

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 March 2016

Public Authority: Surrey County Council
Address: County Hall
Penrhyn Road
Kingston upon Thames
KT1 2DN

Decision (including any steps ordered)

1. The complainant submitted a number of requests to Surrey County Council (the Council) seeking information about library staff. The Council provided the majority of the information requested but refused to disclose the number of staff who had received 'departure payments' when leaving the Council and also refused to disclose the total cost of these departure payments. The Council argued that both pieces of information were exempt from disclosure on the basis of section 40(2) of FOIA. The Commissioner has concluded that the Council was entitled to rely on this exemption to withhold both pieces of information.

Request and response

2. The complainant submitted a number of requests to the Council on 23 September 2015 concerning library staff. The Council responded to these requests on 21 October 2015. The Commissioner has reproduced these requests and the Council's response to them below:
 - *How many staff were employed by the Library Service on December 1 2014?*

512
 - *How many staff left the Library Service from December 1 to today's date?*

83 (1 Dec 2014 to 1 Oct 2015)

- *What are the age bands of the staff who have left and how many within each band ie how many aged 20-30, 30-40 etc*

Age Band	Leavers
15-19	12
20-24	6
25-29	10
30-34	4
35-39	3
40-44	6
45-49	3
50-54	7
55-59	10
60-64	16
65-69	5
70-75	1
75+	0
TOTAL	83

- *How many staff who have left took retirement?*

15

- *How many of those taking retirement had informed SCC/Library Service in writing, prior to December 1, of their intention to retire?*

Two (related to the question immediately above, only four weeks notice required).

- *How many staff members who have left were paid "departure" payments - redundancy, severance etc*

Information withheld on the basis of section 40(2) of FOIA.

- *What is the total cost of these departure payments including legal fees if applicable?*

Information withheld on the basis of section 40(2) of FOIA.

3. The complainant contacted the Council and asked it to conduct an internal review of its decision to withhold the information falling within

the latter two requests on the basis of section 40(2) of FOIA. In doing so she made the following points:

*'1. It is public knowledge, including local press articles naming the individual[s], that the 2 members of staff at Lingfield Library were made redundant. Since they have already been identified, if they were the only 2 to be given departure payments, it is difficult to see how revealing that as a number would breach their (data protection) rights.
2. If there are any other members of staff who were given departure payments simply revealing that fact as a number would not in any way identify them out of the 82 people who have left since December 2014. I am not aware of any other information available that, in conjunction with revealing the numbers involved, could possibly lead to the individuals' identity.'*

4. The Council informed the complainant of the outcome of the internal review on 23 November 2015. The review upheld the application of section 40(2) of FOIA to withhold the information sought by her final two requests.

Scope of the case

5. The complainant contacted the Commissioner on 1 December 2015 in order to complain about the Council's decision to withhold information in response to her latter two requests on the basis of section 40(2) of FOIA. Her grounds of complaint mirrored the points she made when submitting her request for an internal review.

Reasons for decision

Section 40 – personal data

6. Section 40(2) of FOIA states that personal data is exempt from disclosure if its disclosure would breach any of the data protection principles contained within the Data Protection Act (DPA). The Council argued that disclosure of the withheld information would be unfair and thus breach the first data protection principle which states that:

'Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –

(a) at least one of the conditions in Schedule 2 is met, and

(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.'

7. Clearly then for section 40(2) to be engaged the information being withheld has to constitute 'personal data' which is defined by 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 intention of the data controller or any other person in respect of the individual.'

Is the withheld information personal data?

8. In the Commissioner's opinion truly anonymised data are not personal data and thus can be disclosed without reference to the DPA. The Commissioner's test of whether the information is truly anonymised is whether a (or any) member of the public could, on the balance of probabilities, identify individuals by cross-referencing the 'anonymised' data with information or knowledge already available to the public.
9. Whether this 'cross-referencing' is possible is a question of fact based on the circumstances of the specific case. If identification is possible the information is still personal data and the data protection principles do need to be considered when deciding whether disclosure is appropriate. However, where the anonymised data cannot be linked to an individual using the additional available information then the information will, in the Commissioner's opinion, have been truly anonymised and can be considered for disclosure without any reference to the DPA principles.
10. In the circumstances of this case the Commissioner believes that it is important to remember that there are two pieces of withheld information. Firstly, the number of individuals who received departure payments and secondly the total cost of these payments, including legal fees.
11. As noted above the complainant disputed the Council's view that disclosure of the withheld information would lead to the individuals in question being identified. Her rationale for this is quoted at paragraph 3 above. However, in the internal review response the Council emphasised

that the numbers involved were small and it was confident that using information already available the individuals could be identified.

12. The Council elaborated on this argument in its submissions to the Commissioner which set out how in its view disclosure of the withheld information could result in the individuals in question being identified by some members of the public. The Council acknowledged that the average member of the public would not be able to undertake this identification, but a member of the Council's library service (past or present), with more detailed knowledge and insights into the restructure of the service and the staff involved would be able to identify the individuals in question and moreover deduce the amount of payments received. The Commissioner cannot replicate the Council's submissions on this process in this decision notice as to do so risks revealing the withheld information itself.
13. However, on the basis of these submissions, and given the small number of individuals involved, the Commissioner is satisfied that disclosure of the withheld information – both the number of individuals involved and the total cost of departure payments – would constitute the disclosure of personal data. This is because on the balance of probabilities, the public, or at least some members of the public, would be able to identify the individuals who had received departure payments and moreover with reasonable accuracy would be able to infer the likely amount of these payments received by particular individuals. On this latter point, in the Commissioner's view given the figures involved, he is satisfied that any deduction would be sufficient to make the information personal data.
14. The Commissioner appreciates that the lack of detail explaining why he has concluded that the withheld information constitutes personal data is likely to prove frustrating to the complainant. However, he wishes to assure her that he has fully taken into account her submissions as quoted above at paragraph 3 in reaching his decision.
15. Having found the withheld information constitutes personal data, the Commissioner must therefore consider whether disclosure of this information would breach the first data protection principle and thus be exempt from disclosure on the basis of section 40(2).
16. In deciding whether disclosure of personal data would be unfair, and thus breach the first data protection principle, the Commissioner takes into account a range of factors including:
 - The reasonable expectations of the individual in terms of what would happen to their personal data. Such expectations could be shaped by:

- what the public authority may have told them about what would happen to their personal data;
 - their general expectations of privacy, including the effect of Article 8 of the European Convention on Human Rights (ECHR);
 - the nature or content of the information itself;
 - the circumstances in which the personal data was obtained;
 - any particular circumstances of the case, eg established custom or practice within the public authority; and
 - whether the individual consented to their personal data being disclosed or conversely whether they explicitly refused.
 - The consequences of disclosing the information, ie what damage or distress would the individual suffer if the information was disclosed? In consideration of this factor the Commissioner may take into account:
 - whether information of the nature requested is already in the public domain;
 - if so the source of such a disclosure; and even if the information has previously been in the public domain does the passage of time mean that disclosure now could still cause damage or distress?
17. Furthermore, notwithstanding the data subject's reasonable expectations or any damage or distress caused to them by disclosure, it may still be fair to disclose the requested information if it can be argued that there is a more compelling legitimate interest in disclosure to the public.
18. In considering 'legitimate interests', in order to establish if there is a compelling reason for disclosure, such interests can include broad general principles of accountability and transparency for their own sake, as well as case specific interests. In balancing these legitimate interests with the rights of the data subject, it is also important to consider a proportionate approach.
19. The Council explained that the individuals who are given financial payments when leaving the authority's employment would not expect details of such payments to be made public. The Council emphasised that this was in line with the established custom and practice for keeping details of redundancy packages confidential. It argued that disclosure of such information would impact on the privacy of the individuals in question.

20. With regard to the number of individuals who received departure payments, the Commissioner acknowledges that disclosure of this information would simply reveal the number – and to some informed individuals the names – of the individuals in receipt of departure payments. It would not indicate or allow any deductions to be made about the amount of any such payments. Nevertheless, the Commissioner is still persuaded that disclosure of such information would be unfair. In his opinion, given the confidential nature of the discussions between the Council and the individuals during the restructure process, the individuals in question would have had a reasonable expectation that the Council would not disclose information which indicated the amount of any redundancy payment and nor would it even disclose the fact that a departure payment had in fact been paid. As the information disclosed to the complainant revealed, 83 individuals had left the library service in the period covered by her request. In the Commissioner's view it would be an unfair invasion of the privacy of the small numbers of individuals who received a departure payment to confirm their identities. Moreover, the Commissioner can see no compelling or clear legitimate reason to do so.
21. It follows that the Commissioner is also of the view that disclosure of the total amount of payments would also be unfair. As noted above he accepts that disclosure of this information would not necessarily allow even those informed members of the public to identify the exact amount paid to particular individuals. However, again as explained, the Commissioner is satisfied that given the circumstances, disclosure of the information would provide a very clear indication of the sums received by some individuals. For the reasons discussed in the previous paragraph, the Commissioner is firmly of the view that the individuals in question would have a clear and legitimate expectation that the Council would not disclose the level of their departure payments. Moreover, in the Commissioner's opinion, the consequences of doing so would represent a much greater infringement into their privacy than simply confirming that they had received a departure payment. Finally, once again the Commissioner is not persuaded that there is any clear or any compelling reasons to justify disclosure of this information.
22. The Commissioner has therefore concluded that disclosure of the withheld information would be unfair and would breach the first data protection principle and thus the Council is entitled to rely on section 40(2) of FOIA to withhold such information.

Right of appeal

23. 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

24. 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.
25. 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

Jonathan Slee
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