

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 February 2014

Public Authority: Wirral Metropolitan Borough Council

Address: Wallasey Town Hall
Brighton Street
Wallasey
Wirral
CH44 8ED

Decision (including any steps ordered)

1. The complainant has requested information about the supervision of a named member of staff from Wirral Metropolitan Borough Council ("the council"). The council refused the request citing section 40(2) of the FOIA.
2. The Commissioner's decision is that section 40(2) of the FOIA is engaged, and that the council was therefore correct to withhold the information. However, the Commissioner identified that the council issued a refusal notice outside of 20 working days, and therefore breached section 10(1).
3. The Commissioner does not require any steps to be taken.

Request and response

4. On 21 March 2012, the complainant wrote to the council and requested information in the following terms:

"Please disclose the dates of supervision for [named individual] – [position] - Assessment from Jan 2008 until the present.

Please disclose who the supervision was conducted by."

5. The council did not provide a response. The complainant then contacted the council further on 21 April 2012 to request an internal review.
6. The council responded on 8 June 2013 and provided an internal review. It refused the request citing the exemption provided by section 40(2) of the FOIA.

Scope of the case

7. The complainant contacted the Commissioner on 17 July 2013 to complain about the way his request for information had been handled.
8. The Commissioner considers that the scope of this case is the determination of whether the council was correct to rely on section 40(2) of the FOIA to withhold the requested information.

Reasons for decision

Section 40(2) – Third party personal data

9. Section 40(2) provides that:

"Any information to which a request for information relates is also exempt information if–

- (a) it constitutes personal data which do not fall within subsection (1), and*
- (b) either the first or the second condition below is satisfied."*

10. Section 40(3) provides that:

"The first condition is–

- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data*

Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene–

(i) any of the data protection principles...”

Is the withheld information personal data?

11. Personal data is defined by section 1 of the Data Protection Act 1998 (“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 data controller or any person in respect of the individual...”

12. In order for the exemption to apply the information being requested must constitute personal data as defined by section 1 of the DPA. In this instance, the Commissioner accepts that the information requested is both the personal data of the individual who has been directly named in the request, and the personal data of other individuals whose identities have been requested.

13. The Commissioner has considered the extent to which the information could be anonymised by removing the personal data, but has concluded that it would not be possible to redact the information in a meaningful manner without rendering it useless. The Commissioner is therefore satisfied that the withheld information in its entirety is personal data.

Would disclosure breach the data protection principles?

14. The data protection principles are set out in schedule 1 of the DPA. The Commissioner considers that the first data protection principle is most relevant to this case. The first principle states that personal data should only be disclosed in fair and lawful circumstances. The Commissioner’s considerations below have focused on the issues of fairness in relation to the first principle. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the data subject and the potential consequences of the disclosure against the legitimate public interest in disclosing the information.

Reasonable expectations of the data subject

15. When considering whether a disclosure of personal information is fair, it is important to take account of whether the disclosure would be within the reasonable expectations of the data subject. However, their expectations do not necessarily determine the issue of whether the disclosure would be fair. Public authorities need to decide objectively what would be a reasonable expectation in the circumstances.
16. In this case, the council has explained that the requested information is held in the personnel file of a council employee, and relates to the supervision of that individual by other employees. While the information therefore relates to the public life of the individual, the council has explained that providing this information would break the confidentiality expected of the council by its employees, who would not reasonably expect the dates of any required supervision, as held within personnel files for the purposes of employment, to be publically disclosed.
17. Additionally, the council has confirmed that the requested information also holds the personal data of other individuals, namely those who have acted as supervisors in relation to the named individual. The council has also confirmed that it would not expect these individuals to have a reasonable expectation that their internal involvement in the supervision of another employee would be publically disclosed.

Consequences of disclosure

18. The council has advised the Commissioner that it considers the release of the requested supervision dates would damage the relationship of trust and confidence between an employer and employee, and that an employee would not expect the information held within personnel files for the purposes of their employment to be subject to public access. Further to this, the council has advised the Commissioner that it considers that disclosure of the identities of the supervisors would impede the council from undertaking this type of measure in the future, as employees may not be willing to act in the role of supervisors.

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

19. The complainant in this case has proposed that the dates of a named employee's supervision, and the identity of those acting as supervisors, cannot be classed as personal data, but has not proposed the basis of this argument. The Commissioner disagrees with this argument, and considers that the withheld information satisfies the definition provided by section 1 of the DPA, and therefore represents personal data.
20. The council has not advised the Commissioner of any legitimate interests in disclosure that it has identified. However, the Commissioner

considers that the need to promote transparency and accountability on the part of the council is a legitimate argument in disclosure, and must be considered in reaching a decision on this case.

Conclusion

21. In most cases there will be some legitimate public interest in the disclosure of any information held by public authorities. This is because disclosure of information helps to promote transparency and the accountability of public authorities. This in turn may assist members of the public in understanding decisions taken by public authorities and perhaps even to participate more in decision-making processes. However, having considered the circumstances of this case, the Commissioner's view is that the right to privacy outweighs the legitimate public interest in disclosing the requested information.
22. The Commissioner has considered that releasing this information would not be within the expectations of the council's employees, who would not reasonably expect information held about supervision to be released into the public domain, nor would they expect their identity as supervisors within personnel matters to be disclosed. The Commissioner considers that an employee is highly likely to consider such information as being held with the expectation of confidentiality. The routine disclosure of such information could not only jeopardise the public and private life of the individual being supervised, but it could also impede the council from finding individuals willing to act as supervisors in the future.
23. The Commissioner therefore considers that disclosing the information would be unfair under the first principle of the DPA, and that the exemption provided by section 40(2) of the FOIA is engaged.

Section 10(1) – Time for compliance

24. Section 10(1) of the FOIA requires that a public authority must issue a refusal notice within the time for compliance, which is 20 working days following the date of receipt.
25. In this case the Commissioner has identified that the council issued a refusal notice outside 20 working days, and therefore breached the requirement of section 10(1).

Right of appeal

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

Website: 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

Andrew White
Group Manager
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Wycliffe House
Water Lane
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