

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 May 2016

Public Authority: Chichester District Council
Address: East Pallant House
East Pallant
Chichester
West Sussex
PO19 1TY

Decision (including any steps ordered)

1. The complainant has requested details of a redacted sentence which relates to him which was recorded in an interview by a third party. The council applied section 40(2) to the information.
2. The Commissioner's decision is however that section 40(1) was applicable as the information is the requestor's own personal data.
3. The Commissioner does not require the authority to take any steps.

Request and response

4. On 17 July 2015, the complainant wrote to council and requested information in the following terms:

"Under the terms of the Freedom of Information Act I now request that you send to me, by return, copies in their entirety of the recent communications between C.D.C. and the VOA in respect of Flat 6 (6A and 6B)."

5. The council responded on 17 September 2015. It provided information however it redacted a few sentences from one document on the basis that the exemption in section 40(2) applied (third party personal data).
6. Following an internal review the council wrote to the complainant on 5 November 2015. It upheld its initial decision.

Scope of the case

7. The complainant contacted the Commissioner 8 January 2016 to complain about the way his request for information had been handled.
8. His complaint related to the redaction of information from one section of one sentence. He believes that this information should have been disclosed to him by the council.
9. The Commissioner considers that the complaint relates to the council's application of section 40(2) to the one redacted section of information. However once the council had provided the withheld information to the Commissioner he recognised that the information was likely to be the personal data of the applicant. The Commissioner has therefore considered the withheld information under the exemption in section 40(1) prior to considering the application of section 40(2) by the council.

Reasons for decision

Section 40(1)

10. Section 40(1) of the Act provides that:

(1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.

11. Effectively where information relates to the applicant themselves the individual will have rights under section 7 of The Data Protection Act 1998 (the DPA) to request that information and obtain it if no exemption is applicable. The central difference as regards the FOI Act is that under the DPA the exemptions to prevent disclosure are more limited, and disclosure is made only to the applicant. Under the FOI Act a disclosure of information is considered to be to the whole world.
12. The Commissioner has firstly considered whether the information is personal data belonging to the complainant.
13. Under the DPA personal data is defined as:

"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;

The nature of the information

14. The nature of the information is that the redacted section is contained within information recorded by the council with the purpose of aiding a member of the public who has received a Notice of Seeking Possession for non-payment of rent from the complainant's business.
15. The relevant information is one part of one sentence. The sentence itself begins:

"When [name redacted by Commissioner] and I saw [name redacted by Commissioner], she advised the landlord [name of complainant redacted by Commissioner] of [name and address of complainant's business redacted by Commissioner] who is well known to Chichester District Council, [relevant section of information redacted by council]."
16. The complainant is therefore aware of the name of the individual and knows that she is (or was at the time) a tenant in one of his properties. It is only the contents of the last section of the sentence which has been redacted and which he wishes disclosed to him.
17. The Commissioner has considered the withheld section of information and he considers that the information relates to the applicant (i.e. the complainant in this case). He is one of the directors of a limited company which will have its own legal personality in law. Generally the actions of a limited company will not be personal data as the information does not relate to a living individual as required in the DPA. However the actions of individuals, even if they are on behalf of a limited company, may also be personal data relating to that person.
18. The Commissioner has considered the nature of the withheld information in this case and is satisfied that the information is personal data belonging to the applicant. The data relates to him as an identifiable, living individual.
19. As such the Commissioner considers that the information is exempt from disclosure under section 40(1) of the DPA.
20. The Commissioner notes therefore that the complainant's request should have been considered as a subject access request under section 7 of The Data Protection Act 1998. The Commissioner will therefore write to the

parties separately regarding the council's processing of the complainant's personal data under the DPA.

Right of appeal

21. 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

22. 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.
23. 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
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF