

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 19 March 2014

**Public Authority:** Slough Borough Council  
**Address:** St Martins Place  
51 Bath Road  
Slough  
SL1 3UF

#### Decision (including any steps ordered)

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1. The complainant requested information from Slough Borough Council (the Council) relating to allegations regarding corruption and fraud.
2. The Commissioner's decision is that the Council incorrectly applied section 40(2) to the information within the scope of the request.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
  - disclose to the complainant the information listed in the confidential annex to this decision notice.
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

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5. On 15 June 2013 the complainant made the following request for information to Slough Borough Council via the 'whatdotheyknow' website:

*"Please provide the following:-*

*All allegations put to the council regarding corruption and fraud at the council or its agents or subcontractors since 1 April 2011.*

*Details should include:-*

- 1) Detail of allegation made (without personally identifiable information)*
- 2) Action taken*
- 3) Investigation result (if applicable)".*

6. The Council responded on 11 July 2013, providing details of three matters. The complainant requested an internal review on 12 July 2013.
7. On 1 August 2013 the Council revised its position. It provided details of six matters. In respect of one of those matters - relating to a former council housing officer jailed for illegally subletting a council flat - it provided the complainant with a press release.
8. Following further correspondence, the Council wrote to the complainant on 27 September 2013. Providing him with the outcome of its internal review, it cited section 40(2) (personal information) of FOIA.

## **Scope of the case**

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9. The complainant contacted the Commissioner on 2 October 2013 to complain about the way his request for information had been handled. He told the Commissioner:

*"The council is arguing that all data cannot be revealed as the low number of records may make the individuals identifiable.... provision of as much detail as possible with some redactions would have been proportionate and could satisfy the request".*

10. He also told the Commissioner:

*"Relying on a section 40(2) exclusion after three months of correspondence seems like an attempt to frustrate rather than trying comply with the request in good faith, and pays little heed to the original wording of the request".*

11. Although the Commissioner understands from the complainant that some councils would appear to have complied with similar requests, he does not consider that this sets an automatic precedent for disclosure under the FOIA. In the Commissioner's view, each case must be considered on its merits.

12. Expressing his dissatisfaction with the way it handled his request for information, the complainant told the Council:

*"Thank you for providing detail for one of the fraud allegations - the one that is already in the public domain via the courts. You have provided a press release and considerable detail about a housing fraud allegation, but have failed to provide any real detail about the other allegations to an equivalent level ... I am expecting the same amount of detail as you have provided for the housing fraud".*

13. In considering the scope of his investigation, the Commissioner is mindful that, despite those comments to the Council, the complainant clearly specified that, in respect of any information within the scope of the first part of his request, he is seeking details of any allegations made *"without personally identifiable information"*.

14. Similarly, in requesting an internal review, he told the Council

*"I have explicitly asked in my request for*

*1) Detail of allegation made (without personally identifiable information)".*

15. During the course of his investigation, the Council provided the Commissioner with details of the withheld information. It also confirmed that some of that information could be disclosed. For the avoidance of doubt, the Commissioner orders disclosure of that information.

16. The Commissioner considers the scope of his investigation to be the Council's application of section 40(2) to the remaining withheld information. That comprises a small amount of information relating to three of the six matters on record.

## **Reasons for decision**

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### *Section 40 personal information*

17. Section 40(2) of FOIA provides an exemption from the disclosure of personal 'data' where the information is the personal information of a third party and its disclosure would breach one of the data protection principles of the Data Protection Act 1998 (DPA).

*Is the information personal data?*

18. The Commissioner acknowledges the sensitivity of the subject matter of the requested information – allegations regarding corruption and fraud. He accepts that this would lead to the Council being cautious.
19. He also accepts, as the Council stated in its response to the complainant, that the number of instances within the scope of the request is low.
20. However, the first step for the Commissioner to determine is whether the requested information constitutes personal data, as defined by the DPA. If it is not personal data, then section 40 cannot apply.
21. Personal data is defined in section 1(1) of the DPA 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 intention of the data controller or any other person in respect of the individual."*
22. The two main elements of personal data are that the information must 'relate' to a living person and that the 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.
23. It is clear that the withheld information 'relates' to a living person. It is linked to those alleged to be involved in fraud or corruption and may have been used to inform decisions affecting them, for example whether or not to take action depending on the outcome of any investigation.
24. The second part of the test is whether the withheld information identifies any individual. Having reviewed the withheld information, a copy of which was provided to him by the Council in a tabular form, the Commissioner considers that it does not identify individuals. Accordingly, it is not personal data.
25. The Commissioner has therefore concluded that section 40(2) was applied incorrectly by the Council to the remaining withheld information that falls within the scope of the request. The Council is therefore required to disclose the information that has been incorrectly withheld. The Commissioner has specified that information in a confidential annex to the decision notice that will be provided to the Council only.

## Right of appeal

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26. 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: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

27. 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.
28. 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 .....**

**Graham Smith**  
**Deputy Commissioner**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**