

Freedom of Information Act 2000 (FOIA)

Decision Notice

Date: 12 March 2015

Public Authority: Down District Council
Address: Downshire Civic Centre
Downshire Estate
Ardglass Road
BT30 6GQ

Decision (including any steps ordered)

1. The complainant has requested copies of two handwritten witness statements. Down District Council said the requested information was exempt from disclosure under section 40(2) of the FOIA. The Commissioner's decision is that the Council correctly applied section 40(2) and no steps are required.

Request and response

2. On 14 February 2014 the complainant made a request to the Council for handwritten statements made by two witnesses in relation to an alleged dog attack.
3. The Council responded to this request on 26 March 2014, stating that the request was being refused under section 40(2) and section 30(1)(b) of the FOIA.
4. The complainant requested an internal review on 16 April 2014. The Council responded on 8 May 2014, upholding its refusal.

Scope of the case

5. The complainant contacted the Commissioner on 9 September 2014 to complain about the way her request for information had been handled. The complainant advised that, as a party to the incident in question she

had already been provided with typed copies of the two statements. However the complainant wanted to see the original handwritten statements for comparison with the typed versions.

6. The Commissioner has stressed to the complainant that, under the FOIA, he can only decide whether or not information ought to be disclosed into the public domain. He cannot order the Council to disclose the requested information solely to the complainant. Nor can he take into account the fact that the Council has disclosed information to the complainant outside the provisions of the FOIA. However the complainant does not accept that the Council was entitled to refuse her request under the FOIA; therefore the Commissioner is obliged to issue a decision notice.

Reasons for decision

Section 40(2): third party personal data

7. Section 40(2) of the FOIA states that a public authority is not obliged to disclose information if to do so would:
 - constitute a disclosure of personal data, and
 - this disclosure would breach any of the data protection principles or section 10 of the Data Protection Act 1998 (the DPA).

Would disclosure of the requested information constitute a disclosure of personal data?

8. The DPA defines personal information as:

"...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 of the data controller or any person in respect of the individual."

9. The Commissioner is satisfied that the requested information (ie the two statements) is personal data. It comprises each individual's account of an incident in which they were involved. The information is personal data because the individuals (ie the witnesses) can be identified by their names and other information contained in the statements.

Would disclosure of the requested information breach any of the data protection principles?

10. The Council argued that disclosure of the requested information would breach the first data protection principle because it would be unfair to the individuals who provided witness statements. In support of this conclusion the Council argued that the individuals would have a reasonable expectation that information they provided would not be disclosed into the public domain.
11. The Commissioner asked the Council whether it had sought consent from the individuals to disclose the requested information. The Council advised that it had not considered this necessary, as it had considered the nature of the information and had assumed that the individuals would not consent to disclosure.
12. The Commissioner accepts the Council's argument in relation to the individuals' reasonable expectations. This is because the witness statements contain their personal accounts of the incident in question. The Commissioner agrees with the Council that private individuals should generally be able to expect that this type of correspondence with the Council would not be publicly disclosed. The Commissioner accepts that authorities are not obliged to seek consent if they are already of the view that the information in question should not be disclosed, and it is likely that such consent would not be given.
13. The Commissioner has also considered the consequences of disclosure on the individuals in question. The Commissioner accepts that if individuals thought their witness statements would be disclosed to the public, they may well be discouraged from providing relevant information. Such individuals may be concerned about intimidation or harassment, or they may simply be of the view that public knowledge of their statements would intrude on their privacy. The Commissioner considers that disclosure of witness statements would undoubtedly represent an intrusion on individuals' expectations of privacy, and may invite unwelcome public comment or speculation. In this sense the Commissioner accepts that disclosure of the witness statements may have adverse consequences on the individuals concerned.
14. The Commissioner has considered requests for information provided by witnesses in a number of contexts, including local government, and has consistently found that witness statements will be more likely to be withheld than more mundane or innocuous information. The Commissioner sees no reason to depart from that general principle in this particular case.

15. The Commissioner understands that the complainant has personal reasons for seeking access to the original witness statements. As set out above the Commissioner notes that the Council has indeed provided the complainant with relevant information as a party to the incident in question. However this does not affect the Council's ability to argue successfully that it would be unfair to disclose similar information to the public at large. In the Commissioner's view any concerns the complainant has about the witness statements, or the way they were obtained, ought to be addressed with the Council through its complaints procedure. The FOIA provides for access to recorded information, rather than an additional route of complaint about the way a public authority conducts its business.
16. Although the Commissioner accepts that the complainant may have a legitimate interest in seeking access to the information, he must consider this in the context of the reasonable expectations of the witnesses, and the possible consequences of disclosure on these individuals. In this case the Commissioner finds that the latter outweigh the former, and the Commissioner concludes that disclosure of the witness statements would be unfair to the individuals who provided the information.
17. In light of the above the Commissioner finds that disclosure of the requested information would breach the first data protection principle. Therefore the exemption at section 40(2) of the FOIA is engaged and the information has been correctly withheld.
18. As the Commissioner finds that the requested information is exempt from disclosure under section 40(2) he is not required to make a decision in respect of the Council's reliance on the exemption at section 30(1)(b) of the FOIA.

Right of appeal

19. 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 123 4504
Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

20. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Tribunal website.
21. 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

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