

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 29 January 2014

**Public Authority:** City of Stoke on Trent  
**Address:** Civic Centre  
Glebe Street  
Stoke-on-Trent  
ST4 1HH

#### **Decision (including any steps ordered)**

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1. The complainant has requested from the City of Stoke on Trent ('the council') a care workers training history. The Commissioner's decision is that the council has corrected applied the exemption for personal data at section 40(2) of the FOIA. He does not require any steps to be taken.

#### **Request and response**

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2. On 17 April 2013, the complainant made the following request for information under the FOIA for:

"I wish to formally request ALL the records you hold with respect to my complaint including the safeguarding reports and any other correspondence you have entered into with any other persons or companies that were engaged in the care of my late husband. I do understand that some of the material I have requested may be redacted with respect to the names of individuals".

3. The council responded on 21 May 2013 and provided the requested information with redactions made for third party data under section 40(2) of the FOIA.
4. The complainant responded on 10 July 2013. She stated that having scrutinised the reports provided she wished to request further information and listed this as points 1-4. The council interpreted point 4

(detailed below) as a request for an internal review of the response dated 21 May 2013.

4. "In the report by [named individual] (Social Worker) on the investigatory meeting of 6<sup>th</sup> October into the incident that led to my husband's hospitalisation, she records the question directed at the male care worker 'What is your history of care?' No answer is provided in the report as it states 'Personal Data'. I believe his previous training history is directly relevant to this case and request that you provide me with this information."
5. The council provided its internal review response on 15 August 2013. It maintained its original position that information about an individual's previous working life is exempt under section 40(2).

### **Scope of the case**

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6. The Commissioner received correspondence from the council on 16 September 2013 forwarding on a letter of complaint dated 28 August 2013, mistakenly sent to the council, regarding how the complainants request had been handled.
7. The Commissioner had been sent various pieces of correspondence between the complainant and the council dated from 20 February 2013 to 18 September 2013 containing a number of requests and responses. It appeared to him that the complaint related to the request for the male care workers training history therefore he contacted the complainant on 20 November 2013 to clarify that that was indeed the scope of the case. The complainant telephoned the Commissioner on 2 December 2013 to confirm that the Commissioner's interpretation of the complaint was correct.
8. Therefore, the Commissioner has considered the application of section 40(2) of the FOIA to the information held by the council in relation to the male care workers training history.

### **Reasons for decision Section 40 - personal information**

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12. 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').

### **Is the withheld information personal data?**

13. Personal data is defined by the DPA as any information relating to a living and identifiable individual. 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. The withheld information comprises of the male care workers care employment history. The Commissioner is satisfied that an individual's employment history is personal data as defined in the DPA.

### **Would disclosure breach the Data Protection Principles?**

14. The Data Protection Principles are set out in Schedule 1 of the DPA. The first principle and the most relevant in this case states that personal data should only be disclosed in fair and lawful circumstances. The Commissioner's considerations below have focused on the issue of fairness. In considering fairness, the Commissioner has taken into account the nature of the information, the reasonable expectations of the data subject, the potential consequences of disclosure and balanced the rights and freedoms of the data subject with the legitimate public interest in disclosing the information.

### **Nature of the information and reasonable expectations**

15. The council has said that the information was obtained for the purposes of both a disciplinary investigation conducted by the independent sector domiciliary care provider contracted to the city council, who provided care for the complainant's late husband, and an Adult Protection Investigation led by the council.
16. The council considers that in this case, and in any other case, employees either of the council, or of its contracted providers, will have a reasonable expectation that any personal data obtained as part of a disciplinary interview will only be used for the purposes for which it was obtained. Equally, any information obtained as part of an Adult Safeguarding Investigation would only be used for the purposes for which it was obtained. Therefore the council considers that it is reasonable for the male care worker to expect that his personal data would not be shared in order to respond to a request for information under the FOIA.
17. The Commissioner recognises that people have an instinctive expectation that a public authority, in its role as a responsible employer and data controller, will not disclose certain information. He considers that information relating to an individual's employment history will attract a strong general expectation of privacy.

18. The same strong expectation of privacy also applies to information that relates to disciplinary matters or grievances. Indeed, the expectation of confidence in relation to that sort of information is generally even stronger. In the case of *Rob Waugh v Information Commissioner and Doncaster College*<sup>1</sup> the Information Tribunal specifically recognised the expectation in relation to disciplinary matters. It said the following:

“...there is a recognised expectation that the internal disciplinary matters of an individual will be private. Even amongst senior members of staff there would still be a high expectations of privacy between an employee and his employer in respect of disciplinary matters”.

19. The Commissioner considers that public sector employees should expect some information about their roles and the decisions they take to be disclosed under the FOIA. He believes that a distinction can be drawn about the levels of information which junior staff should expect to have disclosed about them compared to what information senior staff should expect to have disclosed about them. This is because the greater the seniority of a member of staff, the greater the likelihood that they will have responsibility for influencing or making policy decisions and/or decisions which involve the expenditure of public funds. However, in this case, the Commissioner does not consider the care worker to be in a role that would involve an expectation of disclosure of his employment history.

20. Taking the above into consideration, the Commissioner considers that the care worker would have had a reasonable expectation that the specific details of his previous employment history would not enter the public domain.

### **Consequences of disclosure**

21. The council has concerns that releasing this information to the complainant, and by the nature of disclosure into the public domain, may lead to the complainant interpreting the information in a way that could be used against him and this may affect his future working life. It has confirmed that the information is not already in the public domain and the council has not published it through any other route.

22. The Commissioner considers that disclosure would amount to an infringement into the privacy of the care worker which has the potential to cause damage and distress, particularly as he has found that

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<sup>1</sup> Appeal no. EA/2008/0038

disclosure of the information requested would not have been within the care workers reasonable expectations.

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

23. There is always some legitimate public interest in the disclosure of information held by public authorities. This promotes the general aims of improving transparency and accountability. This in turn helps the public to understand more about the decisions made by public authorities. Furthermore, it is important for the public to be reassured, as much as possible, that sensible and fair decisions are being taken in relation to the employment of staff in the public sector.
24. The complainant has said that there a legitimate interest in employment history being made public to expose that care companies are employing unsuitable people which is a danger to the public. She explained that despite the fact she had alerted the care company of her concerns about the ability of the care worker, he continued to attend to her husband and attended to him on the day that he died.
25. In this case, the Commissioner recognises that there is a legitimate public interest in knowing that care workers are appropriately trained or experienced.
26. The council considers that it has already satisfied the wider public interest issues in this case by the fact that it has already conducted an Adult Protection Investigation and the employer also conducted internal disciplinary proceedings in respect of the care issue in question. It said that although the complainant may consider that disclosure is in her legitimate interest, it finds that the care workers freedoms and interests would be prejudiced due to the expectation that his data would not be onwardly disclosed. It said that the fact that the FOIA is request and motive blind supports its position that it is not in the wider public interest for the information to be released, but solely of interest to the complainant.
27. The council also stated that the withheld information will not inform the complainant as to the reliability or experience as a carer of the individual in question and therefore it cannot see any benefit of the information being disclosed in this respect.
28. Although the Commissioner can appreciate why the information is of particular interest to the complainant, there is no evidence available to the Commissioner indicating that there is sufficient wider legitimate public interest which would outweigh the rights and freedoms of the individual care worker. The complainant's wish to access this information

is a matter that the Commissioner can sympathise with but it is nonetheless a personal need.

### **Conclusion on the analysis of fairness**

29. Taking all of the above into account, the Commissioner concludes that it would be unfair to the care worker concerned to release the requested information. Disclosure would not have been within his reasonable expectations and the loss of privacy could cause unwarranted distress. He acknowledges that there is a legitimate interest in knowing that care workers are appropriately trained or experienced but does not consider that this outweighs the individual's strong expectations of, and rights to, privacy.
30. As the Commissioner has decided that the disclosure of this information would be unfair, and therefore in breach of the first principle of the DPA, he has not gone on to consider whether there is a Schedule 2 condition for processing the information in question. The Commissioner has therefore decided that the council was entitled to withhold the information under the exemption at section 40(2).

## Right of appeal

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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: [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)

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 .....**

**Andrew White**  
**Group Manager – Complaints Resolution**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**