

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 February 2016

Public Authority: Liverpool City Council
Address: Municipal Buildings
Dale Street
Liverpool
L2 2DH

Decision (including any steps ordered)

1. The complainant has made a request to Liverpool City Council (“the council”) for information about payments made to barristers for legal advice. The council disclosed some information, but withheld the names of the barristers under the exemption provided by section 40(2).
2. The Commissioner’s decision is that the council has correctly withheld the information under section 40(2). However, the Commissioner finds that the council has failed to comply with part of the request, and has breached the requirement of section 10(1).
3. The Commissioner requires the council to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response under the terms of the FOIA to the part of the complainant’s request that seeks copies of relevant invoices.
4. The council 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

5. On 14 May 2015 the complainant requested information in the following terms:

*“I was reading the expenditure report you publish here
<http://liverpool.gov.uk/council/performance-and-spending/budgets->*

[and-finance/transparency-in-local-government/](#) for February 2015 and noticed that for a number of entries you put the supplier down as "redacted personal data".

Please note that section 15 of the Local Government Transparency Code

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/408386/150227_PUBLICATION_Final_LGTC_2015.pdf states

"The Data Protection Act 1998 does not restrict or inhibit information being published about councillors or senior local authority officers because of the legitimate public interest in the scrutiny of such senior individuals and decision makers. The Data Protection Act 1998 also does not automatically prohibit information being published naming the suppliers with whom the authority has contracts, including sole traders, because of the public interest in accountability and transparency in the spending of public money."

Please could you therefore provide details of which supplier was paid and what the payment was for (preferably with a copy of the invoice received by Liverpool City Council) for each of the following transactions listed on that spreadsheet:

*Chief Executive General Legal Fees 5100748876 24/2/15 £2,850
Chief Executive General Legal Fees 5100748011 17/2/15 £2,616.67
Adult Services & Hea Counsel Fees 1902067680 19/2/15 £2,500
Children & Young Peo Counsel Fees 1902066779 13/2/15 £2,250
Community Services Counsel Fees 1902066880 16/2/15 £2,000
Adult Services & Hea Counsel Fees 1902075472 27/2/15 £1,650
Children & Young Peo Counsel Fees 1902057092 2/2/15 £1,425
Community Services Counsel Fees 1902073216 26/2/15 £1,250
Regeneration & Emplo Counsel Fees 1902059905 9/2/15 £1,200
Adult Services & Hea Counsel Fees 1902057104 2/2/15 £1,125
Adult Services & Hea Counsel Fees 1902075443 27/2/15 £1,125
Children & Young Peo Counsel Fees 1902057569 4/2/15 £950
Community Services Counsel Fees 1902062298 10/2/15 £875
Adult Services & Hea Counsel Fees 1902067956 20/2/15 £815
Adult Services & Hea Counsel Fees 1902057106 2/2/15 £750
Adult Services & Hea Counsel Fees 1902072024 25/2/15 £750
Adult Services & Hea Counsel Fees 1902066781 13/2/15 £675
Adult Services & Hea Counsel Fees 1902057111 2/2/15 £600
Adult Services & Hea Counsel Fees 1902066780 13/2/15 £600
Adult Services & Hea Counsel Fees 1902066811 13/2/15 £550
Regeneration & Emplo Counsel Fees 1902066875 16/2/15 £450
Community Services Counsel Fees 1902072021 25/2/15 £450"*

6. The council responded on 10 June 2015. It disclosed some information (namely what services the payment was for, as well as the barristers' business addresses where these were held), but withheld the barristers' names under section 40(2).
7. The complainant requested an internal review on 11 June 2015. He disputed the withholding of the names under section 40(2), and queried whether the council had considered the part of his request which seeks relevant invoices.
8. The council sent the outcome of its internal review on 25 June 2015. It maintained that its original position was correct and complete.

Scope of the case

9. The complainant contacted the Commissioner on 31 July 2015 to complain about the council's application of section 40(2) to withhold the barristers' names. The complainant also contested that the council had not considered the part of this request that seeks copies of invoices.
10. The Commissioner considers the scope of this case to be the determination of whether the council has correctly applied section 40(2) to withhold the barristers' names, and whether the council has complied with the entirety of the request. Whilst the council has referred in its submissions to information on the invoices being exempt under section 40(2), the Commissioner does not consider that this matter falls within the scope of the case; this is because of the council's position (outlined later in this decision notice) that the invoices are not directly sought by the request and were not considered by the council in the response and internal review outcome provided to the complainant.

Reasons for decision

Section 40(2) – Personal data of third parties

11. 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."

12. 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..."*

Is the withheld information personal data?

13. Personal data is defined by section 1 of the Data Protection Act 1998 ("the DPA") as:

*"...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 data controller or any person in respect of the individual..."*

14. In order for the exemption to apply the information must constitute personal data as defined by section 1 of the DPA. In the circumstances of this case, the Commissioner understands that the withheld information comprises the names of barristers who have received payment for providing legal advice. This information can clearly be identified as personal data.

Would disclosure breach the data protection principals?

15. The data protection principles are set out in schedule 1 of the DPA. The Commissioner considers that the first data protection principle is most relevant in this case. The first principle states that personal data should only be disclosed in fair and lawful circumstances, the conditions of which are set out in schedule 2 of the DPA.

16. The Commissioner's considerations below have focused on the issues of fairness in relation to the first principle. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the data subject and any potential consequences of the disclosure against the legitimate public interest in disclosing the information.

Reasonable expectations of the data subject

17. When considering whether the disclosure of personal data is fair, it is important to take account of whether the disclosure would be within the reasonable expectations of the data subject. However, their expectations do not necessarily determine the issue of whether the disclosure would be fair. Public authorities need to decide objectively what would be a reasonable expectation in the circumstances.

18. In this case the council has advised that the individuals whose names have been withheld are self-employed barristers who have been paid for legal advice provided to the council. As the amounts of these payments are already in the public domain, the disclosure of the barristers' names would disclose the exact income that each received for their services. The council considers that such disclosure would be comparable to the publishing of an individual's exact salary, and would represent an intrusion into the barristers' private lives. As such the council considers the disclosure of the information would not be within their expectations.

The consequences of disclosure

19. The council has not referred to any specific consequences of disclosure, but considers that the intrusion into the individuals' privacy would not be fair under the first principle.
20. The complainant considers that disclosure of the barristers' names would provide public assurance that the individuals engaged by the council are qualified professionals.
21. The Commissioner is aware that the payments received by barristers for their services are based on rates decided by the individual, and the disclosure of the payment received has the potential to cause harm to the individual's ability to maintain commercial competitiveness in their public role. This factor was considered in decision notice FS50593599¹, in which the Commissioner concluded that the disclosure of a named barrister's payment could have the consequence of placing the individual at commercial disadvantage. Whilst the situation in this case is reversed; with the fees paid already disclosed and the barristers' names withheld, the Commissioner considers that the potential consequence of commercial disadvantage remains the same.

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

22. In the circumstances of this case, it is evident to the Commissioner that the public cost of engaging the barristers has already been publicly disclosed, and the council considers this to be an appropriate means of ensuring transparency about the expenditure of public monies. However

¹ https://ico.org.uk/media/action-weve-taken/decision-notices/2015/1560256/fs_50593599.pdf

the disclosure of the barristers' names would allow each payment to be connected to the relevant individual. This would result in the disclosure of an individual's exact income, and would have the potential to damage that individual's commercial advantage in their public role. For these two reasons, the Commissioner considers that disclosure would significantly impact on the rights and freedoms of the individuals' as data subjects.

23. While the Commissioner has noted the complainant's position that the council should provide public assurance that only qualified professionals have been sought for legal advice, there is no evidence in the circumstances of this case to suggest that the council has failed to do this. It is also reasonable for the Commissioner to consider that any decision or action taken by the council in light of received legal advice could be referred to the appropriate public authority or court. Having considered these factors, the Commissioner does not consider there to be sufficient legitimate interest in disclosure to outweigh the rights and freedoms of the data subjects.

The Commissioner's conclusion

24. Having considered the above factors the Commissioner is satisfied that the disclosure of the barristers' names would not be fair under the first principle of the DPA. On this basis the Commissioner upholds the council's application of section 40(2).

Section 10(1) – time for compliance

25. Section 10(1) requires that where a public authority has a duty under section 1(1), it must comply with that duty within twenty working days following receipt of the request.
26. In the circumstances of this case the complainant contests that the council has failed to consider the part of his request that seeks invoices.
27. The council has advised the Commissioner that it does not consider the request as seeking copies of invoices, as the information sought by the complainant is described in the request as "...which supplier was paid and what the payment was for..." The council also considers that as the complainant only described that he would "preferably" receive copies of the invoices, this is not definite request for the purposes of the FOIA.
28. The Commissioner's guidance on the interpretation of 'information' and 'documents' under the FOIA advises public authorities that besides making a request by describing the information sought, requesters may

also phrase a request by specifying a document or type of document². In the circumstances of this case the Commissioner considers that the request, due to the clear preference for obtaining the invoices, must be interpreted as requesting these documents. Whilst the terms of the FOIA only provide a right to recorded information within documents, a public authority must consider whether a document imparts a range of information in the form of design, layout and writing that cannot be replicated in a transcript. For these reasons the Commissioner considers that the council must treat the request for invoices as being a valid request for information.

29. As the council has not done this, the Commissioner must conclude that the council has not complied with this part of the request, and has breached the requirement of section 10(1).

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http://ico.org.uk/for_organisations/guidance_index/~/_media/documents/library/Freedom_of_Information/Detailed_specialist_guides/the-right-to-recorded-information-and-requests-for-documents.pdf

Right of appeal

30. 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

31. 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.
32. 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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Wycliffe House
Water Lane
Wilmslow
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SK9 5AF