

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 November 2017

Public Authority: London Borough of Havering

Address: Town Hall
Main Road
Romford
RM1 3BD

Decision (including any steps ordered)

1. The complainant has requested information relating to the consideration by the London Borough of Havering (the Council) of the long term parking needs of visitors and staff to the Queens Hospital when the Rom Valley Ice Rink closed down.
2. The Council released some information relating to the request subject to redactions made under section 40(2) (third party personal data) of the FOIA. It denied holding any further information in relation to the request.
3. The Commissioner's decision is that on the balance of probabilities the Council does not hold any additional information beyond that which had already been identified. With regard to the Council's reliance on section 40(2), the Commissioner has found that this only applies to the names of the junior members of staff.
4. The Commissioner therefore requires the public authority to take the following step to ensure compliance with the legislation:
 - The Council must disclose the names of the individuals listed in the confidential annex.
5. 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

6. On 11 January 2017, the complainant wrote to the Council via Whatdotheyknow.com and requested information in the following terms:

"Please therefore provide the following information under the FOI Act or any other appropriate Act

On what dates did any discussion, exchange of correspondence and or meeting in respect of Car Parking Provision on the Rom valley Ice rink Site take place between January 2010 to 1 May 2013, f

For each meeting, discussion or exchange of correspondence, please provide a copy of any record or an explanation as to why there no record was kept.

This request applies to all records (including electronic) held by the Council which show that Councillors and or Council Officers considered the long term Car Parking needs of visitors and staff to the Queens Hospital and includes emails (and deleted emails/records) from Councillors and Officers on their own accounts which relate to Council business

A search of the Council website reveals very few records (hence the request) , However if compliance with the request appears to require an unreasonable amount of time and or effort. Please confine the scope of the request to that which the Information Commissioner would consider reasonable , given the public interest in the lack of Car Parking provision for the Hospital and the amount of money the Council, receives from Car parking

If any record which ought to be disclosed contains commercially sensitive or privileged information please redact where necessary".

7. The Council responded on 23 February 2017. It supplied the complainant with redacted emails within the scope of his request. The Council applied section 40, third party personal data, to the redactions
8. Following an internal review the Council wrote to the complainant on 11 April 2017. It stated that all information had been supplied and there was no further information held.

Scope of the case

9. The complainant contacted the Commissioner on 21 July 2017 to complain about the way his request for information had been handled.
10. He considers that there was more information that should have been supplied and stated that there was "*clear evidence that it exists, has existed or has been deliberately destroyed*".
11. The complainant also considers that the use of redaction in the emails provided was inappropriate as the withheld information relates to Councillors and Council employees acting in a public capacity.
12. The Commissioner considers the scope of the investigation to be whether the Council held any more information than it supplied to the complainant and if its use of section 40(2), third party personal data, had been applied correctly.

Reasons for decision

Section 1 – information held

13. Section 1 of the FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds the information, and if so, to have that information communicated to them.
14. In cases where there is some dispute between the information located by a public authority and the amount of information that a complainant believes might be held, the Commissioner – following the lead of a number of First-tier Tribunal decisions – applies the civil standard of the balance of probabilities. In essence, the Commissioner will determine whether it is likely or unlikely that the Council holds information relevant to the complainant's request.
15. The Commissioner will consider the complainant's arguments and any evidence that they supply. She will also consider any searches undertaken by the public authority to check whether information is held and any other reasons that they offer to explain why the information is not held. She will also take into account any other reason why it is fundamentally likely or unlikely that information is not held.
16. To clarify, the Commissioner is not expected to prove beyond all doubt that information is or is not held, she is only required to make a

judgement on whether or not the information is held on the civil standard of probabilities.

17. The information in this case relates to copies of any meetings, exchanges of correspondence or discussions in respect of the car parking provision on the Rom Valley Ice Rink site between January 2010 and 1 May 2013.
18. The Council explained to the Commissioner that when it received the request it had staff currently employed by the Council search their email accounts. Email accounts of staff that had left the Council were also searched, however these accounts are only held for 13 months after a staff member leaves the Council. Considering that this request is for information from January 2010 up to 1 May 2013, and was not made until 11 January 2017, the Commissioner accepts that if there was any further information contained in emails it is likely to have been deleted prior to this request being received.
19. Nonetheless, it is the complainant's view that there should still be more recorded information held than the redacted emails provided by the Council. To support this view, he has set out three principal arguments.
20. Firstly, he has highlighted what he considers are references in the information he has received to the existence of further information. While the Commissioner appreciates the reasons for the complainant believing that further information should be held, she does not consider that there is sufficient evidence to indicate that the Council had not identified all the information in its possession at the date of the request.
21. Secondly, the complainant told the Commissioner that the Council has been paperless for more than a decade, which means that copies of electronic documents are held electronically and this would mean that there is an electronic audit trail. He considers that evidence of the relevant electronic communications between Councillors and Officers during the period in question exist in the audit logs.
22. This was put to the Council by the Commissioner. It responded by saying that it had checked with its audit department, which clarified that the audit logs are not kept unless a request is made by a manager in order to monitor a particular account.
23. Thirdly, the complainant questioned whether in relation to two named individuals, one of which was the project lead in the closure of the ice rink, all of the relevant documents had been provided.
24. Writing to the Council a second time the Commissioner asked them to confirm that the email accounts of the two named individuals had been

checked. The Council confirmed that they had and that nothing further had been found.

25. In terms of its wider searchers for information, the Council was also questioned on what search terms had been used to search for electronic data. The answer was: 'Rom Valley Ice Rink Site', 'car parking' and '[company name redacted]'. The Commissioner considers that the use of these terms was reasonable given that the request was regarding car parking provision at the Rom Valley Ice Rink.
26. The Council also stated that key electronic and paper records were held together as this matter had been going through litigation since 2011 and is still ongoing. These had been interrogated for the purposes of the request. The Council also brought it to the Commissioner's attention that the complainant has had copies of all the information contained within the court bundles.
27. In view of the time that has elapsed in relation to the dates in the scope of the request, the explanations provided by the Council with regard to the retention of staff emails and the fact that the principal papers in relation to this matter have been retained due to the ongoing litigation, the Commissioner is satisfied that the Council has demonstrated that all information falling within the scope of the request has been considered and provided to the complainant. So, on the balance of probabilities, the Commissioner has decided that the Council does not hold any further information.

Section 40(2) – third party personal data

28. This exemption provides that any third party personal data is exempt from disclosure, if that disclosure would contravene any of the Data Protection Principles set out in Schedule 1 of the Data Protection Act 1988 (DPA).
29. The complainant considers that the Council employees' and Councillors' names included in the correspondence that has been provided have been redacted inappropriately as they were acting on public business and therefore they should be disclosed.

Is the withheld information personal data?

30. Personal data is defined by the DPA as any information relating to a living and identifiable individual.

31. The two main elements of personal data are that the information must 'relate' to a living person and that the person must be identifiable. Information will relate to a person if it is about them, linked to them, has some biographical significance for them, or has them as its main focus or impacts on them in any way.
32. The withheld information in this case is the names of a number of the Council's staff and also two non-council staff. In the Commissioner's view this withheld information 'relates' to living individuals who are identifiable and it is therefore 'personal data'.

Would disclosure breach the Data Protection Principles?

33. The Data Protection Principles are set out in Schedule 1 of the DPA. The first principle, which is 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.
34. In considering fairness the Commissioner finds it useful to balance the reasonable expectation of the individuals, the potential consequences of the disclosure and whether there is a legitimate public interest in the disclosure of the information in question.

Reasonable expectations

35. In its submission to the Commissioner the Council has explained that of the 22 names that have been withheld, 13 are no longer employed by the Council, two were junior staff members at the Council and five were in management or head of department positions. The other two were not employed by the Council.
36. The Commissioner recognises that it is established practice to redact the names of junior staff when making disclosures under FOIA¹.
37. The Commissioner notes that the majority of staff in the redacted emails held senior positions within the council and because of this their names would already be in the public domain. The emails are in relation to the work they carried out in their public duties.

¹ https://ico.org.uk/media/for-organisations/documents/1187/section_40_requests_for_personal_data_about_employees.pdf

38. Information about an employee's actions or decisions in carrying out their job is still personal data about that employee, but given the need for accountability and transparency about public authorities, there must be some expectation of disclosure.
39. The Commissioner also considers the above to be true in relation to the two employees of Barking Havering Redbridge Hospital employees.
40. In conclusion, whilst the Commissioner acknowledges that disclosure of personal data represents an intrusion into the privacy rights of the data subjects this can be justified in relation to the senior staff members because they would have a reasonable expectation that their personal data would be released in relation to their professional work. The same cannot be said for the junior employees, who would not share a similar expectation that their personal data would be disclosed.
41. As the Commissioner considers that it would be fair to release the personal data for all but the junior employees she has gone on to consider whether any of the conditions from schedule 2 of the DPA can be met.

Schedule 2 condition

42. For the purpose of her decision the Commissioner has focused on the first and the sixth conditions.
43. The first condition states:

"The data subject has given his consent to the processing."
44. Consent has not been obtained in this case, however it is not necessary to have the employees' consent in order to release the data.
45. The sixth condition states:

"The processing 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 processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject."
46. The sixth condition carries a three part test:
 - there must be a legitimate interest in disclosing the information;
 - disclosure into the public domain must be necessary to meet the public interest; and

- disclosure must not cause unwarranted interference with the rights, freedoms and legitimate interests of an individual.
47. The Commissioner considers that the first and third stages of the test have effectively already been dealt with in paragraphs 35 to 41 as part of her fairness considerations.
 48. The final part of the test to be considered regarding the sixth condition is therefore whether disclosure is necessary to meet the public interest.
 49. The car parking issues at the Queen's Hospital and the use of the Ice Rink car park by staff and visitors to the hospital is a topic that was of interest to the wider public in the area.
 50. As there is a general social need for transparency about the policies, decisions and actions of public bodies, the Commissioner accepts that releasing the names of those involved in the discussions of such parking provision is necessary.
 51. Accordingly, the Commissioner considers that the three part test for the sixth condition has been met and, therefore, section 40(2) is not engaged and the names of the senior staff members can be disclosed. The junior staff members' names, on the other hand, should be redacted on all the relevant emails.

Right of appeal

52. 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

53. 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.
54. 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

Alun Johnson
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