

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 November 2016

Public Authority: Allerdale Borough Council
Address: Allerdale House
Workington
Cumbria
CA14 3YJ

Decision (including any steps ordered)

1. The complainant has requested a copy of the Cumbria County Council report into Allerdale Borough Council and the 2012 allegations of corruption and related information. The Commissioner's decision is that Allerdale Borough Council has correctly applied the exemption at section 40(2) of the FOIA. She does not require the public authority to take any steps to ensure compliance with the legislation.

Request and response

2. On 8 March 2016, the complainant wrote to Allerdale Borough Council ('the council') and requested information in the following terms:
 - "1) A copy of the Cumbria County Council report into Allerdale and the 2012 allegations of corruption.
 - 2) A copy of the council minutes authorising and requesting Cumbria County Council to prepare such a report together with the minuted reasons for not calling in the police.
 - 3) Any correspondence between Allerdale and Cumbria County Council relating to the said report, including emails, notes of telephone conversations, faxes and any relevant minutes."
3. The council responded on 11 April 2016 and refused to provide the requested information citing the exemptions at sections 40(2) and 41 of the FOIA.

4. On 16 April 2016, the complainant requested an internal review.
5. The council provided its internal review response on 12 May 2016 in which it maintained its original position and responded to each of the complainant's points.

Scope of the case

6. The complainant wrote to the Commissioner on 5 June 2016 to complain about the way his request for information had been handled.
7. In relation to part 2 of the request, the Commissioner notes that the council has explained that a Councillor made a statement in the council meeting, against officer advice, and the Leader of the council requested that the Chief Executive look into the matter. This wasn't included in the minutes of the council meeting as it was not listed on the agenda and council minutes are not verbatim. The matter was not progressed until an official written complaint was received, which was then dealt with in accordance with the councils policies and the Chief Executive Officer authorised the investigation but the council did not contact the Police as there was no evidence of a criminal offence. The Commissioner considers that the council's response equates to it stating that information within the scope of part 2 of the request does not exist. She has not deemed it necessary to consider this point further.
8. The Commissioner notes that two exemptions, namely section 40(2) and section 41, have been applied to parts 1 and 3 of the requested information. Given that the Commissioner is also responsible for ensuring compliance with the Data Protection Act 1998, she has first considered the application of the exemption at section 40(2).
9. As the Commissioner has decided that the exemption at section 40(2) applies in this case, she has not found it necessary to also consider the application of the exemption at section 41.

Reasons for decision

Section 40(2)

10. 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').

11. In order to rely on the exemption provided by section 40(2), the requested information must therefore constitute personal data as defined by the DPA. Section 1 of the DPA defines personal data as follows:

“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.”

12. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, she must establish whether disclosure of that data would breach any of the data protection principles under the DPA. The Commissioner notes in this case that the council said that disclosure would breach the first data protection principle.

Is the withheld information personal data?

13. As explained above, the first consideration is whether the withheld information is personal data. The information in this case relates to a complaint from a local business operating a commercial premise regarding the behaviour of council officers. The information consists of the report itself, correspondence from the former Assistant Director of Legal & Democratic Services to appropriate individuals, notes of subsequent interviews held, and email correspondence pertaining to the report. The council explained that the focus of the documents is a particular council officer and the investigation of the allegations against him and other council officers. It considers that the information is the personal data of a particular council officer, and of third parties such as witnesses, who gave evidence or who were otherwise involved in the investigation. Having viewed the requested information, the Commissioner is satisfied that it is the personal data of these parties.

Does the disclosure of the information contravene any of the data protection principles?

14. The council considers that the disclosure of the information would contravene the first data protection principle.

15. The first data protection principle 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."

16. In deciding whether disclosure of this information would be unfair, the Commissioner has taken into account the nature of the information, the reasonable expectations of the data subjects, the consequences of disclosure on those data subjects and balanced the rights and freedoms of the data subjects with the legitimate interests in disclosure.

Nature of the information and reasonable expectations

17. The Commissioner recognises that information relating to investigations against individuals carries a strong general expectation of privacy due to the likelihood that disclosure could cause the data subjects' distress and could also cause permanent damage to their future prospects and general reputation.

18. In his guidance on personal data¹, the Commissioner states that the expectations of an individual will be influenced by the distinction between his or her public and private life and this means that it is more likely to be fair to release information that relates to the professional life of the individual. However, information relating to an internal investigation will carry a strong general expectation of privacy. This was recognised by the Information Tribunal in the case of *Rob Waugh v Information Commissioner and Doncaster College*² when it said at paragraph 40 that:

"...there is a recognised expectation that the internal disciplinary matters of an individual will be private. Even among senior members of staff there would still be a high expectation of privacy between an employee and his employer in respect of disciplinary matters."

¹ <https://ico.org.uk/media/for-organisations/documents/1213/personal-information-section-40-and-regulation-13-foia-and-eir-guidance.pdf>

² Appeal no. EA/2008/0038, 29 December 2008

19. The council said that there was an implicit obligation of confidence when the investigation was undertaken and it does not consider that any of those involved would have had any expectation that the documents would be made public in response to an FOI request. It said that it would be reasonable for all the individuals concerned to have a strong expectation that their personal data would not be disclosed and that in coming to this decision it took into account a number of other factors including the individual's seniority within the organisation at that time, that none of the matters resulting in the investigation were of a criminal nature, and that although many of the officers involved no longer work for the council, no-one was dismissed as a result of its findings.
20. Although the Commissioner considers that the withheld information in this case mainly relates to a mixture of the particular officers' professional and personal life, given the nature of it, he is satisfied that the individual, along with the third parties, would have a reasonable expectation of confidentiality and privacy in relation to the withheld information.
21. Given the nature of the investigation and the candid content of some of the information, the Commissioner is satisfied that there would have been a strong expectation of confidentiality and privacy in this case.

Consequences of disclosure

22. 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 information would cause unwarranted damage or distress to the data subjects.
23. The council said that investigations into alleged corruption are undoubtedly a stressful and difficult process for all concerned. It considers that disclosure would cause unnecessary and unjustifiable distress and unwarranted humiliation, especially given that many of those involved no longer work for the authority. It explained that the investigation involved probing interviews with a number of officers and the complainant in order to ascertain whether the allegations into corruption were justified and that some of those involved had attached a great deal of significance to the investigation and it was a stressful and difficult process for all concerned. It said that disclosure would potentially affect the physical and/or emotional wellbeing of some of the data subjects.
24. The council also said that disclosure of both the report and the associated correspondence could lead to wider public scrutiny, including targeted press coverage despite the passage of time which would undoubtedly cause unwarranted distress to the individuals concerned,

some of whom were subject to press attention at the time. It said that due to the press coverage in 2012 council staff and colleagues outside the scope of the investigation were aware of its existence and consequently the individuals involved could be easily identified, even if a redacted version was to be disclosed. It submitted that in addition to approaches from the media, disclosure would also be likely to make some of the data subjects the target of speculation, threats or reprisals.

25. In relation to the particular officer being investigated, the Commissioner considers that disclosure of information relating to an internal investigation would be an intrusion of privacy, could cause distress, and could also cause permanent damage to the officer's future prospects and general reputation.
26. In relation to the third parties who gave evidence, the Commissioner considers that the potential media interest could be distressing to the individuals' and could impact on their wellbeing. Even without any media interest, the Commissioner considers that disclosure would cause distress due to the nature of the information, particularly as he has found that disclosure of the information requested would not have been within the council officers' reasonable expectations.

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

27. 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 specific interests which in this case is the legitimate interest in knowing how an investigation into alleged corruption has been investigated and the outcome of that investigation.
28. The council said that any legitimate interests of the public in accessing the requested information are not sufficient to outweigh the right to privacy of the data subjects, particularly given the substantial detriment that would result from disclosure, which would undoubtedly involve a significant invasion of privacy.
29. It explained that the complainant has argued that there was a very strong legitimate interest in the disclosure of the requested information due to recent planning decisions taken by the council but that in its internal review response it confirmed that there was no link whatsoever between the investigation he requested information about and the Strawberry How development in Cockermonth. Whilst the council said it appreciates that the FOIA is 'motive' blind, it said that it is relevant to note that the issues relating to the investigation bare no relation to any of those the complainant listed in his correspondence to the council.

30. The council also informed the Commissioner that as a direct result of the investigation, and the recommendations made by Cumbria County Council at that time, it has reviewed its procedures to ensure that a similar situation could not occur again. The Commissioner considers that this goes some way towards meeting the legitimate public interest in this case.

Conclusion on the analysis of fairness

31. Taking all of the above into account, the Commissioner concludes that it would be unfair to the officer being investigated and the third parties involved to release the requested information. It is clear that disclosure would not have been within their reasonable expectations and that the loss of privacy could cause unwarranted distress. She acknowledges that there is a legitimate interest in knowing how an allegation of corruption has been investigated and the outcome of that investigation but does not consider that this outweighs the individuals' strong expectations of, and rights to, privacy. The Commissioner has therefore decided that the council was entitled to withhold the information under section 40(2), by way of section 40(3)(a)(i).
32. 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, she has not gone on to consider whether there is a Schedule 2 condition for processing the information in question.

Right of appeal

33. 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

34. 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.
35. 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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