

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 February 2014

Public Authority: London Borough of Bromley
Address: Bromley Civic Centre
Stockwell Close
Bromley
Kent BR1 3UH

Decision (including any steps ordered)

1. The complainant has requested the names and contact information for staff working in Safeguarding and Care Planning, Education and Care Services at the London Borough of Bromley (the "Council"). The Council provided some contact information for senior staff but refused to provide information about more junior staff. It failed to specify the relevant exemption (section 40(2)) and failed to rectify this and other procedural shortcomings at internal review. It also denied holding certain information which, in correspondence with the Commissioner, it later acknowledged that it held.
2. The Commissioner's decision is that Council holds more information within the scope of the request. However, the Council is entitled to rely on section 40(2) as a basis for withholding the contact details of staff below the level of Heads of Service within the scope of the complainant's request. In addition, the Commissioner has decided that the Council failed to comply with a number of its procedural obligations under sections 1, 10 and 17 in its handling of this request.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
 - to provide the complainant with the contact details of Terry Parkin, who is the Executive Director of Education, Care and Health at the Council.
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 8 July 2013, the complainant requested information of the following description:

"I would like to request under the Freedom Of Information Act the following information.

The names of the following post holders working in Safeguarding and Care Planning, Education and Care Services:-

- Director,
- Assistant Directors,
- Deputy Assistant Director,
- Senior Group Managers,
- Group Managers,
- Team managers

In addition to the names of the above, I also request the information in relation to the post holders:

- Direct telephone numbers including extensions,
- Direct email addresses (not including general public enquire email addresses),
- Areas of responsibilities.

I would like a copy of the council's policy and guidance for staff on handling public enquires including the time scales for providing responses to members of the public.

If any or all of this information is available already in the public domain, can you please provide me with direct link(s) to them including a brief outline of what relevant information is contained with the link relevant to my request.

If making this request takes you above the costs and staffing hours limits set for Local Governments and Authorities in the FOI act and Freedom of Information (Appropriate Limit and Fees) Regulations 2004, please let me know and suggest an appropriate revision of request whereby we can reach an agreeable level."

6. On 6 August 2013, the Council responded. It provided some information within the scope of the request. It indicated that it had more information but did not provide it, nor did it explain its basis for not providing it under the Act. Similarly, it failed to offer the complainant an internal review.
7. Nevertheless, the complainant requested an internal review on 6 August 2013. He said that the Council had not provided the contact details for the director and had not provided contact details for all senior group managers, all group managers, and all team leaders. He correctly observed that the Council had failed to explain why it had withheld information. He also queried the information given about a named officer at the Council in respect of the number of people they managed.
8. The Council sent him the outcome of its internal review on 12 August 2013. It provided some further information about the director (but not his contact details) and about the named officer referred to in the complainant's request for internal review. It upheld its position in relation to the other information that remains withheld. It alluded to the data protection principles but did not specify the exemption to which this comment refers, namely section 40(2). It also failed to advise the complainant of his right under section 50 of the FOIA to complain to the Information Commissioner.

Scope of the case

9. The complainant contacted the Commissioner on 12 August 2013 to complain about the way his request for information had been handled. He disputed the Council's reliance on section 40(2) and the Council's assertion that it held no further information in relation to the people for whom a named officer had line management responsibility. He also commented that the Council had not given full contact details for the Director whose role is referred to in the request. Finally, he also raised concerns about the Council's compliance with its procedural obligations in its handling of his request, including the timeliness of its responses.
10. The Commissioner has considered the following as part of his investigation:
 - whether the Council held further information within the scope of the request;
 - whether the Council was entitled to rely on section 40(2) as the basis for withholding information within the scope of the request; and

- whether the Council contravened any of its procedural obligations in its handling of the request.

Reasons for decision

11. Section 1 of the FOIA states that any person making a request for information is entitled to be told whether the public authority holds the information requested and, if held, to be provided with it. Section 10(1) of the FOIA states that this should be supplied within 20 working days.
12. When considering cases where there is a dispute as to whether further information is held, the Commissioner considers the question to the civil standard of proof, that is, on the balance of probabilities.
13. When responding to the complainant, the Council provided a table which listed the names and contact details of its most senior staff within the scope of the request. It also provided the number of staff for whom these senior staff had line management responsibility and whose roles fell within the scope of the request.
14. It did not provide the names and contact details of the more junior staff because it believed this information to be exempt under section 40(2) although it did not specify this exemption. Its position regarding section 40(2) will be considered later in this Notice. For one named senior officer, it said that this individual had no line management responsibility for any people whose roles fell within the scope of the request.
15. It corrected this at internal review and provided the names and contact details of four individuals for whom the named officer had direct line management responsibility. It also provided information about another post for which this person had direct line management responsibility but which was currently vacant. In a table setting out line management responsibility, it gave the figure "zero" to show the number of people whose roles fell within the scope of the complainant's request who were indirectly line-managed by this named individual.
16. In his complaint to the Commissioner, the complainant said he knew this latter assertion to be incorrect. He named two individuals who, to his knowledge, did fall within the line management structure set out in the scope of his request. He provided those names to the Commissioner.
17. When the Commissioner wrote to the Council to ascertain whether it held further information within the scope of the request, the Council acknowledged that it had been in error. It explained that the person handling the original request had concluded that section 40(2) applied to

this information and that it was therefore entitled to give the figure "zero" when responding to the request in respect of junior staff.

18. The Council also provided the Commissioner with its organisation chart. This chart shows that the Group Manager figure (which it had previously explained to the complainant was zero in a particular area of work) is not zero.
19. The Commissioner also notes that there is not a role of "Team Manager" or "Team Leader" in the organisation chart for the area described in the request.
20. The Commissioner further notes that the Council had been inconsistent in its approach in its use of the figure zero in order to, as it believed, protect the names and contact details of staff under section 40(2). The Commissioner has concluded that this inconsistency is symptomatic of other errors made in the handling of the request which are covered later in this notice. The Commissioner is satisfied that this was a genuine error on the Council's part in understanding how section 40 might apply to this case rather than a deliberate attempt to mislead the complainant.

Is further information held? - Conclusion

21. In light of the above, and, in particular, in the light of the Council's own acknowledgement of its error, the Commissioner has concluded that the Council does hold contact information about other junior staff that fulfil a role within the scope of the request. Specifically, the figure for the number of staff in the Group Manager role in a particular area of work is more than zero, contrary to what the Council told the complainant.
22. Having checked the Council's organisation chart, there do not appear to be any Team Manager or Team Leader roles in the areas relevant to the request. The Commissioner is satisfied that the Council does not hold contact information for any Team Managers or Team Leaders in the areas relevant to the request.
23. The Council therefore gave an erroneous denial as to the information it held within the scope of the request. It did hold other relevant contact information in relation to the role of Group Manager as described in the request. In denying that it did so (by providing the figure zero to the complainant), it contravened the requirements of section 1(1)(a) of the FOIA.
24. The Commissioner will now consider whether this contact information, along with other information that the Council has confirmed it holds, is exempt from disclosure under section 40(2).

Are the names and contact details of staff below the grade of Head of Service exempt from disclosure?

25. The Council argued that it was not obliged to provide the names and contact details of staff below the grade of Head of Service because this information was exempt under section 40(2) of the FOIA.
26. Section 40(2) of FOIA states that personal data (which is not the personal data of the requester) is exempt if its disclosure would breach any of the data protection principles contained within the Data Protection Act ("DPA"). The term "personal data" is defined specifically in the DPA.¹

Does the requested information constitute third party personal data?

27. In determining whether information is the personal data of individuals other than the requester, that is, third party personal data, the Commissioner has referred to his own guidance and considered the information in question.² He has looked at whether the information relates to living individuals who can be identified from the requested information and whether that information is biographically significant about them.
28. The information to which the Council has applied section 40(2) is the names and professional contact details of some of its employees.
29. The Council was initially reluctant to provide this information to the Commissioner so that he could consider the application of this exemption with specific reference to the withheld information. The Commissioner issued an Information Notice under section 51 of the FOIA on 25 November 2013. This Notice required the Council formally to provide the information. The Council complied with the Notice.
30. The Commissioner is satisfied that names and contact information that has been withheld is personal data. It relates to living individuals and provides contact information for those individuals at their place of work. The information also shows which role they fulfil at that place of work.

¹ <http://www.legislation.gov.uk/ukpga/1998/29/contents>

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http://www.ico.org.uk/for_organisations/data_protection/the_guide/~media/documents/library/Data_Protection/Detailed_specialist_guides/PERSONAL_DATA_FLOWCHART_V1_WITH_PREFACE001.ashx

The Commissioner is satisfied that information which shows where a person is employed is biographically significant about that person.

Would disclosure contravene any of the DPA data protection principles?

31. The data protection principle that is normally considered in relation to section 40 is the first data protection principle which states that:

'Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –

at least one of the conditions in Schedule 2 is met, and

in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.'

32. In deciding whether disclosure of personal data would be unfair, and thus breach the first data protection principle, the Commissioner takes into account a range of factors including:

- The reasonable expectations of the individual in terms of what would happen to their personal data. Such expectations could be shaped by:
 - what the public authority may have told them about what would happen to their personal data;
 - their general expectations of privacy, including the effect of Article 8 of the European Convention on Human Rights;
 - the nature or content of the information itself;
 - the circumstances in which the personal data was obtained;
 - particular circumstances of the case, e.g. established custom or practice within the public authority; and
 - whether the individual consented to their personal data being disclosed or conversely whether they explicitly refused.
- The consequences of disclosing the information, i.e. what damage or distress would the individual suffer if the information was disclosed? In consideration of this factor, the Commissioner may take into account:
 - whether information of the nature requested is already in the public domain;
 - if so, the source of such a disclosure; and even if the information has previously been in the public domain does the passage of time mean that disclosure now could still cause damage or distress?

33. Furthermore, notwithstanding the individual in question's reasonable expectations or any damage or distress caused to them by disclosure, it

may still be fair to disclose the requested information if it can be argued that there is a more compelling public interest in disclosure.

34. In considering 'legitimate interests', in order to establish if there is such a compelling reason for disclosure, such interests can include broad general principles of accountability and transparency for their own sakes as well as case specific interests. In balancing these legitimate interests with the rights of the individual in question, it is also important to consider a proportionate approach, i.e. it may still be possible to meet the legitimate interest by only disclosing some of the requested information rather than viewing the disclosure as an all or nothing matter.
35. The Council explained that it does not normally provide contact information of staff below the level of "heads of service". It also explained that this had been communicated to its staff. It said that disclosure of the requested information would be outside the reasonable expectations of its staff. It also explained that the staff in question worked in the sensitive area of implementing policy relation to vulnerable children. It referred to a previous decision notice under the FOIA where the Commissioner accepted that staff in such sensitive roles might be vulnerable to harassment from the public and it was under a duty of care to its staff to protect them from such harassment. In the case referred to in the previous decision notice, there had apparently been such incidences of harassment. Although it did not provide evidence that its staff had been harassed by members of the public where their contact details were made public, it argued that the decision in that notice was relevant here.³
36. The staff members in question, it said in summary, are relatively junior and not involved in the day to day running of the Council nor are they responsible for making major policy decisions. As such, it would not be appropriate to disclose their contact details under the FOIA.
37. The Commissioner considers that these arguments have considerable merit. He recognises that there is a legitimate interest in providing contact information to the public but he does not consider that the disclosure of more junior names is necessary for this legitimate interest. The legitimate interest is, in the Commissioner's view, served by the provision of the Heads of Service contact details and those of more

³ http://ico.org.uk/~media/documents/decisionnotices/2012/fs_50401773.ashx (see paragraph 34)

senior staff. The Commissioner notes that the Council provides contact information for its most senior staff on its website.⁴

38. Where a member of the public has any concerns about more junior post holders or about decisions made on a matter relating to them, they can contact the Head of Service in question whose details the Council has disclosed or more senior staff whose details are available from its website.
39. The Commissioner notes that more junior post holders have an expectation that their contact details would not be made available under the FOIA. The Commissioner is satisfied that this is a reasonable expectation. Further, although the Council did not provide examples in support of its arguments as to the likelihood of harassment, the Commissioner does not dismiss this argument entirely. It is not inevitable that a parent or caregiver (or child) in disagreement with the Council would harass individual staff members in the hope of advancing their case. However, given the emotive nature of the contact (related to the care of a child), it may happen.
40. The important point to note here is that disclosure under the FOIA is disclosure to the world not just to the complainant. The Commissioner has no evidence to suggest that the complainant would do anything other than act in a wholly reasonable manner if they were to access this information. However, other individuals may not act in a reasonable manner with ready access to this information under the FOIA and the Commissioner has to take this into account.
41. The Commissioner recognises that an individual who wishes to harass a member of staff may already have some of the requested contact information arising from previous contact. That said, this does not mean that the Council is obliged to make the details of all its more junior staff available under the FOIA. An individual, who wishes to harass staff, would not have access to the contact details of all staff working in this field as part of their previous contact with the Council. With such information, they could broaden the scope of their harassing behaviour to the detriment of the staff in question.

Section 40(2) - Conclusion

42. The Commissioner agrees that it would be unfair and in contravention of the first data protection principle of the DPA to disclose the personal
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⁴ http://www.bromley.gov.uk/info/200026/council_departments/385/chief_executive

data requested in this case. In reaching this view, he has had particular regard to the realistic expectations of the individuals concerned. He has also had regard for the availability of contact information for senior staff.

43. Finally, the Commissioner notes that the Council did not provide the complainant with the contact details of Terry Parkin, who is the Executive Director of Education, Care and Health at the Council although it did provide contact information of staff down to the level of Heads of Service. The Commissioner notes that Mr Parkin's contact information is freely available on the Council's website and has concluded that this information is therefore not exempt under section 40(2). In failing to provide this information to the complainant upon request, the Council contravened the requirements of section 1(1)(a) of the FOIA.
44. The Commissioner now requires the Council to provide this information to the complainant. It is sufficient for the Council to provide him with an online link to information which is already publicly available. Had it done so in response to the request, the Commissioner would have been satisfied that this was an adequate response to this element of the complainant's request.

Procedural failings

45. The complainant also raised concerns about the Council's compliance with its procedural obligations under the FOIA. The Commissioner has concluded that the Council failed to comply with its procedural obligations in several areas in the handling of this request.
46. Section 17(1) of the FOIA requires that "A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -
 - (a) states that fact,
 - (b) specifies the exemption in question, and
 - (c) states (if that would not otherwise be apparent) why the exemption applies."
47. Section 17(7) provides that -

"A notice under section (1), (3) or (5) must -

 - (a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of

requests for information or state that the authority does not provide such a procedure, and

(b) contain particulars of the right conferred by section 50 [the right to complain to the Information Commissioner].”

48. In this case, the Council did not explain it was refusing to provide information; it did not cite an exemption or explain why it considered it was entitled to rely on it; and it did not provide any information about the complainant’s right of appeal to either the Council or, ultimately, to the Commissioner.
49. It therefore contravened the requirements of section 17(1)(a),(b) and (c) and section 17(7)(a) and (b).
50. By failing to do this at all, it also contravened the timeliness requirements of the Act set out in section 10 of the Act. Section 10(1) provides that “ ... 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.”

Right of appeal

51. 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

52. 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.
53. 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

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