

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 August 2018

Public Authority: Stockton-on-Tees Borough Council
Address: Municipal Buildings
Church Road
Stockton-on-Tees
TS18 1LD

Decision (including any steps ordered)

1. The complainant has requested information relating to discretionary hardship awards for council tax. Stockton-on-Tees Borough Council disclosed some information and withheld some under section 40(2) (personal information) of the FOIA. It also confirmed that it did not hold some of the requested information.
2. The Commissioner's decision is section 40(2) of the FOIA has been applied appropriately. The Commissioner also considers that in relation to some of the requested information, Stockton-on-Tees Borough Council was correct to state that it does not hold the information in question. However, the Commissioner considers that Stockton-on-Tees Borough Council has breached sections 10 (time for compliance) and 17 (refusal of a request) of the FOIA.
3. The Commissioner does not require Stockton-on-Tees Borough Council to take any steps as a result of this decision.

Request and response

4. On 15 July 2017, the complainant wrote to Stockton-on-Tees Borough Council (the council) and requested information in the following terms:

"Please provide an anonymised list of successful applicants (from 2013 - present) for discretionary hardship awards for council tax and reasons for successful / unsuccessful award. This is required to benchmark and

show discrimination against my specific case of appeal.

Please also send a copy of your criteria for award and rationale for the all [sic] decisions made in comparison to the improper assessment of my appeal. Please provide copies of minutes of meetings (initial assessment and appeals) and evidence the process followed by the appeal assessors and how this varied from the policy and set procedure.”

5. The council responded on 8 September 2017, numbering the questions contained in the request.
6. The Commissioner considered the following to be question 1: “Please also send a copy of your criteria for award and rationale for the all [sic] decisions made in comparison to the improper assessment of my appeal.” The council withheld the information, citing section 40(2) (personal information).
7. The Commissioner considered the following to be question 2: “Please also send a copy of your criteria for award and rationale for the all [sic] decisions made in comparison to the improper assessment of my appeal.” The council answered the question and also provided two documents: Council Tax Discretionary Tax and Council Tax Discretionary Awards.
8. The Commissioner considered the following to be question 3: “Please provide copies of minutes of meetings (initial assessment and appeals) and evidence the process followed by the appeal assessors and how this varied from the policy and set procedure.” The council put “N/A” as its response.
9. The complainant requested an internal review on 11 September 2017. He explained that there were key elements that the council had not answered: what was the basis and rationale for each assessment in the instances when the hardship fund was released. The complainant also explained that he needed the information that documented all the decision-making process so he could assess consistency and fairness as opposed to taking an arbitrary approach which he alleged happened in his application; and that he needed to see financial benchmarks and comparators between each case as this needed to be compared against his “financials”.
10. The complainant also asked the council to collate the information into a spreadsheet for his review - benchmarked and ranked against those highlighted in its incomplete table. He also added that this needed to include comments and assessments used to support the decision-making process to show transparency and proper balanced assessment.

11. The complainant explained that a key unanswered question included: in what way was the level of hardship determined and what was the level of income and disposable income/deficit on a case by case basis? He also asked what the council's definition of extreme hardship was and how each relevant case scored against this in comparison to his application. The complainant also asked the council to provide the detailed financial assessment and comments against each case.
12. Additionally, the complainant asked the council to send its detailed assessment and all correspondence with minutes/notes of meetings and letters sent and received. He explained that this would be on a case-by-case basis, so he could support his appeal defence.
13. Following an internal review the council wrote to the complainant on 19 September 2017, upholding its original decision. It also provided the complainant with a list of the factors it took into account when making a decision on whether an application was successful or not. Additionally, the council also reiterated that this was done on a case by case basis.

Scope of the case

14. The complainant initially contacted the Commissioner on 13 December 2017 to complain about the way his request for information had been handled, but did not provide all the necessary documentation. There was also some confusion about whether an internal review had been carried out. However, from the documentation subsequently provided by the complainant on 31 January 2018, the Commissioner is satisfied that an internal review was carried out on 19 September 2017.
15. The complainant explained that he was complaining about a clear breach of the FOIA and distinct lack of transparency by the council.
16. The Commissioner will consider the council's application of section 40(2) in relation to question 1 and whether it holds any information in relation to question 3, as agreed with the complainant. She will also consider the length of time taken by the council to deal with the request.

Reasons for decision

Section 40 – personal information

17. 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 its disclosure would breach any of the data protection principles or section 10 of the Data Protection Act 1998 (DPA).

Is the information personal data?

18. The definition of personal data is set out in section 1 of the DPA:

“ ...data which relate to a living individual who can be identified

a) from those data, or

b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intention of the data controller or any other person in respect of the individual.”

19. The two main elements of personal data are that the information must ‘relate’ to a living individual and the individual must be identifiable. Information will relate to an individual if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them or has them as its main focus.

20. The Commissioner’s guidance (the guidance) on what is personal data¹ states that if information ‘relates to’ an ‘identifiable individual’ it is ‘personal data’ regulated by the DPA.

21. The requested information in this case does not directly identify individuals. However, just because the name of an individual is not known, it does not mean that an individual cannot be identified. The guidance states the following:

“A question faced by many organisations, particularly those responding to Freedom of Information requests, is whether, in disclosing information that does not directly identify individuals, they are nevertheless disclosing personal data if there is a reasonable chance that those who may receive the data will be able to identify particular individuals.”

22. It also states:

“The starting point might be to look at what means are available to

¹ <https://ico.org.uk/media/for-organisations/documents/1554/determining-what-is-personal-data.pdf>

identify an individual and the extent to which such means are readily available. For example, if searching a public register or reverse directory would enable the individual to be identified from an address or telephone number, and this resource is likely to be used for this purpose, the address or telephone number data should be considered to be capable of identifying an individual.

When considering identifiability it should be assumed that you are not looking just at the means reasonably likely to be used by the ordinary man in the street, but also the means that are likely to be used by a determined person with a particular reason to want to identify individuals. Examples would include investigative journalists, estranged partners, stalkers, or industrial spies.”

23. The council explained that the discretionary hardship awards in question (known as 13a applications)² contain information relating to applicants' private life including personal, medical, and financial information. It also explained that because the details which support the application are very personal to each individual, taking out only names and addresses would leave information that could lead to the identity of the individual being discovered.
24. Additionally, the council explained that it considered that disclosure would breach section 29 (crime and taxation) of the DPA but that it had not used this exemption, as it considered that the withheld information should be exempt under section 40(2).
25. The council also argued that disclosure would be unfair and unlawful.
26. The Commissioner has considered the council's explanations regarding the requested information constituting personal information. She is satisfied that the information in this case 'relates to' the applicants in question, as it contains details about events which could be related to identifiable individuals.
27. The Commissioner is therefore satisfied that the requested information in this case constitutes personal data.

Does the disclosure of the information contravene any of the data protection principles?

² Section 13a of the Local Government Finance Act 1992.

28. The Commissioner notes that the council has explained that it considers that disclosure would be unfair and unlawful. She considers that this relates to the first data protection principle.
29. The first principle deals with the privacy rights of individuals and the balance between those rights and other legitimate interests in processing personal data. It states:

"Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –

(a) at least one of the conditions in Schedule 2 is met".
30. 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 fair, lawful and would meet one of the DPA Schedule 2 conditions. If disclosure would fail to satisfy any one of these criteria, then the information is exempt from disclosure.

Would it be fair to disclose the requested information?

31. When considering whether disclosure of personal information is fair, the Commissioner takes into account the following factors:
 - the individual's reasonable expectations of what would happen to their information:
 - the consequences of disclosure (if it would cause any unnecessary or unjustified damage or distress to the individual concerned); and
 - the balance between the rights and freedoms of the data subject and the legitimate interests of the public.
32. Under the first principle, the disclosure of the information must be fair to the data subject. Assessing fairness involves balancing the data subject's rights and freedoms against the legitimate interest in disclosure to the public.

Nature of the information and reasonable expectations

33. The information in the present case relates to applications for a discretionary hardship award. Having considered the withheld information, the Commissioner is satisfied that it relates to individuals' personal, medical and financial circumstances.
34. The Commissioner considers that the applicants in question would have a reasonable expectation that information regarding their personal, medical and financial circumstances would not be disclosed to the world at large.

Consequences of disclosure

35. In order to assess the impact of the consequence of disclosure on whether disclosure would be fair, it is necessary to consider whether disclosure of the information would cause unwarranted damage or distress to the data subjects.
36. The council explained that the withheld information included details of events that have happened in applicants lives which have led to them being in financial hardship. It pointed out that information disclosed under the FOIA is made available to the world at large. It argued that if anyone knew someone who had suffered similar tragedies within the Stockton locality they could assume the identity of the applicant.
37. Taking the above into account, the Commissioner is satisfied that disclosure of the withheld information would result in the loss of privacy and could potentially cause further harm or distress to the individuals concerned, if it was used to identify them. The Commissioner considers that disclosure would cause distress due to the loss of privacy, particularly as she has found that disclosure of the requested information would not have been in their reasonable expectations.

Balancing the rights and freedoms of the data subjects with the legitimate interests in disclosure

38. The Commissioner accepts that in considering 'legitimate interests', such interest can include broad general principles of accountability and transparency, along with specific interests.
39. The complainant has confirmed that he wants the information in order to challenge the outcome of his application for a hardship award. However, although the complainant only wants the information for his own personal use, the Commissioner recognises that there is a legitimate public interest in the expenditure of public money.

Conclusion

40. Taking all of the above in account, the Commissioner is satisfied that it would be unfair to the data subjects to disclose the requested information.
41. The Commissioner has accepted that disclosure would not have been within the individuals' expectations and considers the loss of privacy could cause unwarranted harm or distress. Furthermore, she acknowledges that there is a legitimate interest in the expenditure of public money but does not consider that this outweighs the individuals rights to privacy.

42. The Commissioner considers that the individuals' rights and freedoms are not outweighed by the legitimate public interest in disclosure and accepts that disclosure of the personal data in this case could cause damage and distress and would be unfair and unnecessary in the circumstances.
43. The Commissioner therefore considers that the council has applied section 40(2) appropriately.
44. As the Commissioner has decided that disclosure of the information would be unfair and therefore breach the first data protection principle of the DPA, she has not gone on to consider whether there is a Schedule 2 condition for processing the withheld information.
45. The Commissioner will go on to consider whether the council holds information in relation to part 3 of the request: "Please provide copies of minutes of meetings (initial assessment and appeals) and evidence the process followed by the appeal assessors and how this varied from the policy and set procedure."

Section 1 – information held/not held

46. Section 1 of FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds the information and if so, to have the information communicated to him.
47. In cases where a dispute arises over the extent of the recorded information held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the public authority to check whether the information is held and any reasons offered by it to explain why the information is not held. In addition, the Commissioner will consider any reason why it is inherently likely or unlikely that the information is not held.
48. The Commissioner is required to make a judgement on whether, on the balance of probabilities, the requested information is held or not.
49. The Commissioner asked the council what searches had been carried out for information falling within the scope of this request and why these searches would have been likely to retrieve any relevant information. She also asked that if searches included electronic data, to explain whether the searches included information held locally on personal computers used by key officials (including laptop computers) and on networked resources and emails.
50. The council explained that there was no search criteria it could have used in relation to electronic or manual records that would identify the

requested information, as it had never held it. It also explained that it is the responsibility of the section 13a post holder to assess applications. Once an assessment is made, it is given to a manager for approval. The council confirmed that there are no panel decisions and therefore no minutes are taken at any stage in this process.

51. The Commissioner also asked whether any recorded information ever held relevant to the scope of the complainant's request had been either deleted or destroyed. The council reiterated that it had never held any information within the scope of the request; it confirmed that therefore none had been deleted or destroyed.
52. The Commissioner enquired whether there was a business purpose or a statutory requirement for the council to hold the requested information. The council explained that there was no legal or contractual obligation for officers to document or record the way in which they assess or decide applications, as it is a discretionary decision-making process. It also confirmed that there was no other organisation involved in the process.
53. In addition, the Commissioner considered whether the council had any reason or motive to conceal the requested information, but she has not seen any evidence of this.
54. Taking everything into account, the Commissioner does not consider that there is any evidence that shows that the council holds any recorded information in relation to part 3 of this request.
55. The Commissioner is therefore satisfied that, on the balance of probabilities, the council does not hold any further recorded information in relation to this request. Accordingly, she does not consider that there is a breach of section 1 of the FOIA.

Procedural issues

56. The complainant submitted his request on 15 July 2017. The council provided its full response on 8 September 2017.

Section 10 – time for compliance

57. Section 10(1) of FOIA requires that the public authority must respond to a request promptly and in any event no later than 20 working days after the date of receipt.

58. The Commissioner considers that the council has breached section 10(1) as it took longer than 20 working days to respond to the request.

Section 17 – refusal of a request

59. Section 17(1) of FOIA states that if a public authority wishes to refuse any part of a request it must issue a refusal notice within the 20 working day time for compliance, citing the relevant exemptions.
60. The Commissioner considers that the council has breached section 17(1) as it took longer than 20 working days to respond to the request, citing section 40(2).

Other matters

61. The Commissioner notes that the council has referred to the section 29 exemption of the DPA. However, she considers that if the council wanted to rely on this exemption, it should have dealt with the request under the DPA, not under the FOIA.

Right of appeal

62. 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@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

63. 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.
64. 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

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