

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 August 2013

Public Authority: Herefordshire Council
Address: Brockington
35 Hafod Road
Hereford
HR1 1ZT

Decision (including any steps ordered)

1. The complainant requested information as to whether two named employees of Herefordshire Council are related. The Council, relying on section 40(2), declined to provide the information.
2. The Commissioner's decision is that Herefordshire Council correctly relied on section 40(2) not to release the requested information.

Request and response

3. On 7 January 2013, the complainant wrote to Herefordshire Council ("HC") and requested information in the following terms:
 - Whether two of its named employees are related
4. On 8 January 2013 HC responded. It refused to provide the requested information and relied on the exemption provided by section 40(2) (third party personal data) of FOIA to do so.
5. Following an internal review HC wrote to the complainant on 24 January 2013. It stated that it upheld his original decision.

Scope of the case

6. The complainant contacted the Commissioner on 22 February 2013 to complain about the way her request for information had been handled.

Reasons for decision

7. Section 1 of FOIA provides two distinct but related rights of access to information that impose corresponding duties on public authorities. These are:
 - the duty to inform the applicant whether or not requested information is held and, if so,
 - the duty to communicate that information to the applicant.
8. HC has informed the complainant that it holds the requested information. However it will not to communicate it to her and relies on section 40(2) so not to do.
9. Section 40(2) of the FOIA states that information is exempt from the duty of 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).
10. Personal data is defined in section 1(1) of the DPA as:

...data which relate to a living individual who can be identified from those data or from those data and other information which is in the possession of, or likely to come into the possession of, the data controller; and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any person in respect of the individual
11. The Commissioner's guidance ¹on his website expands on what constitutes personal data:
 - "The two main elements of personal data are that information must 'relate to' a living person, and that person must be identifiable. 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."
12. Information as to whether two named individuals are related is biographically significant to them and is plainly their personal data.

¹ http://www.ico.org.uk/for_organisations/data_protection/the_guide/key_definitions

13. In considering whether disclosure of personal data would be unfair and therefore contravene the requirements of the first data protection principle, the Commissioner considers the following factors:
 - The data subject's reasonable expectations of what would happen to their personal data.
 - The consequences of disclosure.
 - The balance between the rights and freedoms of the data subject and the legitimate interests of the public.
14. HC has explained to the Commissioner what the data subjects' expectations are in the context of the information request. Both data subjects have expressly stated that they do not want the withheld information, their personal data, to be given to the complainant.
15. Where the data subject has not expressed consent to the disclosure of their personal data the Commissioner adopts the following approach when considering fairness:
 - Non-expression of consent is not absolutely determinative as to whether the data subject's personal data will be disclosed.
 - It also remains important to still consider whether it would be reasonable for the data subject to object to the disclosure
16. The Commissioner's position therefore is that the data subject's non-consent to the information release is not solely determinative as to whether the release would be fair or not. The non-expression of consent is one, albeit important, factor that has to be weighed against those factors which focus on the public interest in releasing the information.
17. The complainant maintains that the public knowing whether the individuals are related will help it decide whether a planning issue determined by the council was properly and fairly done.
18. HC, on the other hand, avers that the first principle of the DPA would have been breached by answering this request, because disclosure would not be fair to the employees concerned given that the data related to their home and family life. It explained that whilst family or close personal relationships with other people working in the organisation are declared when employees apply for positions, relationships are regarded as part of employees' private life which should not interfere with their professional activities at work.
19. HC goes on to say that conditions in Schedule 2 (in the DPA) do not allow the information to be disclosed. The balance between any

legitimate public interest in disclosure and the rights and freedoms of the employees concerned is considered to be in favour of non-disclosure. This is because in the case in question there would be no conflict of interest as referred to in the Council's policy on close personal relationships, regarding the work carried out by the named employees, were they related or not. (The Commissioner has viewed a copy of this policy). To answer such a question would therefore be in conflict with the employee's reasonable expectations of privacy.

20. On balance (and by a significant margin) the Commissioner finds that the disclosure of the information would be unfair and breach the first data protection principle.
21. He is not swayed by the complainant's assertion that the public interest "trumps" the individuals' expectation of privacy in this case. Whether or not the individuals are related is a private matter rather than a public one. Whilst it is in the public interest to scrutinise the efficacy of a public authority, the withheld information will not in itself shed much useful light on that issue. The Commissioner thinks that the mere fact that people are, or are not, related does not show (let alone mean) that an organisation's decision is necessarily "bad". In any event, there are statutory and democratic avenues to challenge the behaviour of the public authority. It is for these reasons that the Commissioner finds that HC correctly relied on section 40(2) to withhold the requested information.

Right of appeal

22. 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

23. 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.
24. 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

Alexander Ganotis
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