

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 March 2023

Public Authority: City of Bradford Metropolitan District Council
Address: Centenary Square
Bradford
BD1 1HX

Decision (including any steps ordered)

1. The complainant requested information from the City of Bradford Metropolitan District Council ("the public authority"). The Commissioner's decision is that the public authority is entitled to rely on section 40(2) of FOIA to withhold all of the requested information.
2. The Commissioner does not require the public authority to take any steps.

Request and response

3. On 9 May 2022, the complainant made the following request for information to the public authority:

"Under the freedom of information act can you please provide me with the following information,

1 The performance targets / appraisal set for the following senior management for the past 5 years

Strategic Director for Childrens Services

Strategic Director for Health and Wellbeing

Strategic Director for Place

Strategic Director for Corporate Resources

Director for WYPF

Director of Finance

Director of HR

2 Who undertook to set these performance targets/ appraisals for the following senior management over the last 5 years

Strategic Director for Childrens Services

Strategic Director for Health and Wellbeing

Strategic Director for Place

Strategic Director for Corporate Resources

Director for WYPF

Director of Finance

Director of HR

3 The outcome of each of the targets set for the past 5 years and what they were out of ie for those senior management as named above

Target 1 3 out of 5

Target 2 2 out of 5

Please can you provide the full performance targets/ appraisal as filled in by those senior management and the reviewers comments and responses, this must be the completed as is version of the performance targets / appraisal and not a summary for all the request for information above"

4. The public authority provided the requested information in response to question 2 but refused to provide any of the information requested in questions 1 and 3, citing section 40(2) (personal information) of FOIA as its basis for doing so.

Reasons for decision

Section 40 - personal information

5. This reasoning covers whether the public authority was correct to apply section 40(2) of FOIA to the request.¹
6. Section 40(2) says that information is exempt information if it is the personal data of another individual and disclosure would contravene one of the data protection principles. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
7. In this case, the Commissioner is satisfied that the withheld information is personal data because he recognises that small numbers, in this case seven performance appraisals relating to specific named individuals, carry a greater risk of identification than larger ones. However, that does not mean that every small number identifies any individual. Whether individuals can be identified will depend on the particular facts, such as the size of the overall dataset, the number of data points that have been requested and the information, already in the public domain, that could potentially be cross-referenced with the disclosed information. It is not sufficient for there to be only a hypothetical risk of identification. If there is no realistic route to identification, the information is not personal data, regardless of its sensitivity.
8. When considering the possibility of identification, the Commissioner applies the "Motivated Intruder Test." This test starts with a hypothesis that there exists a person who wishes to identify the individuals covered by the disputed information. The person is willing to devote a considerable amount of time and resources to the process of identification. They may have some inside knowledge (i.e. information not already in the public domain) but will not resort to illegality – they are determined but not reckless. The Commissioner looks to see how such a person would go about identifying the individuals involved.
9. In this case, each performance appraisal contains goal descriptions tailored to the individual's role and appraisal comments related to each goal. From both the goal descriptions and the appraisal comments, it is highly likely that a motivated intruder could identify the role to which the appraisal is linked. It would be easy for a motivated intruder to link

¹ <https://www.legislation.gov.uk/ukpga/2000/36/section/40>

the role to an identifiable living individual as the names of role holders are, for the most part, already in the public domain. As the individuals can be identified, the information is personal data and therefore section 40(2) of FOIA is engaged.

10. In the case of a 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.
11. When considering whether the disclosure of personal information would be lawful, the Commissioner must consider whether there is a legitimate interest in disclosing the information, whether disclosure of the information is necessary and whether these interests override the rights and freedoms of the individuals whose personal information it is.
12. The Commissioner considers that the complainant is pursuing a legitimate interest and that disclosure of the requested information is necessary to meet that legitimate interest.
13. It is necessary to balance the legitimate interests in disclosure against the fundamental rights and freedoms of the data subjects. In doing so, it is necessary to consider the impact of disclosure.
14. In the Commissioner's view, a key issue when considering the balancing test is whether the individuals concerned have a reasonable expectation that their information will not be disclosed. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to the individuals, taking into account whether or not they have consented to its disclosure.
15. In this case the Commissioner considers that the individuals concerned have a reasonable expectation that their information will not be disclosed, particularly as this is stated in an official internal document about employment conditions to which both parties are privy. The Commissioner has seen a copy of this document and is satisfied that it clearly states that appraisal data will not be disclosed without both parties' consent.
16. Neither parties have consented to share the requested information, hence any disclosure would be a breach of employment conditions which would be likely to lead to unwarranted damage to employees' confidence in the Council's adherence to its own policies and procedures and to distress to the individuals.

17. Based on the above factors, the Commissioner has determined that the fundamental rights and freedoms of the individuals outweigh the legitimate interest identified above. The Commissioner therefore considers that disclosing the requested information would be unlawful as it would contravene a data protection principle; that set out under Article 5(1)(a) of the UK General Data Protection Regulation. The public authority was therefore correct to apply section 40(2) of FOIA to this request.

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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatorychamber

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

Michael Lea
Team Manager
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