees are senior members of staff. It is reasonable to expect that a public authority would disclose more information relating to senior employees than more junior ones. Senior employees should expect their posts to carry a greater level of accountability. However, the terms 'senior' and 'junior' are relative. It is not possible to set an absolute level across the public sector below which personal information will not be released.
35. The Commissioner acknowledges the apprehension of public authorities when releasing names of employees. However, equally the Commissioner considers the fact that the employees concerned were involved in attempting to resolve concerns and were of a senior level demonstrates that the Council was taking the matter seriously.
36. Furthermore, the Commissioner realises there is a legitimate interest in the public knowing their concerns are taken seriously with regard to the provision of care packages by the Council.
37. In light of the legitimate interest in the information and the negligible harm or distress that would be caused by its release, the Commissioner has found that disclosure of the Council employee's names would be fair.
38. With regard to the personal data of the individuals contacting the helpline, the disclosure of sensitive personal data is highly likely to cause unwarranted distress to the individuals concerned. Consequently, the disclosure of this information would be unfair and therefore in breach of the first data protection principle.
39. Having determined that disclosure of the employee's names would be fair the Commissioner has gone on to consider whether this would be lawful. In order for disclosure to be lawful it must meet one of the conditions in Schedule 2 of the DPA. The conditions that are most likely to be relevant in such cases are conditions 1 or 6.

Condition 1 – consent

40. The issue of consent is dealt with in the Commissioner's specialist guidance "Consent"². The guidance states that the Commissioner will

² <http://www.ico.gov.uk/foikb/PolicyLines/FOIPolicyConsent1.htm>

take data subjects' comments into account insofar as they represent an expression of the views of the data subject at the time of the request. The Commissioner considers that such views will help to inform the analysis of fairness because of the unique perspective of the data subject on the impact of disclosure on them.

41. The Commissioner notes that an individual's objection to the disclosure of information does not necessarily mean that it cannot be released. However, as the Council has not provided any submissions in this regard, the Commissioner has not considered the question of consent further.

Condition 6 – legitimate interest

42. The Commissioner accepts that in considering 'legitimate interests', such interests can include broad general principles of accountability and transparency for its own sake. The Commissioner accepts that public authorities should be open to scrutiny and accountability and there is general interest in the activities of public authorities.
43. As stated in paragraph 36 the Commissioner considers that there is a legitimate interest in the public knowing how their concerns are dealt with and that they are taken seriously.
44. The Commissioner therefore finds that the names of the Council employees dealing with the complaints to the helpline should be disclosed to the complainant along with the further information identified by the Council.

Section 41 – Information provided in confidence

45. Part of the requested information was also latterly withheld under section 41 of the FOIA – information provided in confidence.
46. It is the Commissioner's view that this information is covered by section 40(2) and is the sensitive personal data of the individuals contacting the helpline. Therefore he has not considered the application of section 41.

Other matters

47. Section 1 of the FOIA states that:

(1) Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) *if that is the case, to have that information communicated to him*

48. Section 10 of the FOIA states that:

(1) Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.

49. The request was made on 9 May 2012. The Council did not acknowledge receipt until 30 May 2012, after the complainant had chased it. A response was issued on 7 August 2012, almost 60 days after the request was made.

50. The Council has therefore breached section 10 of the FOIA and the Commissioner has recorded this breach accordingly.

51. The complainant should note however, that the Council were correct to offer an internal review of the response it had provided. In essence this would have meant two internal reviews, one to deal with the delay in its initial response and one to deal with the content of its response.

Right of appeal

52. 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

53. 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.
54. 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

Pamela Clements
Group Manager, Complaints Resolution
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF