

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 September 2022

Public Authority: Sheffield City Council

Address: PO Box 1283

Town Hall

Sheffield

S1 1UJ

Decision (including any steps ordered)

1. The complainant requested information relating to Community Trigger meetings about them held by Sheffield City Council ("the Council"). The Council refused to provide the requested information citing section 40(2) (personal information) of FOIA.
2. The Commissioner's decision is that the Council was entitled to rely on section 40(2) of FOIA for the withheld information.
3. The Commissioner does not require any steps to be taken as a result of this decision notice.

Background

This case relates to a previous decision notice of 5 July 2021 on case reference IC-47111-Q8J4, in which the Council was compelled to issue a fresh response which did not rely on Section 14(1) of FOIA.

Request and response

4. On 7 February 2020, the complainant wrote to the Council and requested information in the following terms:

"A complete set of all Community Trigger meeting notes from all community triggers made in relation to (name redacted) and (name redacted) Issues re (address redacted).

A complete set of all council records in relation to the above in regards to any other multi agency meetings connected to the community triggers. For example council separate to multi agency meetings.

I refer to community triggers made by me."

5. On 28 July 2021, the Council provided their response and refused the request for information citing section 40(2) of FOIA to do so.
6. On 15 November 2021, at internal review, the Council upheld its reliance on section 40(2) of FOIA to refuse to provide the requested information, as it argued this would clearly identify third party individuals and the requesters own personal data.

Scope of the case

7. The complainant contacted the Commissioner on 19 November 2021 to complain about the way their request for information had been handled.
8. The Commissioner considers the scope of this case to be to determine if the Council has correctly applied section 40(2) of FOIA to the withheld information.

Reasons for decision

Section 1 – general right of access

9. Section 1(1) of FOIA states any person making a request is entitled to be told whether the information they have asked for is held and, if so, to have that information communicated to them, subject to the application of any exemptions that are appropriate.

Section 40(2) – personal information

10. Section 40(2) provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.
11. In this case the relevant condition is contained in section 40(3A)(a)¹. This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the General Data Protection Regulation ('GDPR').
12. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA'). If it is not personal data, then section 40 of FOIA cannot apply.
13. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the DP principles.

Is the withheld information personal data?

14. Section 3(2) of the DPA defines personal data as: 'any information relating to an identified or identifiable living individual'.
15. An identifiable living individual is one who can be identified, 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.

¹ As amended by Schedule 19 Paragraph 58(3) DPA.

16. 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.
17. The complainant has provided the names of individuals they have complained to the Council about Anti-Social Behaviour; therefore, they clearly believe the named individuals to be the responsible persons in question.
18. The Commissioner considers that an individual can be indirectly or directly identifiable when information held by a public authority can be combined with other information either previously disclosed to an individual or in the public domain to identify the individual.
19. The public authority has confirmed that "The personal data of other people which is contained within the records for the Community Triggers is also exempt under Section 40(2) because we believe that releasing their personal data would breach the data protection principles", and "It would not be fair for Sheffield City Council to publish the personal data of those involved in the Community Trigger nor would the data subjects expect us to do so." The Commissioner shares the view that third party individual's details, are not disclosable in a scenario such as in this case.
20. The Commissioner considers that named individuals under consideration in this case, clearly constitutes personal data.
21. The Commissioner also accepts that the specifically requested information about named individuals constitutes their personal data.
22. The Commissioner is mindful that the issue to be considered is whether disclosure to a member of the public would breach the data protection principles, because an individual is capable of being identified from apparently anonymised information.
23. A test used by both the Commissioner and the First-tier Tribunal in cases such as this is to assess whether a 'motivated intruder' would be able to recognise an individual if he or she was intent on doing so. The 'motivated intruder' is described as a person who will take all reasonable steps to identify the individual or individuals but begins without any prior knowledge. In essence, the test highlights the potential risks of reidentification of an individual from information which, on the face of it, appears truly anonymised.
24. In the circumstances of this case, the Commissioner accepts that the requested information, if disclosed, would clearly relate to third parties,

and that accordingly that information also constitutes their personal data.

25. He has reached that conclusion on the basis that the focus of the information is that of the named individuals. The Commissioner is satisfied that the wording of the request, which specifically names third parties, makes it clear that the information requested could only relate to the third parties. In the circumstances of this case, he is satisfied that the information is clearly linked to third party individuals.
26. The Commissioner is further satisfied that the individuals concerned would be reasonably likely to be identifiable from a combination of the requested information and other information, which is likely to be in, or come into, the possession of others in the wider public domain.
27. In the circumstances of this case, having considered the withheld information, the Commissioner is satisfied that the information both relates to, and identifies, third parties. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA
28. The fact that information constitutes the personal data of identifiable living individuals does not automatically exclude it from disclosure under FOIA. The second element of the test is to determine whether disclosure would contravene any of the DP principles.
29. The most relevant DP principle in this case is principle (a).

Would disclosure contravene principle (a)?

30. Article 5(1)(a) of the GDPR states that:

'Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject.'

31. In the case of an FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair, and transparent.
32. In order to be lawful, one of the lawful bases listed in Article 6(1) of the GDPR must apply to the processing. It must also be generally lawful.

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

33. 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, in particular where the data subject is a child².'

34. In considering the application of Article 6(1)(f) of the GDPR in the context of a request for information under FOIA, it is necessary to consider the following three-part test:-
- 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.
35. The Commissioner considers that the test of 'necessity' under stage (ii) must be met before the balancing test under stage (iii) is applied.

Legitimate interests

36. In considering any legitimate interest(s) in disclosing the withheld information under FOIA, the Commissioner recognises that such interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case-specific interests.
37. Further, a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.

² Article 6(1) goes on to state that:- "Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks".

However, section 40(8) FOIA (as amended by Schedule 19 Paragraph 58(8) DPA) provides that:- "In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the GDPR would be contravened by the disclosure of information, Article 6(1) of the GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted"

38. The Commissioner acknowledges that the complainant put forward their arguments in support of disclosure:

"The council clearly have no good intentions re us. They are processing vast amounts of personal data and hiding it. We require this data for Legitimate purposes, and it is making it difficult for us to get to the bottom of I'll treatment of us and what I would state is unprofessional behaviour directed at me and my family."

39. The Commissioner considers that there is a legitimate interest in knowing the general policies and procedures the public authority has in place to ensure it is compliant with relevant legislation around the specific issue raised here. However, the Commissioner does not consider that there is a pressing social need to interfere with the privacy rights of individuals in order to disclose the withheld information.
40. He considers that there is a generic legitimate interest in how the Council has adhered to its responsibilities for openness and transparency.

Is disclosure necessary?

41. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity which involves the consideration of alternative measures, and so a measure would not be necessary if the legitimate aim could be achieved by something less. Disclosure under FOIA must therefore be the least restrictive means of achieving the legitimate aim in question.
42. In its submission, the Council told the Commissioner that: As the request was with reference to specific named individuals, and not a general enquiry, it was considered as relating to those individuals.
43. The Commissioner does not consider that there is pressing social need to interfere with the privacy rights of third-party individuals in order to satisfy the legitimate interest in obtaining the specific information requested. Disclosing the withheld information is not the least restrictive means of satisfying this legitimate interest.
44. The Commissioner is mindful that disclosure under FOIA is disclosure to the world at large. Therefore, the effect of complying with this request would be that the third-party individual's personal details were effectively being publicly disclosed and would be accessible to anyone, for any purpose.
45. The Commissioner has therefore concluded that disclosing details with relation to an individual member of staff would not be lawful and

therefore article 6(1)(f) of the GDPR is not met. Disclosure of the withheld information would therefore breach the first data protection principle and thus is exempt from disclosure on the basis of section 40(2) of FOIA.

46. As the Commissioner has concluded that the necessity test has not been met, he has not gone on to consider the balancing test in this case.
47. The Commissioner has therefore decided that the Council was entitled to withhold the information under section 40(2), by way of section 40(3A)(a).

Right of appeal

48. 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@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

49. 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.
50. 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

Phillip Angell
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