

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 November 2013

Public Authority: St Helens Council
Address: Wesley House
Corporation Street
St Helens
WA10 1HF

Decision (including any steps ordered)

1. The complainant has requested information about whether two named members of St Helens Council (the Council) staff are related and what the Council's 'policy is concerning nepotism'.
2. The Commissioner's decision is that the Council has correctly applied the exemption for personal data at section 40(5) of the FOIA by refusing to confirm or deny whether it holds information relating to a relationship between two of its employees. However, the Council failed to comply with its FOIA obligations by not disclosing information relating to its policy on relationships involving councillors and employees.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Respond to the complainant to confirm it holds relevant information in its job application form and Code of Conduct for Employees; and
 - Disclose that information to the complainant.
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 4 March 2013 the complainant made the following request for information under the FOIA:
 1. *"Under the FOI Act 2000, I would like to ask if there is any sort of familial relationship or spousal relationship between [named individual] and [another named individual]."*
 2. *"I would also ask under the FOI Act 2000 what St Helen's Council's policy is concerning nepotism?"*
6. St Helens Council responded on 4 April 2013 as follows:
 1. *"We neither confirm nor deny that we hold this information."*
 2. *"We do not have a policy concerning nepotism".*
7. The Council provided an internal review on 15 April 2013 in which it maintained its original position.

Scope of the case

8. The complainant contacted the Commissioner on 1 May 2013 to complain about the way her request for information had been handled. Specifically she expressed concern about potential bias in the roles of the individuals concerned in the event that they are related.
9. Although the Council did not refer to an FOI exemption when responding to the request, the Commissioner considers the scope of the case to be whether the Council has correctly applied section 40(5)(b)(i) of the FOIA (the duty to confirm or deny whether personal data is held) and whether it holds any recorded information relating to any 'policy concerning nepotism'.

Reasons for decision

Section 1(1) General right of access

Request 2: "I would also ask under the FOI Act 2000 what St Helen's Council's policy is concerning nepotism?"

10. Section 1(1)(a) and 1(1)(b) of the FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds the information and if so, to have that information communicated to him/her.
11. In considering cases such as this, the Commissioner, in accordance with a number of First Tier Information Rights Tribunal decisions, applies the civil standard of the balance of probabilities. To reach a decision on this, the Commissioner asked the Council questions as to the nature of the requested information regarding any nepotism policy. He has also considered the context of the case, the nature of the requested information and the authority's responses, arguments provided by the complainant and evidence to suggest the information is held.
12. The Commissioner asked the Council about all documentation relevant to the disclosure of information regarding relationships between staff members. He is satisfied that this aspect has been adequately researched and answered by the Council.
13. The Council provided the Commissioner with a copy of its job application form requiring all applicants to disclose any relationships with councillors or council employees. It also provided a copy of its Code of Conduct for Employees, section 15 of which details that the corporate management team members and designated senior officers are required annually to make declarations about any relationship. Other employees must also declare interests where there could be a potential conflict of interests, and this may include a relationship with a councillor or another employee.
14. The Commissioner considers the information described in paragraph 13 to be relevant to the complainant's request, and notes that this information was not highlighted or disclosed by the Council in its response to the request. It has therefore breached section 10(1) of the FOIA by failing to provide this information to the complainant within 20 working days of the request. The Commissioner requires the Council to respond to the complainant to provide her with this information in order to comply with its obligations under section 1(1) of the FOIA.

15. However, the Commissioner is satisfied that the information described at paragraph 12 is the extent of information the Council holds of relevance to the request. Based on submissions provided by the Council and the complainant he is satisfied that on the balance of probabilities it is unlikely that the Council holds any 'policy' document or further information relevant to the complainant's request regarding the Council's policy concerning nepotism.

Section 40 - personal data

Request 1: "Under the FOI Act 2000, I would like to ask if there is any sort of familial relationship or spousal relationship between [named individual] and [another named individual]."

16. Section 40 of the FOIA provides a number of exemptions relating to the withholding of personal data with personal data being defined by the Data Protection Act 1998 (DPA).

17. Section 40(5) states that:

"The duty to confirm or deny –

(b) Does not arise in relation to other information if or to the extent that either-

(i) The giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded,"

18. Therefore, for the Council to be correct in relying on section 40(5)(b)(i) to neither confirm nor deny whether it holds information falling within the scope of the complainant's request the following conditions must be met:

- Confirming or denying whether information is held would reveal personal data of a third party; and
- That to confirm or deny whether information is held would contravene one of the data protection principles.

Is the requested information personal data?

19. Section 1(1) of the DPA defines personal data as:

'data which relate to a living individual who can be identified –

(a) from those data, or

(b) from those data and other information which is in the possession of, or is 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 other person in respect of the individual'

20. The Commissioner's view is that the information requested does constitute personal data. The request is for information about whether there is a relationship between two specified individuals.

Would confirming or denying that the requested information is held breach a data protection principle?

21. The first data protection principle says that personal data should be processed fairly and lawfully, subject to further conditions for processing set out in the DPA. In considering fairness, the Commissioner has taken into account the nature of the information requested, the reasonable expectations of the data subjects and the potential consequences of confirming or denying whether it holds information relating to two of its employees being related.
22. When doing so, it is important to consider the effects of the Council confirming whether or not it holds the requested information. As described at paragraph 13, the council will only hold information relating to relationships between its employees where it has been submitted on a job application form or where a relevant conflict of interest has been declared under section 15 of its Code of Conduct for Employees. While there is a requirement to declare any relationships in the Council's current job application form, the Council may not hold such information regarding long term employees. In addition, where there is a relationship between employees which has not been deemed to represent a conflict of interest, the council would not hold information about that relationship because the employees would not be required to declare the relationship.
23. In light of the above paragraph, the Commissioner accepts that if the Council confirmed whether or not it holds information relating to the request as to whether there is a familial or marital relationship between two of its employees, it would confirm whether or not a relationship has been declared. The Commissioner has therefore gone on to consider whether confirming the existence of any personal relationship between two of its employees would contravene the first data protection principle.

24. An important consideration when assessing whether it would be fair to disclose personal data is the data subjects' expectation of disclosure. The Commissioner accepts that employees will have an expectation of a degree of scrutiny around their employment in their professional and public capacity. However, they would not reasonably expect information relating to their personal and private circumstances to be subject to the same degree of scrutiny. In this case the requested information relates to the possibility of personal relationships between employees rather than their actions or conduct in their professional roles.
25. Furthermore, the Council explained that disclosure of this type of information was not considered to be within the reasonable expectations of employees because all information submitted on its job applications is submitted on a confidential basis, and this is made clear in its job application form. The Council further argued that confirming whether or not employees are related would be likely to cause distress to the individuals concerned.
26. The Commissioner recognises that people have a reasonable expectation that a public authority, in its role as a responsible data controller, will not disclose certain information it holds about employees. He considers that information relating to relationships between individuals or the marital status of individuals will attract a strong expectation of privacy as it is inherently personal to the data subjects and of a biographical nature.
27. The Council's submission accepts that there is a legitimate public interest in knowing that a local authority maintains and monitors a register of interests for senior and other relevant officers as a part of good corporate governance. It argues, however, that it is unnecessary to disclose into the public domain records which constitute personal data in order to meet this interest.
28. Whilst the Commissioner acknowledges that there is often a legitimate interest in disclosing information held by a public authority he balances this against the legitimate right to privacy of individuals. In this case he does not accept there is any legitimate interest in the Council disclosing whether or not there is a personal relationship between two of its employees.
29. In all of the circumstances therefore the Commissioner is satisfied that it would be unfair to confirm or deny whether the information is held as to do so would disclose information about their private life and represent an unwarranted infringement on their privacy. The exemption provided by section 40(5) is therefore engaged and the

Council is not required to confirm or deny whether it holds the information.

Other matters

30. Whilst the Council's refusal notice did explain why the request was being refused, under section 17(1) of the FOIA a public authority must specify which exemption is being used. The Commissioner would ask that the Council ensures it complies with this when handling other requests.

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

Alexander Ganotis
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