

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 September 2021

Public Authority: Local Government and Social Care Ombudsman
Address: 53-55 Butts Road
Coventry
CV1 3BH

Decision (including any steps ordered)

1. The complainant has requested a list of email addresses for the Local Government and Social Care Ombudsman's ('the Ombudsman') investigators. The Ombudsman has withheld this information citing section 40(2) (personal information), and by extension 40(3)(a), of the FOIA as its basis for doing so.
2. The Commissioner's decision is the Ombudsman is entitled to rely upon section 40(2) as a basis for refusing to disclose the requested information.
3. The Commissioner requires no further steps.

Request and response

4. On 8 January 2021, the complainant wrote to the Ombudsman and requested information in the following terms:
"Could you please send the direct contact email addresses for each Local government Ombudsman covering each local authority."
5. The Ombudsman responded on 19 January 2021. It explained: *"There is not a separate Local Government Ombudsman for each local authority. The Local Government and Social Care Ombudsman is Michael King. All investigators working on cases have his delegated authority to make decisions as if they were him. His email address is m.king@lgo.org.uk."*
6. The complainant requested an internal review on 19 January 2021, clarifying they wished to receive *'the contact emails of the*

investigators working on behalf of the Local Government Ombudsman.'

7. Following an internal review the Ombudsman wrote to the complainant on 12 February 2021. The Ombudsman explained that, having conducted a public interest test in relation to this matter, that the requested information was exempt under section 40(2) and by extension 40(3)(a).

Scope of the case

8. The complainant contacted the Commissioner on 24 February 2021 to complain about the way that their request had been handled.
9. The complainant explained to the Commissioner that *'This case asked for local Ombudsman contact details, so that they might be directly informed of issues relating to child sex exploitation, insider dealing, and maladministration.'*
10. At the time of raising their complaint, the complainant drew the Commissioner's attention to numerous media reports on the Rotherham child sexual abuse scandal.¹
11. The Commissioner therefore considers the scope of her investigation to be to determine whether the Ombudsman is entitled to rely upon section 40(2) as a basis for refusing to disclose the requested information.

Reasons for decision

Section 40 – personal information

12. Section 40(2) of the FOIA states that:

"Any information to which a request for information relates is also exempt information if-

- (a) it constitutes personal data which does not fall within subsection (1), and*
- (b) the first, second or third condition below is satisfied."*

¹ [Rotherham child sexual abuse: Gang of seven guilty - BBC News](#)

Subsection (1) refers to exempt information of which the requestor is the data subject.

13. In this instance the relevant condition is contained in section 40(3)(a) which states:

"The first condition is that disclosure of the information to a member of the public otherwise than under this Act-

(a) would contravene any of the data protection principles"

14. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA18'). If this is not the case then section 40 cannot be used as a basis for refusing to disclose the information.
15. Secondly, and only if the Commissioner is satisfied that the requested information constitutes personal data, she must establish whether disclosure of that information would breach any of the data protection principles.

Is the requested information personal data?

16. Part 1, Section 3(2) of the DPA18 defines personal data as:

"any information relating to an identified or identifiable living individual.²"

17. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable from that information.
18. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
19. An identifiable living individual is one who can be identified, either directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.

² <https://www.legislation.gov.uk/ukpga/2018/12/section/3>

20. To reiterate, the withheld information is a list of email addresses for all of the Ombudsman's investigators. The Commissioner has been provided with a sample of the email addresses in question and is satisfied that all of the withheld information takes the same format.
21. Having considered the withheld information, the Commissioner is satisfied that the email addresses both relate to and identify the Ombudsman's casework investigators. Therefore this information falls within the definition of 'personal data' above.
22. The most relevant data protection principle in this case is principle (a) which states that "*Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject.*"³

Would disclosure contravene principle (a)?

23. Personal data is processed when it is disclosed in response to the request. This means that a public authority can only disclose personal data in response to an FOI request if to do so would be lawful, fair and transparent.
24. In order to be lawful, one of the lawful bases listed in Article 6(1)⁴ of the UK General Data Protection Regulation (UK GDPR) must apply to the processing.

Lawful processing: Article 6(1)(f) of the UK GDPR

25. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states:

"processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data."

26. In considering the application of Article 6(1)(f) of the UK GDPR in the context of a request for information made under the FOIA, it is necessary to consider the following three-part test:

³ <https://www.legislation.gov.uk/eur/2016/679/article/5>

⁴ <https://www.legislation.gov.uk/eur/2016/679/article/6>

- i) **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
- ii) **Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question;
- iii) **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.

The Commissioner's guidance states that *'If there is no legitimate interest, or disclosure is not necessary, there is no need to go on to perform the balancing test.'*

Legitimate interest test

27. The Commissioner must first consider the legitimate interest in disclosing the personal data to the public and what purpose this serves.
28. The Commissioner recognises that a wide range of interests may represent legitimate interests in the disclosure of information under the FOIA; they can be the requester's own interests as well as wider societal benefits. These interests can include the broad principles of accountability and transparency that underpin the FOIA, or may represent the private concerns of the requestor.
29. It is important to remember that disclosure under the FOIA is effectively disclosure to the world at large. The Commissioner is of the opinion that, if the requester is pursuing a purely private concern which is unrelated to any broader public interest then disclosure is unlikely to be proportionate. Legitimate interests may be compelling or trivial, but trivial interests may be more easily overridden by the fundamental rights and freedoms of the data subject during the test under stage (iii).
30. In its submission to the Commissioner the Ombudsman has written *'We have considered and not identified any legitimate interests in disclosure in this case.'*
31. The Ombudsman has explained that it deals with a variety of complaints including adult-social care and children's services. Complaints within the Ombudsman may be raised through its established routes⁵, (the phone, via a complaints form or via post) the

⁵ [How to register a complaint - Local Government and Social Care Ombudsman](#)

only requirement being that the complaints procedure of the care provider must have been exhausted.

32. It has elaborated that incoming enquiries are managed by one team and only those cases which meet certain criteria are progressed to investigation stage. When an investigator is allocated to a case their name and email address will be disclosed to the complainant and any subsequent individuals involved in the case. Any decision reached is done so in the name of the Ombudsman and not the individual investigator.
 33. It is the Ombudsman's legal obligation to investigate such concerns and, whilst aspects of this task are delegated to individual investigators, all of their work is carried out in the name of the Ombudsman.
 34. Ultimately, the complainant appears to have concerns relating to specific local authorities and the appropriate body to bring such concerns to is the Ombudsman, through its casework process, and not an individual investigator. The complainant has been informed on more than one occasion that all investigators report on local authorities nationwide.
 35. As the Ombudsman has itself outlined *'People wanting to bring a complaint to the Ombudsman can do so through clearly available channels (phone, online, post) and do not require a full list of investigator contact emails to use our service...Emailing an investigator directly with a new complaint will not enable the complainant to register the complaint with us.'*
 36. Therefore it appears that disclosure of the requested information would be at odds with what the requestor is trying to achieve. The Commissioner therefore does not consider that there is any legitimate, private interest being pursued through this request.
 37. The Commissioner is also not convinced that disclosure serves any wider purpose as continued suppression of the requested information does not inhibit the public's ability to bring a concern to the Ombudsman.
 38. However, she accepts the legitimate interests can be represented by the themes of transparency and accountability that underpin the FOIA. Although this accountability and transparency may extend to
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the employees of public authorities the Commissioner considers that there is a limited legitimate interest in disclosure of the requested information.

The necessity test

39. The Commissioner must now consider if disclosure of the requested information is necessary to increase transparency or accountability of the Ombudsman.
40. 'Necessary' means more than desirable but less than indispensable or absolute necessity. The necessity test is a means of considering whether disclosure under the FOIA is necessary to meet the legitimate interest identified, or whether there is another way to do so that would be less intrusive to the privacy of the individuals concerned.
41. In terms of accountability, if an individual involved in a case wishes to raise a query with the investigator they will be able to do so as outlined in paragraph 32. A complainant will also have the right to challenge any decision reached, after the option of one review, through judicial review in the High Court.
42. The Ombudsman notes that *'When published, decisions do not say which investigator made them, they are issued in the name of the Ombudsman not the individual investigator as they are the Ombudsman's decision.'*
43. Any decision reached is ultimately the Ombudsman's, it is he who is accountable for all casework and to Parliament. Therefore if an individual who was not involved in the case wishes to raise a concern they may do so by contacting the Ombudsman directly and not an individual investigator.
44. The Ombudsman has highlighted that for transparency purposes every decision that it reaches is published⁶.

The Commissioner's view

45. The Commissioner does not consider that there is a legitimate individual interest being pursued through this request. Furthermore, the Commissioner does not consider that disclosure of the requested information would add to the public understanding of the Ombudsman or its processes and would not make it any more transparent or accountable.

⁶ [Decisions - Local Government and Social Care Ombudsman](#)

46. The Commissioner therefore considers that there is no Article 6 basis for processing and so the disclosure of the information would not be lawful.
47. Given the above conclusion that disclosure would be unlawful, the Commissioner does not need to go on to consider the balancing test or whether disclosure would be fair or transparent.
48. The Commissioner has decided that the Ombudsman was entitled to withhold the requested information under section 40(2), by way of section 40(3)(a).

Other matters

49. Returning to paragraph 7, the Commissioner notes that the Ombudsman has referred to a public interest test within both its internal review outcome and submission to the Commissioner.
50. Application of section 40(2)(a) and by extension 40(3)(a) involves the balancing test, balancing the rights and interests of data subjects against the legitimate interests in disclosure. Whilst it has not been necessary to conduct a balancing test in this case, the Commissioner notes that this is not the same as carrying out the public interest test which determines whether the public would be best served via disclosure of requested information or the maintaining of the exemption.
51. The Commissioner further notes that the Ombudsman's initial response to the request falls below the expected standard and does not meet the requirements of section 17(1) FOIA which states:

Refusal of request

"A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which—

- (a) states that fact,*
- (b) specifies the exemption in question, and*
- (c) states (if that would not otherwise be apparent) why the exemption applies."*

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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.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

Alice Gradwell
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