

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 March 2024

Public Authority: City of Bradford Metropolitan District Council

Address: Britannia House
Hall Ings
Bradford
BD1 1HX

Decision (including any steps ordered)

1. The complainant requested information about the employment of a named Council officer. City of Bradford Metropolitan District Council (the Council) withheld the information under section 40(2) (personal data) of the FOIA. The Commissioner's decision is that the Council has correctly relied on section 40(2) of FOIA. The Commissioner does not require any steps to be taken.

Request and response

2. On 29 September 2023, the complainant wrote to Council and requested information in the following terms:

"Since the 1st of October 2021 until today 29 September 2023, covering a period over the last 2 years, I would like to know what days [name of officer redacted] - Social Work Registration Number [number redacted] - has been on duty and at work over the aforementioned last two year time period?".
3. The Council responded on 5 October 2023 and stated that the information requested was exempt under section 40(2) and (3A) of the FOIA.
4. Following an internal review, the Council wrote to the complainant on 20 October 2023. It stated that it was upholding its original decision.

Scope of the case

5. The complainant contacted the Commissioner on 26 October 2023 to complain about the way their request for information had been handled.
6. 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

Section 40 – third party personal information

7. Section 40(2) of 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.
8. 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 UK General Data Protection Regulation (UKGDPR).
9. 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.
10. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, she must establish whether disclosure of that data would breach any of the DP principles.

Is the information personal data?

11. Section 3(2) of the DPA defines personal data as:
“any information relating to an identified or identifiable living individual”.
12. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.

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

13. 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.
14. 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.
15. The request in this case is for the dates that a named Council officer was on duty, and at work, over a two year period. The Commissioner considers that the dates that a named officer was in work over a two year period clearly relates to the individual concerned, and has them as its focus. The Commissioner is therefore satisfied that the withheld information constitutes personal data falling within the definition in section 3(2) of the DPA.
16. 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.
17. The most relevant DP principle in this case is principle (a).

Would disclosure contravene principle (a)?

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

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

19. 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.
20. 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)9f) of the UK GDPR

21. Article 6(1) of the UK GDPR specifies the requirements for lawful processing by providing that “processing shall be lawful only if and to the extent that at least one of the” conditions listed in the Article applies. One of the conditions in Article 6(1) must therefore be met before disclosure of the information in response to the request would be considered lawful.

22. 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"².

23. The Commissioner considers that the lawful basis most likely to be relevant in relation to a request for information under the FOIA is Article 6(1)(f); legitimate interests. In considering the application of this provision 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 interests, fundamental rights and freedoms of the data subject.

24. 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

25. In considering any legitimate interests in the disclosure of the requested information under the FOIA, the Commissioner recognises that such

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 UK GDPR would be contravened by the disclosure of information, Article 6(1) of the UK 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".

interests can include broad general principles of accountability and transparency for their own sakes as well as case specific interests.

26. 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
27. The complainant states that they are "a social watchdog, armchair auditor, citizen journalist, data protection advocate, content creator and civil rights activist, looking to hold those in positions of authority and power to account for their conduct and behaviour".
28. The complainant has indicated that they have an interest in disclosure of the information requested as they had dealings with the officer named in the request when acting on behalf of a relative in respect of their care. However, the complainant has not provided any information to explain why they specifically require access to information about when the individual concerned was in work and on duty during the period covered by the request.
29. The Council accepts that the information requested relates to the working life of the individual concerned as opposed to their private life. The Council also acknowledges that employees would have an expectation that some information about their public role would be disclosed. However, the Council considers that, in light of the sensitive nature of the Social Worker role, disclosure of information, essentially into the public domain, about when an individual was present or absent from work could have an adverse effect on the employee as an individual. This in turn could affect their private life.
30. The Council considers that the legitimate interest in disclosure in this case is based entirely on the private concerns of the complainant. It contends that it has taken a proportionate approach in this case, weighing up the legitimate interest in disclosure against the rights and freedoms of the individual concerned. In doing so the Council concluded that disclosure of the information requested would constitute a disproportionate and unwarranted level of interference with the rights and freedoms of the individual concerned, who would have no expectation that detailed information about when they were in work and when they were not would be disclosed, essentially into the public domain.
31. The Commissioner accepts that there is a legitimate interest in disclosure of information which promotes transparency and accountability. However, the Commissioner does not consider that this legitimate interest extends to disclosure of the dates that a specific social worker was in work and on duty. He considers that, to an extent

this information also relates to the individual's private life as it would also reveal when they were not in work.

32. The Commissioner also considers that disclosure of information about when a particular social worker was in work is not necessary in order to hold social workers to account. There is a publicly available register³ that allows anyone to search for a social worker to check their registration status. Any concerns the complainant may have about a particular social worker can be raised with the Council or other appropriate authorities. Therefore this legitimate interest can already be achieved by less-intrusive means.
33. In conclusion, the Commissioner's decision in this case is that disclosure of such detailed information about when a particular social worker was in work is not necessary to meet any legitimate interest in disclosure. 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 Council was therefore correct to apply section 40(2) of FOIA to this request

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

Right of appeal

34. 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

35. 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.
36. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Joanne Edwards
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF