

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 June 2014

Public Authority: Dartford Borough Council
Address: Civic Centre
Home Gardens
Dartford
Kent
DA1 1DR

Decision (including any steps ordered)

1. The complainant has requested information broadly concerning the employment details of a manager at the Dartford Borough Council ("the Council").
2. The Commissioner's decision is that the Council has correctly relied upon the exemption set out at section 40(2) of FOIA.
3. The Commissioner requires the public authority to take no steps.

Request and response

4. On 8 November 2013, the complainant wrote to the Council and requested information in the following terms:
 - 1) *What was the exact date in January 2008 of your formal appointment as [a department] Manager?*
 - 2) *Did you cover the [a department] Manager post after [named individual] left and before someone else was appointed?*
 - 3) *Were temporary staff employed in [a department] between September 2007 and February 2008?*

4) Are you of the opinion that the workload of the [a department] combined is too much for one manager?".

5. The complainant didn't receive a response to this request and therefore chased it on 27 November 2013.
6. On 20 December 2013 the Council responded to the request. It explained that it no longer held the information sought within requests 1, 2 and 3. In response to request 4 it explained that it was not obliged to give opinions.
7. The complainant subsequently asked for a review of this decision. The internal review response was sent on 18 February 2014.
8. With regards to request 1, the Council explained that the information was exempt from release under section 40(2) (personal data) of FOIA. In response to requests 2 and 3 it provided the complainant with some information. With respect to request 4 it explained that there was no requirement under the FOIA to express an opinion.

Scope of the case

9. The complainant contacted the Commissioner on 3 March 2014 to complain about the way his request for information had been handled.
10. The Commissioner wrote to the complainant setting out the scope of the complaint. The Commissioner's view was that the complainant was dissatisfied with the Council's response to request 1. The complainant did not dispute this.
11. The Commissioner has therefore had to determine whether the Council were correct to withhold the information sought within the scope of request 1 under section 40(2) of FOIA.

Reasons for decision

12. Section 40 of FOIA specifies that the personal information of a third party must not be disclosed if to do so would contravene any of the data protection principles.
13. 'Personal data' is defined under section 1(1) of the DPA 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 the data controller or is likely to come into possession of the data controller.

Personal data

14. The two main elements of personal data are that the information must 'relate' to a living person and that the person must be identifiable. 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, had them as its main focus or impacts on them in any way.
15. The Commissioner considers that the withheld information relates to a named individual. This is information which relates to a living individual from which they could be identified.
16. As the Commissioner finds that the withheld information in its entirety constitutes personal data he has concluded that the information falls within the scope of the exemption.
17. Personal data is exempt if either of the conditions set out in sections 40(3) and 40(4) of the FOIA are met. The relevant condition in this case is section 40(3)(a)(i), where disclosure would breach any of the DPA principles. In this case the Commissioner has considered whether disclosure of the personal data would breach the first DPA principle which states that "Personal data shall be processed fairly and lawfully". Furthermore at least one of the conditions in schedule 2 should be met and (in circumstances involving the processing of sensitive person data) at least one of the conditions of schedule 3 should be met.
18. In the Council's response to the complainant, it stated that in providing the requested information, it would breach the first principle of the DPA.
19. The Council concluded in its response that disclosure would not be 'fair' to the named individual who would have no expectation that this personal information would be made publicly available. In addition, the Council did not identify any appropriate condition in either schedule 2 or 3 that would justify disclosure.

The Commissioner's response to fairness

20. The Commissioner has first gone onto consider whether disclosure of this information would be fair. In considering whether disclosure of personal information is fair the Commissioner takes into account the following factors:
 - The individual's reasonable expectations of what would happen to their information;

- The consequences of disclosure, (if it would cause any unnecessary or unjustified damage or distress to the individual concerned); and
- The balance between the rights and freedoms of the data subject and the legitimate interests of the public.

Reasonable expectation of the data subject

21. The Council has stated that the named individual has an expectation that the start date of the appointment to a job would not be released. The Council further stated that there is a "*general presumption of confidentiality for such information*".
22. The Commissioner understands that the named individual did not give consent to the release of the information. It is important to note that consent is not a determining factor however; it is a factor that will be considered when taking into account the reasonable expectations of the data subject.
23. Given that the requested information is personal data, the Commissioner considers that it would be within the reasonable expectations of the individual for this information to not be put into the public domain.

Would disclosure cause damage and distress to the data subject?

24. The Council has explained that the named individual considers that disclosure of the information would cause her unnecessary or unjustified distress.
25. It further explained that the complainant has been in litigation with the Council over benefit fraud related matters. The Council directed the Commissioner to the complainant's 4th request which asked whether "*the job was too much for one person*". The named individual takes this to mean that the complainant considers that she is not doing her job effectively and as a result, his benefits claim was not properly dealt with by the Council.
26. The Council considers that the disclosure of the requested information would put the named individual at risk and it would be unfair.
27. The Commissioner acknowledges the Council's arguments and would consider that generally, information of this nature would be confidential. He is therefore satisfied that the disclosure of this information would cause damage and distress to the individual.

The legitimate public interest

28. The Commissioner considers that the public's legitimate interests must be weighed against the prejudices to the rights, freedoms and legitimate interest of the individual concerned. The Commissioner has considered whether there is a legitimate interest in the public (as opposed to the private interests of the complainants) accessing the withheld information.
29. The Commissioner considers that information about an employee's actions or decisions in carrying out their job is still personal data about that employee, but given the need for accountability and transparency about public authorities, there must be some expectation of disclosure.
30. In relation to this case the Commissioner considers that the information that has been requested does not relate to the individual's actions or decisions in carrying out their job.
31. The Commissioner understands that in response to a previous request, the Council provided the complainant with the month in which the named individual was appointed to the job. The Commissioner considers that the Council has struck the right balance between the individual's rights, freedoms and legitimate interests of the named individual and the legitimate interest in the public. The Commissioner considers that the exact date that the individual was appointed to the job is not information that would be of value to the greater public.
32. The Commissioner has also taken into account the reasonable expectations of the named individual, and the potential impact on the individual if the information were to be disclosed at the time of the request.
33. The Commissioner concludes that the reasonable expectations of the named individual is not outweighed by any legitimate public interest in disclosure, and accepts that disclosure of the personal data in this case would be unfair and unnecessary in the circumstances. The Commissioner therefore considers that the exemption of section 40(2) is engaged and that the Council was correct not to disclose the withheld information.

Right of appeal

34. 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

35. 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.
36. 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

Rachael Cragg
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF