

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 25 October 2016

**Public Authority:** Derby City Council  
**Address:** The Council House  
Corporation Street  
Derby  
DE1 2FS

#### Decision (including any steps ordered)

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1. The complainant has requested copies of the minutes of the Derby City Council's Homeless Liaison Forum, which took place after its meeting on 30 June 2015. The Council disclosed the minutes of the 6 October 2015 meeting, but redacted the names of the persons who were in attendance or who gave their apologies. The Council's redactions were made in reliance on section 40(2) of the FOIA.
2. The Commissioner's decision is that Derby City Council is not entitled to rely on section 40(2) of the FOIA to withhold the names redacted from the disclosed minutes.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - The Council must disclose the minutes in of the 6 October 2015 minutes of it Homeless Liaison Forum in full.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

#### Request and response

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5. On 14 December 2015, the complainant wrote to Derby City Council to make a request for recorded information. The complainant's request

comprised a number of questions relating to the Homeless Strategy 2015-19, and specifically to the Delivery Plan in Appendix A. The first item in the complainant's request asked for:

'...copies of all minutes of the Homeless Liaison Forum, after the 30 June 2015 meeting?'

6. The Council responded to the complainant's request on 13 January 2016. The Council provided the complainant with most of the information he had requested, including the minutes of the Homeless Group Liaison Meeting held on 6 October 2015. These minutes were redacted of personal data in reliance on section 40(2), on the grounds that disclosure of this personal data would contravene one or more data protection principles provided by the Data Protection Act 1998.
7. Having received the Council's response, the complainant wrote to the Council to complain about the extent of the redactions it had made to the minutes it had disclosed. The redacted information included the names of Councillors, which the complainant asserted, had not been previously redacted.
8. The Council wrote to the complainant on 25 February 2016, having carried out a review of its handling his information request. The review stated:

"Redacting has taken place where phone numbers or email addresses appear to be private/personal. There have been some instances where information was redacted where it did not need to be. This has been rectified and the document with the revisions on is attached. However on review it is considered that the majority of the redacted information is appropriate."

### **Scope of the case**

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9. The complainant contacted the Commissioner on 3 March 2016 to complain about the way his request for information had been handled. The complainant stated, "I have requested the minutes of the Derby City Council Homeless Liaison Forum. I had previously received the minutes of the 1<sup>st</sup> meeting – nothing was redacted. The 2<sup>nd</sup> set had all names redacted – issued Jan 13. I complained immediately. The appeal decision came back on Feb 25<sup>th</sup> upholding the redaction of the minutes. The basic claim is that the name is personal data".
10. The Commissioner has investigated the Council's reliance on section 40(2) of the FOIA to withhold the names of the persons attending the 6 October meeting of the Homeless Liaison Forum.

## Reasons for decision

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### Section 40(2) – the personal data of a third party

11. The Council has relied on section 40(2) of the FOIA to withhold the names of those persons who attended the 6 October meeting of Derby City Council's Homeless Liaison Group. The Council's reliance on section 40(2) is based on the fact that the attendees' names constitute these persons personal data and its belief that their disclosure would contravene the provisions of the Data Protection Act 1998 ("the DPA").
12. Section 40(2) provides an exemption from the duty to disclose information which is the personal data of any third party and where disclosure would breach any of the data protection principles contained in the DPA or section 10 of that Act.
13. In order to rely on the exemption provided by section 40, the requested information must constitute personal data as defined by the DPA. The DPA defines personal data 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 or, 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 to the individual.'
14. In the Commissioner's opinion this information is undoubtedly personal data.
15. The Commissioner is required to consider whether disclosure of the attendee's names 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

16. 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.

17. The withheld information is contained in minutes which were provided to the complainant when the Council initially responded to his information request. The minutes were redacted of these names on the grounds that the persons are not members of the Council's senior management or they are the names of persons representing third party organisations.
18. The persons who attended the Homeless Liaison Group contribute towards the Council's Homeless Strategy: They either represent the Council an agency or organisation which works with homeless people in one form or another. Their names are recorded in the minutes as being in attendance at the meeting or as a record of their apology for not attending. Some names appear in the body of the minutes in full or in abbreviated form.
19. The Council informed the Commissioner that it has approached the persons who are named in the minutes in order to obtain their consent for the release of their names. Of those persons the Council was able to contact, 12 consented to the disclosure of their names and 1 council employee asked that his/her name should be withheld. The Council did not contact the Councillor named in then minutes in recognition that he is an elected member of the Council and therefore that his name should have been disclosed.
20. The Commissioner asked the Council to provide her with its rationale for its application of section 40(2) of the FOIA. She asked the Council to explain why disclosure of the names would be unfair to the persons concerned and whether condition 6 of Schedule 2 of the Data Protection Act would allow their disclosure. Condition 6 states:

"The processing [disclosure] is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject."
21. The Council did not provide the Commissioner with a detailed rationale. Rather than do this, the Council confirmed that it had considered condition 6 and it restated why the Council considered the information was personal data.
22. The Council advised the Commissioner that the intended audience for the minutes was the Group itself. It explained that the minutes are intended to record the proceedings of the group and that they are circulated to those persons who attended the meeting and to those who sent their apologies.

23. The meetings are held as part of the Council's Homelessness Strategy which was published in March 2015. Attendance at the meeting is to bring together the many agencies which work in this area and which provide services for the homeless.
24. The Council confirmed to the Commissioner that the attendees were not informed that their names might be disclosed to the public for any reason, including by way of disclosure made under the FOIA.

*The Commissioner's considerations and decision*

25. The Commissioner has considered the nature of the minutes which the complainant has asked for. She understands that the minutes stem from the provisions of the Housing Act 1996 (as amended by the Homelessness Order 2002). This Act requires local authorities to develop and implement a Homelessness Strategy.
26. Part of the Council's response to this duty is the creation of the Homelessness Liaison Forum. This is comprised of representatives from a variety of agencies working in this field. The purpose of the Forum is to oversee implementation of the Council's strategy, and to amend it to reflect changing circumstances. The Forum may also coordinate funding bids where collaborative working is necessary.
27. The Council's monitoring of its Homelessness Strategy is carried out through its performance management systems. Reports and updates are tabled at the Homeless Liaison Forum and this provides additional scrutiny among the Council's partners.
28. The Commissioner has considered the expectations of the attendees at the meeting of the Homeless Liaison Forum. She is mindful that the attendees include representatives of agencies which work with the homeless. Likewise, she is minded that the attendees were not informed that their names may be put into the public domain for any purpose, including when requested under the FOIA.
29. The absence of any indication to the attendees that their names may be disclosed to the public, does not in itself establish an expectation that their names will not be disclosed. It is insufficient to be considered as a determining factor to persuade the Commissioner that disclosure of their names would be unfair.
30. To assist her further in this matter, the Commissioner has turned her attention to a consideration of condition 6 of Schedule 2 of the Data Protection Act. In order for the Council to be able to disclose the names of the attendees without breaching the first data protection principle, disclosure must be both legitimate and necessary.

31. Here again, the Commissioner is obliged to recognise the statutory basis of the Homeless Liaison Forum: It is clear to the Commissioner that in establishing the Forum, the Council has satisfied its statutory responsibilities and it is providing both accountability and transparency by making the Forum's minutes available on request.
32. The Commissioner considers that the disclosure of the Forum's minutes adequately satisfies the public's legitimate interest in the work of the Forum.
33. The Commissioner recognises that some attendees have refused to consent to the disclosure of their names. Whilst she is not persuaded that it is entirely necessary for their names to be disclosed, the Commissioner believes that they attended the meeting of the forum in a professional capacity - the representatives of the identified stakeholders. In the Commissioner's opinion this significantly lowers a person's expectation of privacy.
34. Having considered the first data protection principle, the Commissioner has decided that it would be fair to the attendees at the meeting to have their names disclosed and that condition 6 of Schedule 2 of the Data Protection Act can be met. The Commissioner's has therefore decided that the Council is not entitled to rely on section 40(2) to withhold the names of those persons who attended the meeting of the Homeless Liaison Group.

## Right of appeal

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35. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

36. 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.
37. 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**