

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 March 2024

Public Authority: Local Government and Social Care
Ombudsman (LGSCO)

Address: PO Box 4771
Coventry
CV4 0EH

Decision (including any steps ordered)

1. The complainant has requested information relating to several complaints adjudicated by Croydon Council. The LGSCO provided some information and refused to provide other information under section 14(2).
2. The Commissioner's decision is that the LGSCO has complied with section 1 of FOIA by providing recorded information in scope of part of the request. The Commissioner finds the LGSCO incorrectly applied section 14(2) to refuse to provide other information but section 40(2) does provide a basis for refusing this part of the request.
3. The Commissioner does not require further steps.

Request and response

4. On 18 September 2023, the complainant wrote to the LGSCO and made a request in several parts, most of which were considered under the Data Protection Act 2018 (DPA). The parts considered under FOIA were in the following terms:

"3. The law relied upon by the LGO in each category when it adjudicated three serious complaints.

6. Full names governing Bodies and membership numbers of every single officer who adjudicated in three serious cases against Croydon Council wherein a criminal finding had been made.”
5. The LGSCO responded on 10 October 2023. For part (3) it provided a link to information and for part (6) it explained this was a repeated request and it was therefore refused under section 14(2) of FOIA.
6. Following an internal review the LGSCO upheld its position in an email dated 19 October 2023.

Scope of the case

7. The complainant contacted the Commissioner to complain about the way their request for information had been handled.
8. The Commissioner considers that the scope of his investigation is to determine if the LGSCO has complied with its obligations under FOIA and has correctly provided or withheld relevant information in scope of the request.

Reasons for decision

Section 1 – information held

9. Section 1(1) requires that a public authority must inform a requestor, in writing, whether it holds information falling within the scope of the request. If it does hold relevant information, it also requires that it communicates the information to the requestor, subject to any exclusions or exemptions applying.
10. In scenarios where there is some dispute between the amount of information held which a public authority says it holds, and the amount of information that a complainant believes is held, the Commissioner, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
11. In other words, in order to determine such complaints, the Commissioner must decide whether, on the balance of probabilities, a public authority holds any - or additional - information which falls within the scope of the request (or was held at the time of the request). For clarity, the Commissioner is not expected to prove categorically whether the information/further information is held.

12. With regard to part (3) of the request the LGSCO explained, in response to an earlier request, it had sent the complainant a statement that explained the complaint was considered using information provided by the complainant and Croydon Council and the Assessment Code – Local Government and Social Care Ombudsman was considered by the investigator. A link was provided to the complainant where this could be accessed.
13. In the complainant's correspondence with the Commissioner they stated they expected the LGSCO to cite the law it relied on when it found in favour of Croydon Council and it was expected the LGSCO would be able to, at the least, provide a list of documents it relied on from Croydon Council.
14. The Commissioner should stress that FOIA is concerned with requests for recorded information held by a public authority. The LGSCO provided a link to its Assessment Code and explained how it made its decision. The Commissioner therefore considers it has provided the complainant with the recorded information it holds in relation to this part of the request. He notes the complainant wanted to see a list of documents used as evidence but this was not? within the scope of the request that was actually made – the request asked for the law relied on by the LGSCO and LGSCO stated they used evidence from the complainant and the Assessment Code. As such the Commissioner considers the LGSCO has complied with its obligations under section 1 of FOIA in relation to part (3) of the request.

Section 14(2) – repeated requests

15. Section 14(2) of FOIA states that a public authority does not have to comply with a request which is identical or substantially similar to a previous request submitted by the same individual, unless a reasonable period has elapsed between those requests. Section 14(2) can only apply if the public authority previously provided the information when responding to the earlier request, or previously confirmed the information was not held.
16. The LGSCO stated they had responded to a substantially similar request in a short period of time so were refusing the request at part (6) under section 14(2) of FOIA. The earlier request of 14 August 2023 asked for:

"Please provide full names membership and Governing Bodies of every single officer at the LGO who assessed by case on the three occasions I made serious complaints"
17. On 7 September the LGSCO responded to this point and stated that any information about memberships, governing bodies or members of staff

was exempt from disclosure under section 40(2). The LGSCO further explained this response, setting out the basis in legislation for refusing to provide this information.

18. As the LGSCO did not provide the information in response to this earlier request it was not entitled to refuse the current request under section 14(2) of FOIA. However, the LGSCO made it clear it would still rely on section 40(2) of FOIA to refuse the request and the Commissioner has gone on to consider this.

Section 40(2) – personal data

19. Section 40(2) provides an exemption for information that is the personal data of an individual other than the requester and where the disclosure of that personal data would be in breach of any of the data protection principles.
20. Section 3(2) of the Data Protection Act 2018 defines personal data as:
“any information relating to an identified or identifiable living individual.”
21. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
22. In this case, the information comprises the names, membership numbers and governing bodies of every officer who was involved in the adjudicating on three specific complaints about Croydon Council. Therefore, the Commissioner is satisfied that the withheld information is personal data as the information relates to and identifies the officers.
23. The next step is to consider whether disclosure of this personal data would be in breach of any of the data protection principles. The Commissioner has focussed here on principle (a), which states:
“Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject.”
24. 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.
25. 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.

26. 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.
27. He has therefore gone on to consider the balance of the legitimate interest in disclosure and the fundamental rights and freedoms of the officers at the Council.
28. Although the requested information relates to the officers working lives rather than their private lives, if it were made public that officers had a particular role to play in specific decisions and details of any memberships were also provided, disclosure may impact negatively on the fundamental rights and freedoms of the officers.
29. The Commissioner also notes that the legitimate interest in disclosure is based on the complainant's private concerns and that the impact that disclosure would have on the fundamental rights and freedoms of the officers is therefore not proportionate. While legitimate interests may be public or private, narrow private interests are more easily overridden in the balancing test.
30. The Commissioner considers that employers are well placed to assess the impact that disclosure would likely have on their staff and disclosing the names and membership numbers of staff involved in particular adjudications, if not already publicly known, is likely to impact on the officers. The Commissioner therefore finds that in this case the fundamental rights and freedoms of officers at the Council to carry out their duties without the risk of reprisals from members of the public outweighs the limited legitimate interest in disclosure.
31. The Commissioner's decision is therefore that the LGSCO was entitled to rely on section 40(2) of FOIA to refuse to provide the information.

Right of appeal

32. 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

33. 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.
34. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Jill Hulley
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