

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 October 2014

Public Authority: Durham County Council
Address: Room 4/143-148
County Hall
County Durham
DH1 5UF

Decision (including any steps ordered)

1. The complainant has requested from Durham County Council (the "Council") any other reports relating to the Broom Cottages Pupil Referral Unit (the "PRU") investigation.
2. The Council provided some information to the complainant in a redacted format. Information was withheld under section 40(2) and section 41 of the FOIA.
3. The Commissioner's decision is that the Council has correctly applied section 40(2) of the FOIA to the withheld information. As section 40(2) of the FOIA applies to the entirety of the withheld information, the Commissioner has not gone on to consider the Council's application of section 41 of the FOIA.
4. However, the Commissioner considers that the Council failed to meet the requirements of section 10 of the FOIA, as it disclosed some of the requested information outside the statutory time limits for compliance with requests.
5. The Commissioner does not require the Council to take any steps.

Request and response

6. On 2 February 2014 the complainant submitted the following requests for information to the Council:
 1. *Can I please request a copy of the policies and procedure for the Pru from July 2010 to January 2012 a copy of the new policies and*

procedure due to the outcome of the investigation into the Pru to date.

2. *A copy of how many children were restrained from July 2010 to January 2012 and from January 2012 to December 2013.*
 3. *A copy of how many children have been in isolation from July 2010 to January 2012 and from January 2012 to December 2013.*
 4. *How many second return pupils there were from July 2010 to January 2012 and from January 2012 to December 2013.*
 5. *How many second return pupils were put in isolation on their first day back at the Pru and on average how long for from July 2010 to January 2012 and from January 2012 to December 2013.*
 6. *I would like to request a copy of any report regarding the investigation into safeguarding at the pru broom cottages from January 2012 and the independent investigation report into safeguarding at the pru broom cottages.*
7. The Council provided a response on 25 April 2014 to.
8. On 30 April 2014, the complainant wrote to the Council and stated the following:

"I am very happy with the cc finally supplying the independent report but my request has not been answered fully. I would like a revue of my request.

In question 6 I ask for any other report regarding the Pru investigation.

This includes what the independent Investigator was asked to investigate and information supplied to them.

The overall outcome to the investigation

The police report

The sass report

The allegations made by members of Pru staff

The allegations made by ex impact staff

And any other report the cc may hold regarding the investigation

9. The Council responded on 1 May 2014 and stated that it would treat this as a request for an internal review.
10. Following an internal review dated 27 May 2014 the Council wrote to the complainant. It confirmed that there is no other report regarding the PRU investigation and applied section 40(2) and section 41 exemptions to the remaining parts of the complainant's request for information.

Scope of the case

11. The complainant contacted the Commissioner on 27 May 2014 to complain about the way his request for information had been handled.
12. During the investigation of this case the Council confirmed that it had identified additional information that fell within the scope of request 6. Subsequently it made an additional disclosure to the complainant – although it withheld information under sections 40(2) and 41. The disclosed information consisted of a number of internal individual and personal disciplinary files – each of which consists of an investigation report, together with appendices. These have been disclosed to the complainant in a redacted format.
13. In a telephone conversation on 12 September 2014 the complainant confirmed that he wished the Commissioner to issue a formal decision into the way in which the Council had dealt with request 6, including the length of time it had taken the Council to release some of the information that fell within the scope of his request.
14. Therefore the Commissioner has considered whether the Council was correct to apply section 40(2) and section 41 of the FOIA. He has also considered whether the Council has complied with section 10 of the FOIA.

Reasons for decision

Section 40(2) personal data

15. 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 Act would breach any of the data protection principles or section 10 of the Data Protection Act 1998 (the "DPA").
16. In order to rely on the exemption provided by section 40(2), the requested information must therefore constitute personal data as

defined by the DPA. Section 1 of the DPA defines personal data as follows:

"*personal data*' means data which relate to a living individual who can be identified –

- (a) from those data, or
 - (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual."
17. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the data protection principles under the DPA. The Commissioner notes in this case that the Council considers that disclosure of the withheld information would breach the first data protection principle.
18. The Council has explained that the individuals who were interviewed and the people that were mentioned in the reports (i.e. the employees being investigated, other employees, and students attending the PRU) would not expect their personal data to be disclosed to the public. In particular the Council has argued that the individuals who were interviewed were assured that the information would remain confidential.
19. As noted above, during the investigation of this case the Council disclosed some information to the complainant, consisting of the investigation reports on several individuals which had been used in internal disciplinary processes. These reports had been redacted under section 40(2) so as to render them anonymous.

Is the information in question personal data?

20. The Commissioner has noted that the reports in question contain statements provided by witnesses that were used as part of employee disciplinary proceedings against the individuals that are the focus of these reports. He also notes that the appendices contain statements that were provided to the police, student statements and statements from other individuals.
21. The information clearly relates to the staff that had been suspended following allegations of inappropriate actions by them. The

Commissioner considers that the information is clearly the personal data of those individuals. In addition he notes that the withheld information also identifies other PRU employees, witnesses and students. The Commissioner also considers that these individuals are identifiable from the information in question.

The Commissioner's approach to fairness

22. The Commissioner has gone on to consider whether disclosure of this information would be in breach of the first principle of the DPA. This requires, amongst other things, that the processing of personal information is 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 an unnecessary or unjustified damage or distress to the individuals concerned); and
- the balance between the rights and freedoms of the data subjects and the legitimate interests of the public.

Reasonable expectations of the individuals

23. The Commissioner notes that the withheld information consists of the details of internal investigations into allegations of misconduct of a number of PRU staff. Given the nature of these investigations the Commissioner is satisfied that it would be reasonable for these individuals to expect that this information would remain confidential. He considers that the individuals who gave statements could be identified from the information, and he is satisfied that these individuals would also have expected this information to be confidential. In addition, the information contains the personal information of the PRU students.

24. The Commissioner is satisfied that these students would not expect their personal information to be disclosed under the FOIA.

25. The complainant argued that the expectations of staff should be assessed on an individual basis, with those recorded in the withheld information as having been guilty of serious misconduct having less entitlement to privacy than those who had no finding of culpability against them or only minor criticism. The complainant also argued that his purpose in securing disclosure was to obtain information that might assist him in a civil claim against anyone found to have behaved improperly at the PRU or to bring a private prosecution against them.

The consequences of disclosure

26. The Commissioner considers that disclosure of the requested information would result in distress to the individuals who are the focus of these reports. To disclose the information could harm the professional reputations of these individuals and, as a result, their employment prospects could be hindered. The Commissioner also considers the consequences of disclosure would be an unwarranted invasion of the privacy of these individuals. He is of the view that disclosure would constitute an unwarranted interference of the privacy of the other individuals identified in the withheld information.

The legitimate public interest

27. The Commissioner considers that the public's legitimate interests must be weighed against any prejudice to the rights of freedoms and legitimate interests of the individuals concerned. The Commissioner has considered whether there is a legitimate interest in the public (as opposed to the private interest of the complainant) accessing the withheld information.

28. The Council has stated that it does not see that the public interest is served by further disclosures. It argued that the balance falls in maintaining the confidence of the individuals. The Council argued that it is in the public interest that potential witnesses, who are involved in an internal investigation, should feel confident in knowing that their details and the content of their interview will not be disclosed to the public. The Council added that people would be discouraged from "*coming forward*" with information and this could impede future internal investigations. However, the Council did note the complainant's concern to have "*a robust investigation process and disciplinary process*". It stated that the summary report which it had previously released to the complainant addresses these issues. Therefore, the Council reiterated that it did not see that the public interest is served by further disclosures.

29. The Commissioner recognises that there is a public interest in the subject matter of the request. He acknowledges that this is due to the importance of the alleged problems at the PRU which have been identified and the steps that have been taken by the Council to resolve them in response to the investigator's recommendations. The Commissioner has noted the steps which the Council made following the investigator's recommendations which included the school operating under new leadership and management arrangements. The Council stated that the independent inspectors were satisfied that the newly conducted systems and procedures "*are both appropriate and robust.*" It also explained that it will continue to work closely with the school and its

leadership team to ensure that the Council meets its priority "*for pupils at the school to be kept safe*".

30. The Commissioner also recognises the need for transparency and openness in this case. However, he is mindful that the individuals concerned continue to have a reasonable expectation that the reports remain confidential.

The Commissioner's view

31. The Commissioner's view is that the data subjects would hold a reasonable expectation that this information would not be disclosed. He also considers that disclosure of the redacted information would be likely to result in damage and distress to the individuals concerned. However, the Commissioner has recognised that there is a legitimate public interest in the disclosure of this information.

Conclusion

32. Having considered all the circumstances of this case, and the withheld information, the Commissioner's decision is that the disclosure of redacted information would be unfair and in breach of the first data protection principle. Therefore, the Commissioner finds that the information was correctly withheld under section 40(2) of the FOIA. The Commissioner has not gone on to consider the Council's application of section 41 of the FOIA to the request.

Section 10 – Time for compliance

33. Section 10 of the FOIA states that an information request should be responded to promptly and in any event not later than the twentieth working day following the date of receipt.
34. The request was received on 2 February 2014 and the Council failed to provide the complainant with some of the information requested until 25 April 2014.
35. As the Council did not provide its response in the required 20 working day period from receipt of the request, the Commissioner finds that the Council has breached the requirements of section 10 of the FOIA.

Right of appeal

36. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

37. 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.
38. 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