

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 July 2014

Public Authority: Gosport Borough Council
Address: Town Hall
High Street
Gosport
PO12 1EB

Decision (including any steps ordered)

1. The complainant has requested details of disciplinary action taken against employees at the council. The council provided some information in response to some questions, however it then applied section 40(2) to the remaining questions.
2. The Commissioner's decision is that the council has correctly applied section 40(2) to the information.
3. The Commissioner does not require the authority to take any steps.

Request and response

4. On 30 November 2013 the complainant wrote to council and requested information in the following terms:

"Please provide the following information under the FOI Act 2000, regarding council officers suspended due to allegations of gross misconduct.

Please provide information about suspensions from April 2010 to date.

For each suspension please provide:

- 1. Officer's Department;*
- 2. Summary of allegation (i.e. mismanagement leading to distrust, inappropriate sexual conduct, violence, etc.*
- 3. Start and end date of suspension (please indicate if suspension ongoing);*
- 4. Total salary paid to officer during suspension to date;*
- 5. Total of any compromise agreement/pay-off given to officer;*
- 6. Disciplinary investigation outcome."*

5. The council responded on 9 January 2014 and provided information in response to the requests. It withheld information re point 1 on the basis that section 40(2) of the Act applied (personal data).

6. On 19 February 2014 the complainant wrote back to the council asking for further information from the council. He asked for:

"Please answer the following for each allegation:

Theft:

- 1. What was stolen?*
- 2. How was it stolen?*
- 3. What action was taken after the theft? (ie was it recovered)*

Breach of policies:

- 1. What policy (or policies) was breached?*
- 2. How was it breached?"*

7. The council responded on 21 February 2014 and provided further information in respect of the questions asked. However it withheld

information on the grounds that section 40(2) applied in respect of point 2 of the 'breach of policies' questions.

8. There was no internal review as such however after considering the requested information twice the council is satisfied that its response to the requests was correct. It submitted arguments supporting its decision to the Commissioner when asked to do so.

Scope of the case

9. The complainant contacted the Commissioner on 18 March 2014 to complain about the way his request for information had been handled.
10. The Commissioner considers that the complainant believes that the council should have disclosed all of the information which he asked for to him.

Reasons for decision

Section 40(2)

11. Information is exempt from disclosure on the basis of section 40(2) if it constitutes third party personal data (i.e. the personal data of anyone other than the individual making the request) and either the first or second condition in section 40(3) is satisfied.

Is the information personal data?

12. Personal data is defined in section 1 of the Data Protection Act (DPA) as follows:

'.....data which relate to a living individual who can be identified from those data or from those data and other information which is in the possession of, or likely to come into possession of, the data controller; and includes any expression of opinion about the individual and indication of the intentions of the data controller or any person in respect of the individual.'

13. In this case the information relates to suspensions and disciplinary action being taken against members of staff at the council. Although the complainant has not asked the council to provide the identities of any individuals involved the council has argued that answering some of the questions which form the request will in fact allow the identification of the individuals concerned, both by other members of staff and within the

local community. A disclosure of this information would therefore provide details of disciplinary action taken against identifiable individuals at the council and would therefore be a disclosure of personal data.

14. The first question for the Commissioner is therefore whether responding to the relevant questions would allow the individuals to be identified.
15. The council said that the authority is a small authority. It said that it has a total staff number of 274 members and that its departments are also small. It said that it is not uncommon for an event in one department to be news throughout the Town Hall within a matter of hours. It also said that the majority of staff live within the Borough and the town is something of a village when it comes to the exchange and spread of information, and this is helped by the social media and the local press.
16. It said that if the council were to disclose the department within which the individuals worked, or details of the policies which were breached, together with information already available, the identities of the individuals would become immediately apparent to colleagues, other members of staff and from there to people in the wider community.
17. The council also provided further information to the Commissioner which he is not able to discuss within this decision notice but which supports its arguments in this respect.
18. The Commissioner is satisfied that if the withheld information were to be disclosed then the individuals would be identified by colleagues and that this would then become known in the wider community. His decision is therefore that the disclosure of this information, together with information already available, would be a disclosure of personal data for the purposes of the Act.

Would the disclosure of the information contravene any of the data protection principles?

19. As mentioned, for section 40(2) to apply, either the first or second condition in section 40(3) must be satisfied. The first condition in section 40(3) states that disclosure of personal data would contravene any of the data protection principles of the DPA.
20. The first data protection principle states:

'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 [DPA] is met.....'

21. 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,
 - The consequences of disclosing the information, i.e. what damage or distress would the individual suffer if the information was disclosed?
22. Furthermore, notwithstanding the 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 if it can be demonstrated that there is a pressing social need for a disclosure of the information to the public which overrides the expectations of the individual or any detriment that may be caused.

Would the individuals expect that their personal data would be disclosed?

23. The first thing to consider is whether the individuals would expect the information about them to be disclosed.
24. The requested information is details of disciplinary action taken against individuals who work at the council. The council provided some details of the disciplinary actions which were taken but has refused to provide information where the result would be that the individuals would also be identified.
25. When working for public authorities there will always be an expectation that some information about individuals will inevitably be disclosed. Individuals may work directly with members of the public, may send out letters with signatures identifying who they are and their role at the authority, may involve meeting members of the public face to face, and in some cases their role may involve making public statements on behalf of the authority.
26. Similarly, some personal information will often need to be disclosed insofar as senior staff is concerned in order for the council to be transparent and accountable for its actions, about decisions it has taken, and about how it spends public money.
27. This sort of information forms part of the individual's role, and would be a disclosure of information about the individuals 'public lives' rather than their private lives. This would therefore fall within their expectations.
28. However some information held by public authorities relates to individuals private lives more than it does their public roles. Details of

disciplinary action being taken against an individual falls within this category of 'private information' which would be held by a public authority. The disclosure of this sort of information may not be directly about the authority itself and its disclosure would impact more upon the individual's family or home life.

29. Additionally, some information held by public authorities will be held in confidence under the implied duty of confidence between an employer and employee. Again this raises an expectation that such information will not be disclosed by the individual's employer unless the specific circumstances of the case merit it.
30. The individual would recognise that, within limits, it is inevitable that some colleagues will need to be told that the individual has been disciplined, such as members of the Human Resources teams and managers with direct responsibility. Similarly those working day to day with an individual may recognise that a work colleague is absent from work etc or has left the authority where a dismissal or suspension from employment takes place. However in the latter case this falls short of a direct confirmation from the authority that an individual has been disciplined or dismissed, and the disclosure of information as to why that has occurred. Disciplinary action may also not be apparent to colleagues where no suspension or dismissal occurs because the individual would not be absent from work for any period of time. The expectation of the individuals concerned would be that only staff with a direct requirement to know that information would be fully informed of the situation.
31. In general the First- tier Tribunal has considered that it would be unfair to an employee for his employer to disclose information which would allow the public to identify that disciplinary proceedings had been taken against him.
32. In *Lord Dunboyne v Information Commissioner EA/2011/0261 & EA/2011/0303* the Tribunal addressed the issue of requests for information on the disciplinary files of employees. It said at paragraph 32:

"The Tribunal has – and will continue to – recognise the strong expectation of staff members that disciplinary matters are personal and to be kept private."
33. Although the council are not able to take into account the motives of the requestor when making a decision it is noted that the complaint is a journalist and so the information which is disclosed may well be reported upon in the press.

34. Without specifically taking into account the identity or the motives of the requestor in this case it is quite possible that a disclosure of the information, including the identity of the individuals, would be reported upon by the local press and the media because the circumstances of this case would be of interest to local people. The council has argued, and the Commissioner agrees, that a disclosure of the requested information which leads to the individuals being identified by the local press or media would amount to an unwarranted intrusion into their private lives and would have the potential to cause unnecessary and unjustified distress to the individuals concerned.
35. Clearly in a relatively small community details of disciplinary action taken against an individual, and potentially reported upon the press would be likely to cause embarrassment, distress and be generally detrimental to the individuals concerned.
36. The Commissioner is therefore satisfied that the individuals would have no expectation that details about disciplinary action being taken against them would be disclosed in this instance.

Is there a pressing social need for the information to be disclosed?

37. As the Commissioner considers that it would not lie within the individuals expectations he must therefore consider whether there is a pressing social need for the council to disclose information which would override those expectations and make a disclosure of the information fair for the purposes of the first data protection principle.
38. The council has furnished the Commissioner with details of the circumstances of the cases in order for him to reach his decision.
39. Overall accountability for the actions of employees on behalf of the public authority generally rests with the authority itself rather than with the employees. If an employee of an authority acts inappropriately it is generally the authority which should be accountable to the public. The employee is accountable to the authority for his or her actions and the authority can take disciplinary action as necessary to prevent that happening again. The general public do not generally need to know the details of the disciplinary action which is taken other than where that is necessary to demonstrate that the authority has reacted appropriately and the circumstances require that (i.e. there is a pressing social need).
40. The public does not therefore have a general right to know whether an individual has been suspended, disciplined or dismissed from their position. That is not to say that no information on this should ever be disclosed, however in order for that to occur there would need to be a

demonstrable pressing social need which outweighs the expectations of individual concerned.

41. There are circumstances which provide stronger arguments that information on disciplinary action being taken against an individual should be disclosed to the public. These may be where there is a high profile or senior public official concerned and/or where a criminal prosecution or a public inquiry has taken place. Information in such circumstances is often disclosed due to the nature of proceedings being taken against the individual in question. The disclosure of information in such circumstances is not disclosed in response to a request being made under the Act. The Commissioner does however note that where that is not the case there would be a stronger argument for the disclosure of some information to the public in order for the authority to be accountable to the people it serves. The information which would be disclosed would however be limited to the information that there is a pressing social need to disclose.
42. The Commissioner has therefore considered whether there is a pressing social need for the disclosure of the information in this case and has decided that there is not. The employees concerned are not senior, and the reasons for the disciplinary action being taken do not have a large impact on the community or how the council carries out its functions.
43. A disclosure of the information would therefore be unfair for the purposes of the first data protection principle.
44. The Commissioner has therefore decided that the council was correct to apply section 40(2) to the information in this case.

Right of appeal

45. 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

46. 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.
47. 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
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