

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

### **Decision notice**

**Date:** 25 August 2023

**Public Authority:** City of Bradford Metropolitan District Council

**Address:** 4th Floor Britannia House  
Hall Ings  
Bradford  
West Yorkshire  
BD1 1HX

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

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1. The complainant has requested information regarding the Adult Social Care staff, who have worked at City of Bradford Metropolitan District Council (Council).
2. The Commissioner's decision is that the Council has correctly relied on section 40(2) of FOIA.
3. The Commissioner does not require any further action.

#### **Request and response**

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4. On 4 May 2023, the complainant wrote to the public authority and requested information in the following terms:

"I would like the name, registration number and date of employment or date of last employment of all qualified registered social workers which are working in Adult social services at Bradford Council, including if they are full-time, part-time, permanent, contract or agency workers covering the period from 2010 onwards. My enquires should exclude any social workers working in other files such as children's services.

I would like the response to my enquires to be in an easily readable spreadsheet dataset format, such as Excel."

5. The public authority responded on 12 May 2023. It stated that the requested information was being withheld under Section 40.
6. Following an internal review, the public authority wrote to the complainant on 31 May 2023. It stated that it was upholding its original decision.

### **Scope of the case**

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7. The complainant contacted the Commissioner 16 June 2023 to complain about the way his request for information had been handled.
8. The Commissioner considers the scope of his investigation to be to establish whether the public authority is entitled to withhold the requested information under section 40(2) of the FOIA

### **Reasons for decision**

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#### **Section 40 personal information**

9. 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 requester and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.
10. In this case the relevant condition is contained in section 40(3A)(a)<sup>1</sup>. 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').
11. 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 the FOIA cannot apply.

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<sup>1</sup> As amended by Schedule 19 Paragraph 58(3) DPA

12. 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 information personal data?**

13. Section 3(2) of the DPA defines personal data as:

“any information relating to an identified or identifiable living individual”.

14. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
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.
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 Council explained to the Commissioner that the withheld information contains; individuals names, information regarding their Adult Social Care role, specifically the fact that they work within Bradford district, the hours they work and whether they are employed by the Council directly, or as a member of an agency. The Council concluded that the combination of this information would constitute personal data.
18. The complainant advised that they did not consider the name, or post of an individual to be personal data. They explained that they believed section 40(2) has been used as a way to withhold the requested information.
19. In the circumstances of this case, having considered the withheld information, the Commissioner is satisfied that the information relates to the data subjects. The request specifically seeks the name of each social worker – that name can then be linked to the other information about each social workers terms of employment. Such information clearly relates to the social workers and has them as its focus. It is therefore their personal data.
20. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under the FOIA. The second element of the test is to determine whether disclosure would contravene any of the DP principles.

21. The most relevant DP principle in this case is principle (a).

**Would disclosure contravene principle (a)?**

22. 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”.

23. 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.

24. 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**

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, in particular where the data subject is a child”<sup>2</sup>.

26. In considering the application of Article 6(1)(f) of the GDPR in the context of a request for information under the 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;

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<sup>2</sup> 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”.

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.

27. 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

28. In considering any legitimate interest(s) in the disclosure of the requested information under the FOIA, the Commissioner recognises that such interests can include broad general principles of accountability and transparency for their own sakes, as well as case specific interests.

29. 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.

30. The complainant was provided with the opportunity to express their legitimate interests, but did not take the this opportunity. The Commissioner has therefore applied general principles.

31. The Commissioner recognises that there is a legitimate interest in knowing whether the Council employs an adequate number of social workers and whether those that it does employ have the necessary qualifications.

#### Is disclosure necessary?

32. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under the FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.

33. The Commissioner does not consider it necessary to disclose such detailed information about each individual social worker in order to allow the public to decide whether it is deploying its budget effectively. Such information can be provided in aggregated form in such a way as not to identify individuals.

34. Equally disclosure is not necessary to hold social workers to account. There is already a publicly available register that allows anyone to

search for a social worker to check their registration status.<sup>3</sup> Any concerns about a particular social worker can be raised with the Council or other appropriate authorities. Therefore the legitimate interest can already be achieved by less-intrusive means.

35. The complainant was unable to identify any legitimate interest that would necessitate disclosure.
36. As disclosure would be unnecessary, there is no lawful basis for the processing of this personal data. Disclosure would be unlawful and would therefore breach the first data protection principle. Section 40(2) of FOIA is therefore engaged.

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<sup>3</sup> <https://www.socialworkengland.org.uk/umbraco/surface/searchregister/results>

## Right of appeal

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37. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

38. 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.
39. 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 .....**

**Roger Cawthorne**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**