

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 April 2015

Public Authority: Isle of Wight Council

Address: County Hall
Newport
Isle of Wight
PO30 1UD

Decision (including any steps ordered)

1. The complainant has asked to be given the name of a person who made a complaint to the Isle of Wight Council ("the Council") about alleged noise nuisance coming from the complainant's property.
2. The Commissioner finds that the information sought by the complainant constitutes personal data and that its disclosure would be unfair to the data subject. The Commissioner's decision is that the Council is entitled to withhold the requested information on the grounds that it is exempt from disclosure under section 40(2) of the FOIA.
3. The Commissioner requires the public authority to take no further action in this matter.

Request and response

4. On 4 February 2015, the complainant wrote to The Isle of Wight Council and requested information in the following terms:

"I phoned your office on Monday 2nd February to ask if you can tell me who complained against me."

5. The Council responded to the complainant's request on 9 February, advising him that:

"The information you have requested is considered personal data of another individual...as defined by section 1(1) of the Data Protection

Act 1998, and is therefore exempt under section 40(2) of Part II of the Freedom of Information Act 2000."

6. The Council advised the complainant that release of the information he seeks would likely breach the first principle of the Data Protection Act. The Council asserted that the data subject would have a legitimate expectation that their personal details would not be released and disclosure would therefore be unfair.
7. The complainant wrote to the Council again on 17 February. He expressed his dissatisfaction with the Council's decision not to disclose the identity of the person who had informed the Council of an alleged noise nuisance coming from his property. The complainant's letter prompted the Council to undertake an internal review its initial decision.
8. The Council completed its internal review and wrote to the complainant on 11 March to advise him of its final decision. The Council advised the complainant that its decision was to uphold its initial application of section 40(2) of the FOIA.

Scope of the case

9. The complainant contacted the Commissioner on 17 March 2015 to complain about the way his request for information had been handled. He explained that he had spoken to various neighbours about the complaint made to the Council and had determined, on the basis of what his neighbours had told him, that, "there can only be one person involved in this and I do need written proof so that I can sort this out with my solicitor and get whoever did this into Court".
10. The Commissioner has considered all of the information which the complainant sent him in support of his complaint. This information was sufficient for the Commissioner to make a decision in this case without the need to investigate the matter further with the Council.
11. This notice is the Commissioner's decision.

Reasons for decision

Background to the request

12. The information sought by the complainant relates to a complaint made to the Council about noise nuisance coming from the complainant's address. The Council wrote to the complainant on 18 August 2014 outlining the nature of the noise nuisance which had been reported.

13. The complainant strongly refutes the allegations outlined in the Council's letter.
14. It is not within the Commissioner's role to comment on whether the allegations have merit.

Section 40 – personal data

15. Section 40(2) provides an exemption from disclosure for information which is personal data of any third party, where disclosure would breach any of the data protection principles contained in the Data Protection Act 1998 ("the DPA") or section 10 of that Act.
16. In order to rely on the exemption provided by section 40, the information which the complainant seeks must constitute personal data as defined by the DPA. The DPA defines personal data as:

'...data which relates 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,
 - c) And includes any expression of opinion about the individual and any indication of the intention of the data controller or any other person in respect to the individual.'
17. The Commissioner is satisfied that the identity of the person who made the complaint to the Council about alleged noise nuisance from the complainant's property is personal data.
18. The Commissioner must now consider whether disclosure of the requested information would breach any of the data protection principles contained in Schedule 1 of the DPA. He considers that the first data protection principle is the one most relevant in this case.

The first data protection principle

19. The first data protection principle has two components:
 1. Personal data must be processed fairly and lawfully, and
 2. Personal data shall not be processed unless one of the conditions in Schedule 2 of the DPA is met.

20. In this case, a person, the "*Informant*" has made a complaint to the Council about an alleged noise nuisance coming from the complainant's property.
21. The Commissioner recognises that this allegation is strongly refuted.
22. The Council has a duty under the Environmental Protection Act 1990 to investigate any complaint which constitutes a statutory nuisance.
23. The Council logs all complaints it receives and will investigate those complaints which require investigation. The Council will then take action where there is sufficient evidence to warrant this.
24. The Commissioner has considered what might be the reasonable expectations of the Informant that his or her identity would be put into public domain by virtue of a request made under the provisions of the FOIA.
25. The Commissioner considers that anyone making a complaint to a public authority would do so with the expectation that their details – including their identity, would not be made public to the extent that they could be identified. He considers that the majority of persons would expect their complaints to be treated in confidence unless there is a necessary and legitimate interest that would warrant otherwise.
26. In this case the Commissioner can find nothing which would make disclosure of the identity of the informant under the FOIA necessary. It is not sufficient that the complainant wants to pursue the informant by way of a possible court action for making an alleged false accusation.
27. Disclosing the identity of an Informant could result in potentially serious consequences for that person, making him or her vulnerable to an aggrieved person taking matters into their own hands.
28. In the Commissioner's opinion there is a real possibility that potential informants will be dissuaded from making complaints to their local authorities, if their personal data was to be routinely placed into the public domain. This would negatively impact on the ability of public authorities to carry out their statutory responsibilities and enforcement duties, such as those required by section 79 of the Environmental Protection Act 1990¹.

¹ <http://www.legislation.gov.uk/ukpga/1990/43/section/79>

29. The Commissioner's finds that disclosure of the information sought by the complainant would be unfair to the informant and as such it would contravene the first data protection principle. Consequently, the Commissioner's decision is that the Council is entitled to withhold this information in reliance of section 40(2) of the FOIA.

Right of appeal

30. 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

31. 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.
32. 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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