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Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 October 2017

Public Authority: London Borough of Hounslow
Address: Chief Executive's Office
Civic Centre
Lampton Road
Hounslow, TW3 4DN

Decision (including any steps ordered)

1. The complainant has requested information relating to certificates awarded by the Mayor for community service.
2. The Commissioner's decision is that London Borough of Hounslow (the council), has correctly applied section 40(2) to the list of names.
3. During the Commissioner's investigation the council located a list of the various award criteria relevant to some of the awards presented. However, the Commissioner is satisfied that on the balance of probabilities, it does not hold any further information.
4. The Commissioner requires the public authority to now disclose the list of award criteria.
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 2 June 2016, the complainant wrote to the council and requested information in the following terms:

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"I note that recently the Mayor awarded certificates for Community Service to 89 people from the community. Under the Freedom of Information Act please supply the following:

- 1. Names of persons receiving award;*
 - 2. Reason for the individual award,*
 - 3. Criteria for the award;*
 - 4. Application and selection process."*
7. The council responded on 14 June 2016 and refused to provide the requested information as to do so would breach the Data Protection Act (DPA).
8. Following an internal review the council wrote to the complainant on 9 August 2016. It cited section 40(2) of the FOIA in relation to part 1 of the request. It provided further explanations in relation to the remaining parts of the request but maintained it did not hold any information that could specifically answer parts 2 – 4 of the request and upheld its original position.

Scope of the case

9. The complainant contacted the Commissioner on 23 March 2017 to complain about the way his request for information had been handled.
10. The Commissioner considers the scope of this case to be to determine if the council has correctly applied section 40(2) of the FOIA to the withheld information and that it has complied with its obligations under section 1 of the FOIA.

Reasons for decision

11. 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 that information and, subject to the application of any exemptions, to have that information communicated to them.
12. In scenarios where there is some dispute about whether a public authority holds the requested information the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
13. In other words, in order to determine such complaints the Commissioner must decide whether on the balance of probabilities a public authority

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holds any information which falls within the scope of the request (or held such information at the time of the request).

14. The council explained that the events at which these certificates and medals were handed out were generally small Mayoral functions. The Mayor's office has not always been associated with events where such awards have been handed out. In this particular case of awards to school children, this was arranged in an email correspondence from the Mayor's office. The awards were given out for high achievement where the criteria and selection process was carried out by the schools themselves.
15. The council had located the nine nomination forms which the schools completed and stated it would be happy to provide a complete list of the various 'Criteria for Award' the schools listed.
16. The council further confirmed that it had carried out searches on the Mayor's personal assistant's laptop and emails. The searches were made of the events where the certificates were expected to be handed out, using the dates of the events and also by looking through the emails from that period.
17. The council also advised it does not hold the complete list of names of all the recipients, as these were handed out on a discretionary basis by the then Mayor and the Mayor's office was not always informed.
18. In addition, there were other Mayoral events at which the Mayor gave certificates and awards but, whilst the Mayor's office holds some dates of these events, there are no records of the recipients of the awards. The Mayor's office may have received email correspondences at the time, if any of the awards were given out at such events, but such emails no longer exist as they are deleted early on during the subsequent mayoral year.
19. The council further explained that historically, most emails for the previous mayoral year would be deleted early on during the subsequent mayoral year when such information would no longer be useful. Since the awards in question, the council has had two Mayors and therefore the usual process has been followed which is currently being reviewed.
20. As the council is not the nominator for these awards nor does it arrange the presentations it would not be expected to hold all the information requested. It appears that the awards are actually awarded by others e.g. schools and the Mayor takes the opportunity to present them as part of his attendance at events.
21. The Commissioner is satisfied that the council has carried out appropriate searches for any information that may fall within the scope

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of the request. She is also further satisfied that on the balance of probabilities, no further information is held by the council that could specifically answer parts 2 – 4 of the request.

Section 40(2) – Third party personal data

22. This exemption provides that any third party personal data is exempt if its disclosure would contravene any of the Data Protection Principles set out in Schedule 1 of the Data Protection Act (DPA).

Is the withheld information personal data

23. Personal data is defined by the DPA as any information relating to a living and identifiable individual. 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, is used to inform decisions affecting them, has them as its main focus or impacts on them in any way.
24. The information being withheld is the names of the individuals who were presented with these awards.
25. It is clear that the names of the individuals will relate to them and make them identifiable. The council has also confirmed that these are the names of school children aged 6 – 11.

Would disclosure breach the Data Protection Principles?

26. The Commissioner has gone on to consider whether the disclosure of this information would be in breach of the first principle of the DPA. The first principle requires, amongst other things, that the processing of personal data is fair and lawful. The Commissioner has initially considered whether the disclosure would be fair.
27. In deciding whether disclosure of personal data would be unfair, and thus breach the first data protection principle, the Commissioner takes into account a range of factors including:
- the reasonable expectations of the individual in terms of what would happen to their personal data. Such expectations could be shaped by:
 - o what the public authority may have told them about what would happen to their personal data;
 - o their general expectations of privacy, including the effect of Article 8 of the European Convention on Human Rights (ECHR);
 - o the nature or content of the information itself;

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- the circumstances in which the personal data was obtained;
 - any particular circumstances of the case, e.g. established custom or practice within the public authority; and
 - whether the individual consented to their personal data being disclosed or conversely whether they explicitly refused.
 - the consequences of disclosing the information, i.e. what damage or distress would the individual suffer if the information was disclosed?
28. In consideration of this factor the Commissioner may take into account:
- whether information of the nature requested is already in the public domain; if so the source of such a disclosure;
 - and even if the information has previously been in the public domain does the passage of time mean that disclosure now could still cause damage or distress?
29. Furthermore, notwithstanding the data subject's reasonable expectations or any damage or distress caused to them by disclosure, it may still be fair to disclose the requested information if it can be argued that there is a more compelling legitimate interest in disclosure to the public.
30. In considering 'legitimate interests', in order to establish if there is a compelling reason for disclosure, such interests can include broad general principles of accountability and transparency for their own sake, as well as case specific interests. In balancing these legitimate interests with the rights of the data subject, it is also important to consider a proportionate approach.
31. The Commissioner notes the complainant's argument that some of the individuals have themselves made their award public on social media. Although this may well be the case there is no evidence that all the individuals have done so, and therefore would be unfair to those that have not.
32. The Commissioner has not been persuaded that there is any compelling reason for the information to be disclosed other than the complainant's suspicion of 'cronyism' of which there is no evidence.
33. Therefore, the Commissioner is satisfied that the council has correctly withheld the names of the recipients by virtue of section 40(2) of the FOIA.

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Right of appeal

34. 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

35. 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.
36. 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

Pamela Clements
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Wycliffe House
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Wilmslow
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