

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 August 2016

Public Authority: Norfolk County Council
Address: County Hall
Martineau Lane
Norwich
NR1 2DH

Decision (including any steps ordered)

1. The complainant has requested the wording of a petition created in response to a consultation on planning and parking restrictions. The Commissioner's decision is that Norfolk County Council has correctly applied the exemption for personal data at section 40(2) of the FOIA. She does not require the council to take any steps to ensure compliance with the legislation.

Request and response

2. On 10 December 2015, the complainant wrote to Norfolk County Council ('the council') and requested information in the following terms:

"I am aware that the proprietors ([names redacted]) of the [name of shop redacted] located at [address redacted] have organised a "Petition" objecting to the installation of the "Double Yellow Lines"...If a copy could be forwarded to me it would be appreciated."
3. The complainant also made the following request, for the same information, on 4 January 2016:

"...a copy of the "petition" that was sent to Norfolk County Council by the proprietors ([names redacted]) of the [name of shop redacted] located at [address redacted]."

4. On 28 January 2016, the council refused to provide the requested information citing the exemption for personal data at section 40(2) of the FOIA. It said that details contained within a petition, such as the names, addresses and signatures are personal and are provided by the signatories with the expectation of confidentiality and therefore to release such information would be in breach of the Data Protection Act.
5. The complainant first expressed his dissatisfaction with the response on 28 January 2016 and requested the 'wording of the petition' only, that being the petition without the details of those who signed it.
6. The council provided an internal review on 24 February 2016 maintaining the application of the exemption at section 40(2) of the FOIA. It said that the wording is the opinion of the petitioners and as such constitutes their personal data and that it does not have the petitioner's consent to release this information into the public domain. It also said that the petitioners supplied the information for the express purpose of objecting to the planned parking restrictions and they would not reasonably expect that this information would be made public as would be the case if it were released under the FOI Act. In relation to the request for just the wording of the petition without the detail of the signatories, the council said the following:

"However, you have identified the petition by naming the people who sent in the petition, identifying them as the proprietors of the [name and address redacted]. Releasing the wording of the petition under the FOI Act would mean that the Council was disclosing the personal opinions of the proprietors of the [name of shop redacted] to the world at large.

Further to this I can see no pressing public interest in overriding the rights of the individuals who made this petition to the Council. Any other member of the public that wishes to make representation or express a view regarding the parking restrictions in [address redacted] can do so without reference to the views of others."

Scope of the case

7. The complainant contacted the Commissioner on 10 March 2016 to complain about the way his request for information had been handled.
8. As the complainant has made it clear that he is not seeking access to the personal details of those who signed the petition, the Commissioner has considered the council's application of section 40(2) the 'wording of the petition' only.

Reasons for decision

Section 40(2)

9. 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 FOIA would breach any of the data protection principles or section 10 of the Data Protection Act 1998 ('the DPA').

Is the withheld information personal data?

10. Personal data is defined by the DPA as any information relating to a living and identifiable individual. Information will relate to a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them, has them as its main focus or impacts on them in any way. The withheld information is the wording of a petition proposed by individuals identified in the request. The Commissioner is satisfied that this wording is the personal opinion of the individuals and has biographical significance to them and therefore constitutes their personal data as defined by the DPA.

Would disclosure breach the Data Protection Principles?

11. The Data Protection Principles are set out in Schedule 1 of the DPA. The first principle and the most relevant in this case states that personal data should only be disclosed in fair and lawful circumstances. The Commissioner's considerations below have focused on the issue of fairness. In considering fairness, the Commissioner takes into account the nature of the information, the reasonable expectations of the data subject, the potential consequences of disclosure and balances the rights and freedoms of the data subject with the legitimate public interest in disclosing the information.

Nature of the information and reasonable expectations

12. The complainant has said that because the petition was available in the individuals shop, it was therefore open to the public and he could have seen the wording if he had gone into the shop before the petition was submitted.
13. The council said that it looked into the circumstances of the case to see whether the individuals would reasonably expect the requested information to be made public. It explained that the individuals had sought planning permission to expand their shop and that a public consultation on parking restrictions asked for responses to be sent to nplaw, the council's legal service, and that it gave no indication that responses would be made public. The council explained that the petition

was a response to the consultation and that it does not normally release the personal data of respondents to such consultations. It said that the petition had previously only been made available to customers of the shop in the village which is a small community and not to the wider public and that it therefore considers that the petitioners would not expect the information to be released to the public at large as is the case under the FOIA.

14. The Commissioner is satisfied that although the wording of the petition was available for a limited time, in one shop, the individuals would have a reasonable expectation that such wording would not enter the public domain via a request under the FOIA.

Consequences of disclosure

15. In order to assess the impact of the consequence of disclosure on whether disclosure would be fair, it is necessary to consider whether disclosure of the withheld information would cause unwarranted damage or distress to the data subjects.
16. The council explained that it wrote to the data subjects to seek their views on the release of the requested information. During a telephone conversation with the council, one of the data subjects expressed his concern about the possible disclosure of the information. Although the data subject had not been informed of the identity of the requester, he was sure that he knew who it was, stating that there was only one person in the village that it could be and that he would only use the information to cause trouble. The data subject explicitly stated that he did not want the council to release the information.
17. The council also explained that the issue of the parking restriction around the shop has become a cause of friction within the small community and it considers that releasing the requested information is likely to exacerbate that friction with potential damage to the business of the village shop and distress within the community.
18. Taking the above into consideration, the Commissioner considers that disclosure would amount to an infringement into the privacy of the data subjects which has the potential to cause them damage and distress.

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

19. The Commissioner accepts that in considering 'legitimate interests', such interests can include broad general principles of accountability and transparency for its own sake along with any specific interests.

20. In this case, the Commissioner recognises that there is a legitimate public interest in planning and parking issues.
21. The complainant alleges that the petition seeks to go against planning conditions and that it is a matter of highway safety.
22. The council said that as the consultation was a public consultation anyone wishing to contribute to the debate had had an opportunity to do so. It said that there were three responses to the consultation, two objections and one in favour and that a petition only counts as one response and carries no more weight than any other.
23. The council also explained that there is no further opportunity within the process to object to the extent of the parking restrictions and the Traffic Regulation Order is due to be sealed imminently. However, there is an option to lodge an appeal with the High Court, which can only be in connection to a failure by the council to follow the correct process and it is not necessary to have the wording of the petition in order to lodge such an appeal regarding the process.
24. For the above reasons, the council said that it could see no compelling public interest in releasing the requested personal data to the wider public.
25. The Commissioner is mindful of the fact that the FOIA is request and motive blind and has not seen any evidence to indicate that there is sufficient wider legitimate public interest which would outweigh the rights and freedoms of the data subjects in this case.

Conclusion on the analysis of fairness

26. Taking all of the above into account, the Commissioner concludes that it would be unfair to the data subjects concerned to release the requested information. Disclosure would not have been within their reasonable expectations and the loss of privacy could cause unwarranted damage and distress. He acknowledges that there is a legitimate interest in planning and parking issues but, given the consultation and option to appeal, does not consider that this outweighs the data subjects expectations of, and rights to, privacy.
27. As the Commissioner has decided that the disclosure of this information would be unfair, and therefore in breach of the first principle of the DPA, he has not gone on to consider whether there is a Schedule 2 condition for processing the information in question. The Commissioner has therefore decided that the council was entitled to withhold the information under the exemption at section 40(2).

Right of appeal

28. 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

29. 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.
30. 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

Deborah Clark
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Wycliffe House
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