

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 February 2014

Public Authority: Denbighshire County Council
Address: County Hall
Wynnstay Road
Ruthin
LL15 1YN

Decision (including any steps ordered)

1. The complainant requested the score sheets for interviews carried out in connection with the tendering of a lease for a particular property. Denbighshire County Council ('the Council') withheld the information requested under section 40(2) of the FOIA. The Commissioner's decision is that the Council has correctly applied section 40(2) to the withheld information. The Commissioner requires no steps to be taken.

Request and response

2. On 17 May 2013, the complainant wrote to the Council and requested information in the following terms:

"Under the F.O.I.A. Could I have a .pdf copy of the score sheets for [names of three individuals redacted]. Relating to the 'tendering' for the lease of the Old Offa's Dyke Tourist Information Centre, Central Beach, Prestatyn.

Please redact names of individuals so as not to pass on personal scores.

2) I also note that my reply from [name redacted] the then Head of Development Services of 3rd June 2009. (below for reference) Also mentions a 'third' application?

'The selection process consisted of a panel of Council officers who considered the three applications among themselves. They, as I explained to you, did not accept your bid as meeting the required application criteria. They invited the remaining two applicants to attend for interview.'

Could I have clarity as to what were the 'did not accept your bid as meeting the required application criteria' actually was?

3) Whom were the panel of Council officers?".

3. The Council responded on 29 May 2013 and stated that the interview score sheets (part 1 of the request) were exempt under section 40(2), that it did not hold information relevant to part 2 of the request and it provided the information in relation to part 3 of the request.
4. On 4 July 2013 the complainant requested an internal review of the Council's decision to withhold the tender score sheets (part 1 of the request).
5. The Council provided the outcome of its internal review on 30 July 2013 and upheld its decision that the information was exempt under section 40(2) of the FOIA.

Scope of the case

6. The complainant contacted the Commissioner on 29 August 2013 to complain about the way his request for information had been handled.
7. The Commissioner considers the scope of his investigation is to determine whether the Council should disclose the interview score sheets (part 1 of the request) or whether it was correct in relying on section 40(2) as the basis to withhold the information requested.

Reasons for decision

Section 40(2) – the exemption for third party personal data

8. Section 40(2) of the FOIA states that information is exempt from 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').

9. In this case, the Council argued that the requested information is the personal data of the individuals who were interviewed in relation to the tendering of the lease in question. The Council considers that disclosure of the third party personal data under the FOIA would constitute unfair processing and would therefore breach the first data protection principle.
10. In order to rely on the exemption provided by section 40, the information being requested must constitute personal data as defined by section 1 of the DPA. It defines personal information as data which relates to a living individual who can be identified:
 - from that data,
 - or, from that data and other information which is in the possession of, or is likely to come into the possession of, the data controller.

Is the requested information personal data?

11. When making his request the complainant asked for the names of individual interviewees to be redacted so as "not to pass on personal scores". The Commissioner considers that truly anonymised data is not personal data because no individual can be identified from that information or from that information together with other available information. In such circumstances the information cannot be exempt under section 40(2) because a disclosure of the information would not be disclosure of personal data.
12. The Commissioner has therefore considered whether the Council could have made a limited disclosure of the information, with details of the identities of the individuals redacted.
13. The Council stated that it invited two applicants for interview in connection with the awarding of the lease in question. The Council explained that although there is only one name on each 'set' of score sheets, one of the interviews comprised two interviewees rather than one. The complainant is clearly aware of the identity of the individuals concerned as he named all three of them in his request for information. In addition, in his complaint to the Commissioner, the complainant mentioned that he had spoken to the unsuccessful applicant regarding concerns about the tender evaluation process undertaken by the Council.
14. The withheld information comprises two sets of evaluation score sheets (one for each interview) showing the points awarded and associated comments based on set questions/criteria. Three Council officers sat on the interview panel and there are three score sheets for each interview conducted (one for each panel member).

15. The Council's position is that redaction of the names will not anonymise the information as the withheld information also contains comments and other biographical information which would lead to the identification of the individuals concerned, for example, previous places of work, examples of work experience. In addition, the Council advised that the unsuccessful applicant has been provided with copies of his own score sheets following a subject access request he made for the information. The Council advised that it has received unsubstantiated allegations that the complainant and the unsuccessful applicant have co-ordinated their requests for information. In light of this and the fact that essentially only two applicants were interviewed the Council considered that disclosure of redacted copies of the information would still lead to the individuals being identified.
16. The Commissioner considers that based on the content of the withheld information, and the fact that only two applicants were interviewed for the lease, there is a strong likelihood that if the information were disclosed, even in a redacted format, it would be relatively easy to identify the individuals concerned. He believes the likelihood of identification would be greatest in relation to someone either associated with the applicants or with some local knowledge. The complainant himself is clearly aware of the names of the individuals who were interviewed as they were named in his request. In addition, whilst the Commissioner has no evidence to suggest that the complainant and the unsuccessful applicant have co-ordinated their requests for information to the Council, in correspondence with the Commissioner the complainant confirmed that he had spoken to the unsuccessful applicant in connection with the tender process.
17. Taking into account the above factors the Commissioner believes that it would be highly probable that individuals would be identified if the withheld information were disclosed. Accordingly, the Commissioner is satisfied that the information requested constitutes personal data, within the definition at section 1(1) of the DPA.

Would disclosure breach one of the data protection principles?

18. Having accepted that the information requested constitutes the personal data of a living individual other than the applicant, the Commissioner must next consider whether disclosure would breach one of the data protection principles. He considers the first data protection principle to be most relevant in this case. The first data protection principle has two components:
 - personal data shall be processed fairly and lawfully; and
 - personal data shall not be processed unless at least one of the conditions in DPA schedule 2 is met.

Would disclosure be fair?

19. In considering whether disclosure of the information requested would comply with the first data protection principle, the Commissioner has first considered whether disclosure would be fair. In assessing fairness, the Commissioner has considered the reasonable expectations of the individuals concerned, the nature of those expectations and the consequences of disclosure to the individual. He has then balanced against these the general principles of accountability, transparency as well as any legitimate interests which arise from the specific circumstances of the case.

Expectations of the individuals concerned

20. The Commissioner has considered the reasonable expectations of the individuals in terms of what would happen to their personal data. These expectations can be shaped by factors such as the individuals' general expectation of privacy and also the purpose for which they provided their personal data.

21. The Council confirmed that the applicants interviewed were not told that any of the information they provided during the interview would be disclosed into the public domain. As such, the Council considers that they would have had a reasonable expectation that their personal data would be kept confidential. The Council advised that the applicants were interviewed as "individuals" and not private limited companies and the successful applicant holds the lease as such. The Council has not sought consent from the individuals concerned but referred to telephone calls received from one of the individuals asking for assurances that their personal data would not be disclosed. In light of this the Council concluded that at least one of the individuals would refuse consent.

22. In this case, the Commissioner notes that the withheld information in this instance relates to the individuals' work life. However, the individuals are not public officials carrying out public roles but are individuals going about their private business. The withheld information is in essence a record of how the individuals performed and it would therefore be possible to discover how well or how badly they had performed during the interview. The Commissioner recognises that this sort of information could not be known by those able to identify the individuals concerned.

23. The Commissioner is satisfied that the individuals concerned would have had a reasonable expectation that the information they provided during the interviews would be used to consider whether or not they would be awarded the lease, and would not be passed on to third parties without their consent.

Consequences of disclosure

24. In light of the nature of the information and the reasonable expectations of the individuals concerned, as noted above, the Commissioner is satisfied that release of the withheld information would not only be an intrusion of privacy but could potentially cause unnecessary and unjustified distress to the individuals in this case. The Commissioner considers that it may be upsetting or embarrassing to some individuals to have such details disclosed to the world, and in particular to their friends, family or colleagues.

General principles of accountability and transparency

25. Notwithstanding a data subject's reasonable expectations or any damage or distress caused to them by disclosure, it may still be fair to disclose the requested information. The Commissioner has therefore gone on to consider whether there is any countering argument which would outweigh such an intrusion. He must consider whether there is any pressing social need for the information to be disclosed which might outweigh the expectation that the information would not be disclosed and shift the balance towards it being fair to disclose that information.
26. The Council's position is that, the individuals who were interviewed were interviewed in a private capacity, and as such the withheld information does not refer to public officials carrying out public functions, nor does it involve the spending of public money. The Council explained that the leaseholder (ie the successful applicant) pays rent to the Council in connection with the terms of the lease. The Council accepts that there could be a legitimate interest in disclosure of information about rent levels, but pointed out that this did not form part of the request in this case.
27. The Commissioner appreciates that the complainant has personal reasons for requesting the information. He understands that the complainant submitted an application for the lease which was not accepted and he was not invited for interviewed. The Commissioner notes that the complainant has discussed concerns about the tender process with the losing applicant who was interviewed. The Commissioner also notes that the Council has responded to queries and questions which the complainant has raised about the application and interview process associated with the awarding of the lease in question.
28. The Commissioner recognises that there is a legitimate interest in disclosure of the withheld information in order to show that the process of awarding the lease was carried out fairly. However, the Commissioner does not believe that any legitimate interest in the public's accessing the withheld information would outweigh the potential damage and distress caused by disclosure in this case. Therefore the Commissioner is unable

to conclude that disclosure of the withheld information is necessary to meet a legitimate public, rather than personal, interest.

29. In view of the above, the Commissioner is satisfied that the withheld information is personal data and that disclosure of any of it would breach the first data protection principle as it would be unfair to the individuals concerned. As the Commissioner has determined that it would be unfair to disclose the requested information, it has not been necessary to go on to consider whether disclosure is lawful or whether one of the conditions in Schedule 2 of the DPA is met. The Commissioner therefore upholds the Council's application of the exemption provided at section 40(2) of the FOIA.

Right of appeal

30. 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

31. 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.
32. 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

Anne Jones
Assistant Commissioner
Information Commissioner's Office
Wycliffe House
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