

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 February 2016

Public Authority: Kirklees Metropolitan Council

Address: Civic Centre
High Street
Huddersfield
West Yorkshire
HD1 2TG

Decision (including any steps ordered)

1. The complainant has made a request to Kirklees Metropolitan Council ("the council") for the identities of individuals present at a 'speed awareness course'. The council withheld the information under the exemption provided by section 40(2).
2. The Commissioner's decision is that the council has correctly withheld the information under section 40(2).
3. The Commissioner requires no steps to be taken.

Request and response

4. On 1 June 2015 the complainant requested the following information in respect of a speed awareness course held by the council on a specific date:

*"1. A list of the people who attended the course with me on that day.
2. A further list of people who were in Room '1' and identified by red name tags."*
5. The council responded on 24 June 2015. It withheld the requested information under section 40(2).
6. The complainant requested an internal review on 2 July 2015.

7. The council sent the outcome of its internal review on 16 July 2015. It maintained that its original position was correct.

Scope of the case

8. The complainant contacted the Commissioner on 31 August 2015 to complain about the council's refusal of the request.
9. The Commissioner considers the scope of this case to be the determination of whether the council has correctly applied section 40(2) to withhold the requested information.

Reasons for decision

Section 40(2) – Personal data of third parties

10. Section 40(2) provides that:

"Any information to which a request for information relates is also exempt information if–
(a) it constitutes personal data which do not fall within subsection (1), and
(b) either the first or the second condition below is satisfied."

11. Section 40(3) provides that:

"The first condition is–
(a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene–
(i) any of the data protection principles..."

Is the withheld information personal data?

12. Personal data is defined by section 1 of the Data Protection Act 1998 ("the DPA") 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 data controller or any person in respect of the individual..."

13. In order for the exemption to apply the information must constitute personal data as defined by section 1 of the DPA. In the circumstances of this case, the Commissioner understands that the information withheld in respect of part 1 of the request are the names of members of the public who were attendees on a speed awareness course. The Commissioner further understands that the information withheld in respect of part 2 include both the names of the attendees and the names of council officers who were present to deliver the course (the council has clarified that all of these individuals wore a red name tag in order to identify what course they were attending or delivering). The Commissioner considers that this information can clearly be defined as personal data.

Is any of the information sensitive personal data?

14. Section 2 of the DPA defines sensitive personal data as personal data that consists of information about the following:
- an individual's mental or physical health,
 - their political opinions,
 - their sex life,
 - their racial or ethnic origin,
 - their religious beliefs,
 - whether they are a member of a trade union,
 - the commission or alleged commission of an offence by them, or any proceedings for any offence they have committed or are alleged to have committed.
15. The council considers that in the context of this request the names of the attendees would represent sensitive personal data. This is because disclosure would indicate that the individual has attended a speed awareness course, which is information that the council holds as evidence for the police in order for the individual to avoid prosecution. As such the council considers that the information falls within the definition of "*the commission or alleged commission of an offence by them, or any proceedings for any offence they have committed or are alleged to have committed.*"
16. The Commissioner understands that attendees take part on this type of course in lieu of receiving a fine and penalty points on their driving licence, and that participation on the course is taken to represent acknowledgement of the driving offense. As such the Commissioner

concurs with the council that the names of the attendees represent sensitive personal data.

Would disclosure breach the data protection principals?

17. The data protection principles are set out in schedule 1 of the DPA. The Commissioner considers that the first data protection principle is most relevant in this case. The first principle states that personal data should only be disclosed in fair and lawful circumstances, the conditions of which are set out in schedule 2 of the DPA.
18. The Commissioner's considerations below have focused on the issues of fairness in relation to the first principle. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the data subject and any potential consequences of the disclosure against the legitimate public interest in disclosing the information.

Reasonable expectations of the data subject

19. 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.
20. In this case the council believes that all of the individuals would hold a strong expectation that their identities would not be placed into the public domain under the terms of the FOIA. In particular, the attendees are specifically informed that their identities will not at any time be made available to the public, and that attendance registers are retained only for the purpose of providing evidence that the individual has complied with the terms of not being receiving a fine and penalty points. The council also considers that the council officers attending the course to ensure its delivery are sufficiently junior (i.e. below the level of Head of Service) so as to not reasonably expect their identities to be released into the public domain.

The consequences of disclosure

21. The complainant has requested the information in order to support a complaint in respect of the council officer who delivered the course. In particular, the Commissioner understands that the identities of attendees are sought in order for the complainant to seek individuals who may act as witnesses. The disclosure of the requested information may therefore assist the complainant in pursuing their complaint against the council.

22. The council considers that disclosure of the attendees' identities, due to the context of their identity being held, would cause significant personal distress. The council also considers that should the identities of council officers who have been involved in the delivery of the courses be disclosed, these individuals may be targeted by either the complainant or other third parties.

Balancing the rights and freedoms of the data subject with the legitimate interests in disclosure

23. Whilst the Commissioner has considered the complainant's reasons for requesting the information, it is recognised that these reasons relate to a private matter rather than one of wider public interest, and it appears that the request has been made without a clear understanding of what public disclosure under the FOIA represents. The Commissioner also notes that to pursue a complaint in this context there are other more appropriate mechanisms available (and it is now understood that the matter has been referred to the Local Government Ombudsman).
24. In comparison to the limited legitimate interest in disclosure, the Commissioner recognises that disclosure of the identities has the potential to place individuals at significant risk of harm, either to their reputation or physical selves. Having noted that the public authority is a metropolitan council with jurisdiction covering a limited geographic area, it is highly feasible that the disclosure of the attendees' identities would allow further information about them to be identified, such as telephone number and residential address. The same argument may also be applied to the identities of the council officers; and it is feasible to consider that the nature of their work may cause these individuals to be placed at direct risk of harm if their identities, and potentially their residential addresses, became publically available.
25. Having considered the above factors, the Commissioner recognises that disclosure would represent a significant infringement on the rights and freedoms of the relevant individuals, and considers that there is limited legitimate interest to warrant this.

The Commissioner's conclusion

26. Having considered the above factors the Commissioner is satisfied that the disclosure of the individual's names would not be fair under the first principle of the DPA.
27. Whilst the council has also proposed that the second data protection principle (which specifies that personal data will not be processed for reasons incompatible for why it is held) is relevant in this case, the

Commissioner is satisfied that disclosure would already be a breach of the DPA under the first principle.

28. On this basis the Commissioner upholds the council's application of section 40(2).

Right of appeal

29. 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

30. 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.
31. 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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