

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 September 2015

Public Authority: Enfield Council

Address: Civic Centre
Silver Street
Enfield
EN1 3XY

Decision (including any steps ordered)

1. The complainant has requested from Enfield Council (the "Council") an un-redacted copy of a resident's letter which concerns a petition relating to a parking scheme.
2. The Council refused to comply with the request as it considered the information is exempt under section 40 of the FOIA.
3. The Commissioner's decision is that the Council is correct to withhold the information requested as it constitutes personal data of a third party. Therefore the Council correctly relied on section 40 of the FOIA to the request.
4. The Commissioner does not require the Council to take any steps.

Request and response

5. On 4 February 2015 the complainant wrote to the Council and requested information in the following terms:

"Thank you for enclosing the redacted copy resident's letter; however, in addition to being redacted, a whole section or sections (please see copy with yellow highlighted area) has/have been hidden with post-it notes before Xeroxing and sending to us. Therefore, please send us a copy of the letter with the hidden text included. As previously mentioned, the

Data Protection Act is in place to protect personal details i.e. name, address, telephone number, date of birth, national insurance number, nationality and the like and not personal comments."

6. The Council responded on 16 February 2015. It refused to comply with the request as it considered the information would identify the author of the letter.
7. On 18 March 2015 and on 16 April 2015 the complainant expressed her dissatisfaction to the Council. She asked it for clarification on how the author of the letter would be identified and asked for a copy of the letter un-redacted.
8. The complainant contacted the Commissioner on 14 May 2015 to complain about the Council's handling of her request for information.
9. Following an internal review the Council wrote to the complainant on 20 July 2015 and confirmed that it holds the information. However, the Council considered the information exempt under section 40 of the FOIA as it constitutes third party personal data.
10. The Council apologised to the complainant that she did not receive an appropriate refusal notice in its letter of 16 February 2015. Although the Council considered it correct to refuse to provide the redacted information.

Scope of the case

11. The complainant contacted the Commissioner on 23 July 2015 to complain about the way her request for information had been handled.
12. The Commissioner considers the scope of this case is to determine whether the Council is correct to withhold the information under section 40 of the FOIA.

Reasons for decision

Section 40 – personal information

13. 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").

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."
14. 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 would breach the first data protection principle.
 15. The Council explained that the personal data relates to a third party who had written to the Council to express their view about a proposed residential parking scheme issue.
 16. The Council confirmed that it does not consider the information to constitute sensitive personal data of the third party. However, the Council argued that the disclosure of this information would be in breach of the first data protection principle and therefore it considers it would be unfair to the third party to disclose their personal data.
 17. The Council explained that the purpose for the letter was for the individual to express to it their opinion confidentially regarding the Council's placement of monitoring cables in the road in which they live. This was a result of a petition organised by one resident about the proposed residential parking on their road.
 18. The Council argued that such expression of opinion would be treated confidentially and that there would be an expectation of privacy regarding any individuals expressing these views to the Council.
 19. The Council provided the Commissioner with the un-redacted letter. It stated that the redacted information would allow the complainant to identify the author by revealing attributes about them (e.g. length of time they have lived on the road in question).

20. The Council said it understands that it should be applicant blind when dealing with requests. However, it is of the view that the complainant would have sufficient local knowledge to identify the individual on the minimum amount of information.

The complainant's view

21. The complainant argued that the third party had already stated the length of time they have been living on the road. She said that unless they have described their physical appearance and stated the type of car they drive, she fails to understand how the individual can further be identified.
22. The complainant explained that signatures for petitions were collected and submitted to the Council concerning local issues. She further explained that the Council informed her that it had received a letter from one resident opposing the petitions.
23. The complainant requested sight of this letter and the Council refused under the DPA. She responded to the Council and argued that residents and the public have a right to see this letter with the sender's personal details (name, house number and telephone number) removed or hidden.
24. The complainant stated that the Council sent the letter with black permanent-ink marker removing the personal details. However, the complainant said that the Council had also placed post-it notes over a section of the letter (one paragraph) and that she responded, reiterating her view that the DPA is in place to protect personal details and not personal comments.

Is the information in question personal data?

25. The Commissioner considers that the information in question is the name and postal address of the individual together with personal comments that he considers would be likely to identify the individual. As such he is satisfied that this information constitutes the personal data of a third party.

The Commissioner's approach to fairness

26. 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 individual

27. When considering whether the disclosure of personal data is fair, it is important to take account of whether the disclosure would be within the reasonable expectations of the data subject. However, their expectations do not necessarily determine the issue of whether the disclosure would be fair. Public authorities need to decide objectively what would be a reasonable expectation in the circumstances.
28. The Council had explained that the individual's reasonable expectation in these circumstances would be that the Council would not disclose their name, address or revealing attributes to the complainant. Also, that the individual would have an expectation of privacy regarding expressing their views to the Council.
29. The Commissioner considers that the individual would not reasonably expect their name and address to be disclosed to an FOI requester in order to confirm who opposed the parking scheme petitions.

The consequences of disclosure

30. The Council considers that disclosure of the requested information would allow the complainant to identify the author of the letter by revealing attributes about them.
31. The Commissioner considers that the release of the name, address and the hidden text (personal details) would allow the individual to be contacted directly by the complainant which would be a possible invasion of privacy. This would cause unnecessary damage and distress to the author of the letter if this information was disclosed.

The legitimate public interest

32. 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.

33. The Council has stated that it sees no reason in the public interest in revealing to the complainant, the identity of the author of the letter. The Council considers that sufficient disclosure has already been made in the public interest to the complainant.
34. The complainant argued that residents and the public have a right to see this letter with personal details redacted but the personal comments un-redacted.
35. However, the Commissioner does not consider the disclosure of the individual's name and address and the hidden text (personal details) would be of interest to the public. The Commissioner considers that the complainant's interest in the information is personal rather than being representative of any wider public interest. It is clear that she wishes to obtain the author's identity in order to contact the individual directly to discuss them opposing the parking scheme petition.
36. The Commissioner is satisfied that there is no wider public interest in the disclosure of the information which is sufficient to outweigh the rights of the individual concerned.

The Commissioner's view

37. The Commissioner's view is that the individual would hold a reasonable expectation that this information would not be disclosed.
38. Having considered all the circumstances of this case, and the withheld information, the Commissioner's decision is that the disclosure of the 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.

Right of appeal

39. 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

40. 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.
41. 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
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