

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 September 2012

Public Authority: Haringey Council
Address: Civic Centre
High Road
Wood Green
London
N22 8LE

Decision (including any steps ordered)

1. The complainant has requested copies of minutes of a meeting held between Haringey Council and a residents' campaign group on 8 September 2011. Also requested were records of meetings and emails between Haringey Council's Resident Involvement Group and the parties involved in that campaigning group in January and February 2012.
2. Haringey Council responded, disclosing the minutes of the specified meeting but refusing to disclose the emails on the grounds that these are personal data, and exempt from disclosure under section 40(2) of FOIA.
3. The Commissioner's decision is that the requested information is personal data, but Haringey Council has incorrectly withheld the emails as disclosure would not contravene the data protection principles.
4. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Disclose the withheld information. The names and contact details of private individuals may remain withheld and should be redacted, but names and business contact details for the public authority's own staff should be disclosed.
5. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court

pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

6. On 25 November 2011, the complainant wrote to Haringey Council (the council) and requested information in the following terms:

"Please provide us with the minutes of the meeting held on 8 September 2011 between HfH and the Haringey Leaseholders' Campaign Group.

And then we would like either all records of meetings and emails in January and February this year between the Resident Involvement Team and the group of leaseholders who went on to become the HLCCG, or the date on which the decision to fund the HLCCG mail-out for their launch meeting was taken by HfH along with the documentary evidence that backs that up. If that date is after 19 January, we would like to know what had been agreed or discussed by 19 January."

7. The council responded on 22 December 2011. It disclosed the minutes of the specified meeting and stated that it was not providing the emails between the group of leaseholders who went on to become the Haringey Leaseholders' Campaign Group (HLCCG) and Homes for Haringey¹. It confirmed the date of the decision to fund the HLCCG mailout as 20 January 2011, but refused to provide the documentary evidence as all such documentary evidence was contained in the emails which were being refused.
8. Following an internal review the council wrote to the complainant on 20 February 2012. It stated that it considered the information in emails both from, and to, HLCCG to be personal data of the officers and members of HLCCG. It considered that in the specific circumstances, it would be unfair to disclose the requested information. It upheld the decision to refuse the request under section 40(2) of FOIA. It also clarified that, in respect of the decision to fund the mailout, this was taken verbally and no record was taken. Contrary to its earlier reply, therefore, no information is held in respect of that specific element of the request. It disclosed a (redacted) copy of an email sent by the

¹ Homes for Haringey is an arms length management organisation (ALMO) set up by Haringey Council to manage its tenanted and leasehold homes. It is owned and monitored by Haringey Council and hence subject to FOIA. Its FOI compliance is undertaken by the council.

council to HLCG on 20 January which confirmed the agreed funding of the mailout.

Scope of the case

9. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He complained about the council's refusal to provide the requested emails and communications.
10. The Commissioner considers the scope of this case to be to decide whether or not the refusal of the requested information as personal data, under the provisions of section 40 of FOIA, complies with the requirements of FOIA, ie that disclosure would contravene with the data protection principles as set out in the Data Protection Act 1998 (DPA).
11. During the Commissioner's investigation, the council indicated that it was, in the alternative to section 40 above, also considering the application of section 14 of FOIA to the complainant's request, namely a refusal on the grounds that the request was vexatious. In the event, when subsequently invited to make submissions on this point, the council confirmed that it no longer wished to pursue this option. The Commissioner has consequently not considered the application of section 14 of FOIA in this case.

Background

12. The complainant is a member of a tenants' representative group, the Haringey Leaseholders Association (HLA) which was the recognised leaseholder umbrella group for the area. It received a modest funding grant, under £1000 per annum, from the council. There was an internal dispute within HLA which resulted in some members leaving and setting up an alternative group, Haringey Leaseholders Campaign Group. HLCG approached the council to be recognised as the accredited leaseholder umbrella group instead of HLA, which was at some point in this process de-recognised by the council. HLA has applied for re-recognition and it is understood that HLCG's application for recognition has been withdrawn.
13. HLA learned that, prior to any such recognition, HLCG had received over £1000 in financial assistance from the council, for the purposes of a mail-out to leaseholders in the area to publicise itself. It is HLA's belief that funding for leaseholder umbrella groups cannot be provided until such groups are officially recognised. Its request is intended to help it understand how this funding came to be agreed, in circumstances where

it believed the decision to provide the financial assistance was beyond the council's powers.

Reasons for decision

Section 40 of FOIA states:

Section 40(2) provides that –

“Any information to which a request for information relates is also exempt information if-

- a) it constitutes personal data which do not fall within subsection (1), and*
- b) either the first or the second condition below is satisfied.”*

Section 40(3) provides that –

“The first condition is-

- a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-*
 - i) any of the data protection principles”*

The applicable data protection principle is the first:

First Principle

“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;*

14. The Commissioner has viewed the refused information and is satisfied that it is personal data. That is because it is correspondence between identifiable individuals. The content of the correspondence ‘relates to’ the individuals, in particular the HLCG members, because it describes their actions, intentions and requirements.
15. The Commissioner has therefore first considered whether disclosure would be fair, under the first data protection principle.

Fairness

16. The information consists largely of emails between council staff and members of HLCG discussing and arranging the formation of HLCG as the representative 'umbrella group' for Haringey leaseholders, to replace HLA. It discusses, for example, the requirements and preferred form of the HLCG constitution, the conduct of meetings and practical matters. The council's contribution is largely practical advice and assistance.
17. Much of this information is anodyne and of a procedural or administrative nature. Some of it falls only loosely into the description of personal data because, aside from the personal details of the corresponding parties, the content discloses little of significance about the parties. However, for the reasons described at paragraph 13, above, the Commissioner is satisfied that it should all be considered personal data and it would be artificial, in this particular context, to separate the correspondence into personal and non-personal data.
18. The anodyne and procedural nature of much of the correspondence does not immediately suggest that there would be any inherent unfairness if it was disclosed. There is no obvious harm to any of the parties if, as an example, an exchange of emails discussing the wording of a clause in the group's draft constitution were to be made public.
19. The council argues two points. Firstly, that the reasonable expectations of any individual when writing to their council will be that their correspondence will be treated as private, and will not be disclosed simply because the council receives an FOI request for it. Secondly it argues that, in the particular circumstances, there is a degree of acrimony between the members of HLCG and HLA which leads to an increased likelihood that the information disclosed would be used in a way detrimental to the individuals involved.
20. The Commissioner is not satisfied on the first point. While he would broadly agree that private individuals can reasonably expect their correspondence with a public body to be treated as private, in the present circumstances the correspondence relates to the creation and possible accreditation of a body representing local leaseholders. This is not a private matter, indeed, some of the correspondence relates to arrangements for publicity for the setting up of HLCG. The correspondence is about a matter potentially of interest to all leaseholders within the borough.
21. In this case, therefore, the correspondence is a 'business' matter, not a private one and, moreover, the business is one which concerns all leaseholders in the district. It is unlikely that, in the specific circumstances, the correspondent could have any reasonable

expectations that this correspondence was of a private nature. On the second point, it is clear from the accounts of the council, and also from an Ombudsman's letter² that there has been some acrimony between members of HLA and HLCG and that this has, on occasion, resulted in personal or unpleasant remarks being exchanged. The council's view is that disclosure of the withheld information to parties who, it believes, would use the information in an unreasonable way would result in harm and would consequently be unfair. The council is therefore not arguing that disclosure to the wider world will result in harm, but that disclosure to parties within HLA may cause harm.

22. The acrimonious nature of the split is not disputed by HLA, but it maintains that, following HLCG's withdrawal of its application to become the umbrella group, any dispute is a historic one and is not ongoing. It disputes the council's assertion that disclosure would result in hostilities being resumed.
23. The Commissioner recognises that the setting up of the rival group is an issue of some sensitivity, and that it is reasonable to consider the acrimonious nature of the split between the various factions which led to the setting up of HLCG as a rival group to HLA. The council has not suggested, however, that the dispute was one-sided and the Commissioner should not assume that HLA are entirely the aggressors and HLCG purely the victims. Nevertheless, if harm to the correspondents could arise from the disclosure, this is a factor which should carry some weight in any consideration of fairness.
24. The council also withheld the email replies sent from it to HLCG. Again, it argues that in the specific circumstances disclosure would be unfair, on the same grounds. The Commissioner finds this element of the council's argument unconvincing. Firstly, the emails are from an officer of a public body, in a public-facing role, acting in his official capacity. Secondly, the council has not argued that council staff have been subjected to any of the rancour apparent between HLA and HLCG members.
25. Having carefully weighed the competing factors, the Commissioner has formed the view that it would not be unfair, in the specific circumstances of this case, to disclose the withheld information. This is, partly, because much of the content is anodyne, procedural or administrative and therefore unlikely to provoke any personal animosity. Secondly, neither

² HLA complained to the Local Government Ombudsman about the actions of the council in de-recognising it, and taking steps to assist HLCG. The Ombudsman discontinued the investigation without making a formal finding on the substantive issues, on the grounds that his investigation found only minor faults which did not merit the involvement of the Ombudsman.

HLA nor HLCG appears to be entirely guilty or entirely innocent in the split and there is no strong evidence to show any particular likelihood that the suggested acrimony (harm) would arise from the disclosure of the correspondence. The question of fairness will require assessment of the degree of harm in disclosure, and of the likelihood of that harm occurring.

26. The Commissioner agrees, however, that disclosure of private contact details (email addresses, home addresses, mobile or private telephone numbers) would be unfair. Correspondents, even in public business matters can have a reasonable expectation that their privacy will be respected, and disclosure to the wider world could lead to unwanted contact. The council has not given any persuasive reason for withholding its own responses to the HLCG emails on the grounds of fairness.

Would disclosure be lawful?

27. It is also necessary, when considering disclosure of personal data, to be satisfied that the disclosure would not be unlawful. The Commissioner's guidance indicates that disclosure would be unlawful if it would involve a breach of confidence, a breach of an enforceable contractual agreement, or of a statutory bar to disclosure (or, indeed, if disclosure would amount to a criminal offence). The Commissioner has no reason to think in this case, that a breach of confidence or enforceable contract terms would occur, or that there is any apparent statutory bar to disclosure. There is no suggestion that disclosure would amount to a criminal offence. He is therefore satisfied that the disclosure would not be unlawful.
28. Having decided that the disclosure of the content of the correspondence would not be unfair or unlawful in the terms expressed by the first data protection principle, the Commissioner has gone on to consider whether the information should be disclosed. This requires an 'enabling' condition from Schedule 2 of the DPA to be met. The applicable condition is the sixth:

Condition 6 (1) provides that –

"The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject."

29. The complainant has explained to the Commissioner what his purpose was in requesting this information. He explained that it was to help HLA get to the bottom of the actions of Homes for Haringey (HfH) at the time

of the setting up of HLCG. He aims to allow a better understanding of what may have gone wrong in the past and thereby enable a better service to be provided by HfH to residents in future.

30. He argues that there are legitimate questions about the financial (and other) help provided to HLCG. He has provided copies of documents which do suggest that funding and support from the council is conditional on the umbrella group being recognised³ and comments that HLA did not receive any funding or support at start-up, ie before becoming formally recognised by HfH.
31. He states that HfH has been asked for the statutory or regulatory basis for the support given to HLCG, but has failed to cite any wording in support of its actions but instead *"falling back only on an over-arching 'duty of care'"*. He argues that the detailed provisions for the recognition criteria must over-ride any such duty of care provisions and that, in any event, HfH neglected its duty of care in respect of HLA. He is therefore suggesting a degree of favouritism on the part of HfH, towards HLCG.
32. He also states that the public authority's board which considered matters of recognition and funding was not informed of the funding support provided to HLCG and he claims that it should have been informed because the key difference between non-umbrella residents' groups and recognised umbrella groups is that the board's approval is required for the latter, and not for the former.
33. This gives rise to reasonable concern that the funding was not properly provided, and undermines the principles behind the recognition process. This is therefore a matter of accountability, and access to the correspondence might shed light on how and why this funding came to be provided. The complainant gives his view that it is important to establish whether or not HfH has followed its own rules during this matter.
34. It does appear to the Commissioner that it is a reasonable question to ask how and why quite substantial funding (in total amounting to about £1,700) was given to HLCG prior to its becoming recognised (noting also that the recognition never happened and the group appears to have withdrawn) when the public authority's own guidelines appear to suggest that funding and other practical assistance are contingent on formal recognition having taken place.

³ Homes for Haringey's proposed Recognition Criteria for Umbrella Groups states, at paragraph 1.2, that recognition (as an umbrella organisation) means that the organisation may qualify for funding and support.

35. The correspondence between the parties discusses the setting-up of HLCG as a formal umbrella group and the provision of financial help at the outset, and may therefore assist the complainant in shedding light on the actions of the public authority. He accordingly agrees that obtaining the correspondence would be a legitimate interest, and disclosure would be necessary to meet that legitimate interest.
36. The correspondence contains names and personal contact details (email addresses and private or mobile telephone numbers, plus at least one home address) for individuals within HLCG. It also contains names and work-related contact details for council staff.
37. The Commissioner notes that the complainant's stated objectives may be achieved without knowledge of the specific identities of the individuals within HLCG who sent the correspondence; he also acknowledges, as above, that disclosure into the public domain of the private contact details would be unfair. The names and private contact details of HLCG members should therefore remain withheld and should be redacted from the disclosed information.
38. The names and business contact details of HfH staff acting in their professional capacity however should not be redacted. This is because the staff roles are public-facing in any event, being members of HfH's resident involvement team, so it would not be unfair to disclose them. Furthermore, the actions of HfH cannot properly be examined without knowledge of the identities of its staff in this case.
39. The Commissioner therefore finds that the withheld information should be disclosed, with personal data (names, addresses and contact details) of private individuals remaining redacted.

Right of appeal

40. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

41. 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.
42. 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

Andrew White
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