

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 11 June 2019

**Public Authority:** Newry, Mourne & Down District Council

**Address:** Newry Office, Monaghan Row  
Newry BT35 8DJ

#### **Decision (including any steps ordered)**

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1. The complainant has requested information from Newry, Mourne & Down District Council ('the Council') in relation to the 2016 Firmus Energy Newry City Triathlon & 2016 Borderman Half Distance Triathlon. The Council refused to disclose the requested information, citing section 40(2) of the FOIA as a basis for non-disclosure.
2. The Commissioner's decision is that the Council has correctly applied section 40(2) of the FOIA to the requested information.
3. The Commissioner requires no steps to be taken.

## **Request and response**

4. The complainant on 12 October 2017 made the following request for information to the Council:-

“Under the Freedom of Information Act I request the following:

A copy of all email correspondence between [name redacted] and [name redacted] relating specifically to the 2016 Firmus Energy Newry City Triathlon & 2016 Borderman Half Distance Triathlon from January 1 2016 to October 30 2016.”

5. The Council responded to the complainant’s request on 14 December 2017, after several reminders. It stated that it was withholding the requested information, citing section 40(2) of the FOIA as a basis for non-disclosure.
6. The complainant was not satisfied with that response and sought an internal review on 1 January 2018 stating several reasons why he believed that the information should be disclosed. The result of that internal review was provided to the complainant on 26 January 2018. The reviewer upheld the original decision.

## **Scope of the case**

7. The complainant contacted the Commissioner on 12 February 2018 to complain about the way his request for information had been handled, in particular its application of the above exemption.
8. The Commissioner wrote to the Council on 19 November 2018 seeking its detailed submissions as to its application of the exemption set out in section 40(2) of the FOIA. The Council responded to the Commissioner on 30 November 2018 providing those submissions.
9. The Commissioner has considered the Council’s handling of the complainant’s request, in particular its application of the above exemption.

## Reasons for decision

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### Section 40(2) -third party personal data

10. Section 40(2) of the FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the applicant and where one of the conditions listed in section 40(3) or 40(4) is satisfied.
11. In this case the Council cited section 40(2) in respect of the e-mails which formed the e-mail exchange between the parties who were named by the requestor but whose names are redacted in this notice. The Council confirmed that it was applying section 40(2) in conjunction with the condition listed in section 40(3)(a)(i). This applies where the disclosure of the information to any member of the public would contravene any of the principles of the Data Protection Act 1998 (the DPA). Although the DPA 1998 has now been superseded by the General Data Protection Regulation (GDPR) and the Data Protection Act 2018, it was still in force at the time of the complainant's request. The Council has confirmed its position that disclosure of this information into the public domain would be unfair and unlawful, which would contravene the first data protection principle as set out in the DPA.
12. The Commissioner is satisfied that the information in question is the personal data of individuals other than the requestor. This is because the individuals could be identified from their names and contact details on the e-mails. Even if these were redacted, the wording of the complainant's request and the nature and content of the e-mails would enable identification of those individuals. The Commissioner has therefore gone on to consider whether disclosure of this information into the public domain would be unfair.
13. When considering fairness and the first data protection principle the Commissioner has taken the following factors into account:
  - the individuals' reasonable expectations of what would happen to their information;
  - whether disclosure would cause any unnecessary or unjustified damage or distress to the individuals concerned (i.e. the consequences of disclosure); and
  - whether the legitimate interests of the public are sufficient to justify

any negative impact to the rights and freedoms of the individuals as data subjects.

14. The Commissioner has first considered the individuals' expectations. The Council states that the individuals in question would have a reasonable expectation that the Council would keep their personal information in confidence and not disclose it into the public domain in this specific context. The Commissioner notes that one of the individuals involved is a senior staff member in the Council and the e-mails are in relation to the Triathlon event that the Council was organising, so the individual was acting in an official capacity. The other individual involved is a member of the public and as such would not expect their personal information to be disclosed in this specific context. As the nature of the information is such that it would be very difficult to separate out the personal data of the member of the public from that of the Council's senior staff member, the Commissioner has considered all of the information as a whole, and the potential effect of its release on the second individual.
15. The Council also states that it has sought the consent of the second individual involved, and has provided evidence of the individual's views. The individual stated that, if the e-mails were to be disclosed, they would expect their names and contact details, and those of other individuals copied into the e-mails, to be redacted. However, as covered in paragraph 27 above, the nature and wording of the complainant's request would mean that the individual would be immediately identifiable from the e-mails.
16. It is known that the individual was involved in helping with the organisation of the event, however there has been media coverage of the Council's organisation of the event and, as a private individual acting in a voluntary capacity, this individual does not wish to be 'implicated' in any questions surrounding the organisation of the event and its funding, due to concerns that that such implication could tarnish the individual's reputation for community/voluntary support which has been built up over a long period of time. The prospect of such reputational damage resulting from disclosure would cause distress to the individual. The Council accepts that there is a legitimate interest in the public being aware of funding issues, especially as public funding is involved, and indeed the Council has disclosed information regarding funding in response to previous requests under the FOIA. However, the Council states that disclosure of the specific e-mails between the two individuals would not be necessary in order for that legitimate interest to be met, and so there would be no legitimate

interest considerations which would outweigh the likely distress/damage caused.

17. The Commissioner, having perused the information withheld under section 40(2), accepts that the second individual would not have had a reasonable expectation of disclosure and that disclosure would be likely to cause them damage or distress, which is not outweighed by any legitimate interest. The Commissioner also accepts that it would be difficult to separate out the personal data of the first individual from that of the second, so she has treated the entirety of the information as being both individuals' personal data. The Commissioner is therefore satisfied that section 40(2) is engaged in relation to that information.

**Right of appeal**

18. 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)

19. 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.
20. 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 .....**

**Deirdre Collins**

**Senior Case Officer**

**Information Commissioner's Office**

**Wycliffe House**

**Water Lane**

**Wilmslow**

**Cheshire**

**SK9 5AF**