

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 July 2016

Public Authority: Calderdale College
Address: Francis Street
Halifax
HX1 3UZ

Decision (including any steps ordered)

1. The complainant has made a number of requests for information relating to a dispute between a training service provider and Calderdale College (the College) which culminated in legal proceedings. The College has provided some information but refused to disclose the remainder. The Commissioner has found that a considerable part of the requested information is the personal data of the complainant and should be considered under the Data Protection Act 1998 (DPA) and not FOIA. She has therefore not considered further the personal data as part of this notice. With regard to the College's position under FOIA, the Commissioner has decided that the 'vexatious requests' (section 14(1)) exclusion does not apply and the 'information contained in court records' (section 32(1)) and 'legal professional privilege' (section 42(1)) exemptions to disclosure are not engaged. She has though found that the 'third party personal data' (section 40(2)) does apply to some elements of the withheld information. With respect to a separate procedural concern raised by the complainant, the Commissioner has determined that the College is not required to take any further action in terms of the information disclosed in relation to requests 1 – 4 under 'the confirm or deny' (section 1(1)(a)) mechanism in FOIA.
2. The Commissioner requires the public authority to take the following step to ensure compliance with the legislation.
 - Disclose all the information held by the College that is covered by requests 5 – 11, with the exception of the complainant's personal data or any third party personal data that the Commissioner has decided is subject to section 40(2) of FOIA.

3. 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

4. On 11 June 2015, the complainant wrote to the College and made 11 requests about a contractual agreement relating to the provision of training courses, the exercise of which became the subject of formal proceedings. The complete wording of the requests is set out in Annex A, which is appended to this notice.
5. The complainant has also made reference to a further request made on 27 July 2015 but has not disputed the Commissioner's proposal that her investigation should focus on the 11 requests referred to above. This particular request is not therefore considered further as part of this notice.
6. The College responded to the requests on 17 July 2015 and carried out an internal review into the way it had dealt with the requests on 4 August 2015. The College's position at the conclusion of this process is outlined below.

- Requests 1 and 2

The College considered that the use of the term 'activities' in the requests was potentially very broad and therefore it required the complainant to confirm what information he was seeking that did not fall within the other categories of information captured by the other requests.

- Requests 3 and 4

The College stated that it was prepared to disclose the requested information subject to a payment of a fee.

- Requests 5, 8, 9, 10 and 11

The College considered that the information caught by the scope of the requests was covered by the 'legal professional privilege' (section 42(1)) exemption to disclosure in FOIA.

- Requests 6 and 7

The College considered the requests were vexatious within the meaning set out by the exclusion at section 14(1) of FOIA.

Scope of the case

7. The complainant has contacted the Commissioner to complain about the way his requests for information had been handled.
8. Upon being notified of the Commissioner's involvement, the College has confirmed that it carried out an in-depth trawl of its records for relevant information. It also revised its position with regard to the requests.
 - Having received further clarification from the complainant via the Commissioner, the College decided it could comply with requests 1 and 2 and supplied the relevant information it held.
 - The College waived the fees notice issued in connection with requests 3 and 4 and disclosed the information, as well as any other documents that were deemed to be non-sensitive which were captured by the remaining requests.
 - In addition to the application of section 14(1) (vexatious requests) of FOIA to requests 6 and 7, the College argued that the 'court proceedings' (section 32) exemption in FOIA was likely to cover some of the material.
 - The Council also maintained that the 'legal profession privilege' (section 42(1)) exemption applied to any information relating to requests 5 and 8-11 which had not already been disclosed under FOIA.
9. In response to the complaint, the Commissioner has been required to consider the following questions. 1) With respect to the bundle of information disclosed to the complainant, was the College obliged to take the further step of identifying the request to which each disclosed record related? 2) Was the College entitled to refuse to disclose the remainder of the information it held?

Reasons for decision

Question 1 – Was the College required to identify the request to which each item of disclosed information related?

10. During the course of the Commissioner's investigation, the College decided to disclose a number of records that were said to pertain to

requests 1 – 4. The complainant has accepted receipt of the records but asserted that in disclosing the bundle the College should have linked each item of information disclosed with the relevant request.

11. Section 1(1)(a) of FOIA states that any person making a request for information to a public authority is entitled –

to be informed in writing by the public authority whether it holds information of the description specified in the request

12. The process of confirming or denying whether information is held will in most cases be a straightforward process. It is complicated in these particular circumstances, however, because of the similarity of the requests. Each of these is a very slight variation on a request for records relating to the disputed contract and the training provider.
13. It is acknowledged that the further identification of the records would be helpful to the complainant. Returning to the legislation itself though, section 1(1)(a) only requires a public authority to confirm *whether* it holds information of the description specified. In the case of a request that is limited to one document, the act of confirming whether the information is held will invariably relate to that item. Where, as here, a request is far wider in scope and could potentially cover a large number of records, however, there is not an additional requirement in FOIA which says that a public authority must go beyond simply saying whether it holds any information. The Commissioner does not therefore agree with the complainant that the College would be required to take any further steps in relation to the application of section 1(1)(a) of FOIA.
14. Notwithstanding this finding, the Commissioner has in any event compared the bundle of documents that have been disclosed and the requests in question. In her view, many of the records could legitimately be found to fall under more than one request and therefore it is doubtful that an exercise of the type described by the complainant could have any value.

Question 2 – Was the College entitled to refuse the disclosure of information that had been requested?

15. As part of her investigation, the Commissioner has asked the College to ensure that a copy of the complete set of the disputed information is provided to her. The College has stated that this has been done, with the solicitors acting on behalf of the College confirming that a trawl of its records had been completed. Upon an examination of this material, two points salient to the investigation have become apparent.

16. Firstly, it has been observed that a large slice of the information constitutes the complainant's personal data. Information of this description covers the documents referenced in the bundle prepared solely for the claim to the High Court, including court pleadings, and any correspondence to and from the complainant. It would not however cover any supporting evidence, or any other documents, that did not make direct reference to the complainant.
17. Insofar as requested information is the personal data of the applicant, the legislation that properly applies is the DPA and not FOIA – section 40(1) of FOIA providing an absolute exemption to the release of this category of information. The right to access personal data, commonly referred to as subject access, is created by section 7 of the DPA and should be dealt with accordingly by the organisation. The Commissioner does not therefore consider the personal data as part of this notice but has instead written separately to the complainant about that aspect of his complaint.
18. Secondly, where the withheld information is not the personal data of the complainant, it is likely that most if not all of the records will already be familiar to the complainant due to his position in the proceedings. Notwithstanding this possibility, the Commissioner has considered whether the College was entitled to refuse to disclose the information on the basis of the exclusion or exemptions cited. Her analysis follows below.

Requests 5 and 8 – 11

Section 42(1) – legal professional privilege

19. The College has refused to comply with requests 5 and 8 – 11 under section 42(1), although it subsequently clarified during the Commissioner's investigation that it did not hold any information covered by request 11. The Commissioner has found that a significant part of the withheld information constitutes the complainant's personal data, which as explained above has been addressed separately. Consequently, this decision only refers to the remaining elements of the withheld information that are not the complainant's personal data.
20. Section 42(1) provides an exemption under FOIA for information which is subject to legal professional privilege (LPP). The exemption is qualified by the public interest test.
21. The concept of LPP protects advice given by a lawyer to a client and confidential communications between them about that advice and exists to ensure complete fairness in legal proceedings. There are two types of privilege within the concept of LPP; litigation privilege and advice

privilege. The College has argued it is self-evident that requested information relating to a dispute that had required the College to instruct solicitors pursuant to court proceedings would be subject to litigation privilege.

22. The Commissioner's guidance¹ explains that litigation privilege 'applies to confidential communications made for the purpose of providing or obtaining legal advice about proposed or contemplated litigation. There must be a real prospect or likelihood, rather than just a fear or possibility. For information to be covered by litigation privilege, it must have been created for the dominant (main) purpose of giving or obtaining legal advice, or for lawyers to use in preparing a case for litigation. It can cover communications between lawyers and third parties so long as they are made for the purposes of litigation' (paragraph 8).
23. Under the heading 'Enclosures and attachments to a communication, and pre-existing documents', the Commissioner in her guidance on section 42 further clarifies the situations where litigation privilege may apply.

19. Any enclosures or attachments to a communication are usually only seeking covered by LPP if they were created with the intention of seeking advice or for use in litigation. The authority must consider each document individually.

20. If an enclosure existed before litigation was contemplated or before it was considered possible that legal advice might be needed, LPP will not usually apply to it. There is however one important exception to this rule. When a lawyer uses their skill and judgement to select pre-existing documents that weren't already held by the client, for the purpose of advising their client or preparing for litigation, then LPP can apply.

24. What emerges from the guidance is that even if litigation is being contemplated or is underway, it is not appropriate for a public authority to apply section 42(1) on a blanket basis.
25. As stated, a number of documents directly relating to the legal proceedings have been found to be the complainant's personal data and therefore not been considered further as part of this notice. The

¹ https://ico.org.uk/media/for-organisations/documents/1208/legal_professional_privilege_exemption_s42.pdf

question for the Commissioner is whether the remaining documents fall within the description of LPP. The solicitors acting on behalf of the College have advised that all of the records in the withheld information 'were created in contemplation of and in the course of litigation for the dominant (main) purpose of ourselves giving and the College receiving legal advice and/or in order for ourselves to prepare for the hearing of the claim. All of the same were used for the purposes of the Court and proceedings and for other purpose other than to justify the legal decision to terminate the agreement between the Claimant and the College. As such litigation privilege applies.'

26. The Commissioner disagrees with the categorisation of the information, however. She recognises that a request directed towards a matter that has resulted in litigation would, in normal circumstances, cover documents that would attract LPP. As explained though, it does not mean that all of the records covered by such a request would be covered. In the view of the Commissioner, the documents in question were neither created for use in litigation nor part of a selection of pre-existing documents that were not already held by the client for use in the proceedings. For this reason, the Commissioner has found that section 42(1) does not apply.

Requests 6 and 7

27. The College considered that it is not obliged to comply with the requests on the basis that they are vexatious according to section 14(1) of FOIA. In any event, it argues that any information captured by the requests is exempt information under section 32 of FOIA. The Commissioner looks at the College's application of each of these provisions in turn.

Section 14(1) – vexatious requests

28. Section 14(1) of FOIA provides that a public authority is not obliged to comply with a request if that request is vexatious. Its inclusion within the legislation is designed to protect public authorities from those who abuse, whether wittingly or not, the right to seek information. Put simply, it is a tool that can be used by a public authority to prevent the misuse of its resources.
29. A critical point for the purposes of FOIA is that it is the request and not the requester that must be vexatious. It is accepted, however, that a public authority may take into account the history and context of a request when deciding whether it engages the exclusion. FOIA does not define what it is meant by a 'vexatious' request. The way in which the

term should be applied was though explored by the Upper Tribunal in *Information Commissioner vs Devon County Council & Dransfield [2012] UKUT (AAC), (28 January 2013)*²; its judgment in respect of which was upheld by the Court of Appeal ([2015] EWCA Civ 454)³. The Upper Tribunal found that the term vexatious “in section 14 carries its ordinary, natural meaning within the particular statutory context of FOIA” (paragraph 24). The Upper Tribunal also agreed with the observation of the First-tier Tribunal in *John Lee v Information Commissioner & King's College Cambridge (EA/2012/0015, 0049, 0085; 18 December 2012)*⁴ that the term implies a “manifestly unjustified, inappropriate or improper use of a formal procedure” (paragraph 69).

30. In accordance with the principles identified in *Lee*, the *Dransfield* judgment established that the concepts of ‘proportionality’ and ‘justification’ are fundamental considerations when deciding whether a request can reasonably be classified as vexatious. It therefore follows that the key question for a public authority is whether the purpose and value of a request justifies the distress, disruption or irritation that would be incurred by complying with the request.
31. In *Dransfield*, the Upper Tribunal found it instructive to assess the question of whether a request is truly vexatious by considering four wide-ranging issues: (1) the burden imposed by the request (on the public authority and its staff); (2) the motive (of the requester); (3) the value or serious purpose (of the request); and (4) any harassment or distress (of and to staff). The Upper Tribunal, however, also cautioned that these considerations were not meant to represent an exhaustive list. Rather, the Upper Tribunal underlined the ‘importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests’ (paragraph 45).
32. It is recognised, not least by the aforementioned Upper Tribunal, that the vexatious nature of a request may only become apparent when the history and context of a request are considered. The effect of this is that

² [http://www.osspsc.gov.uk/judgmentfiles/j3680/\[2015\]%20AACR%2034ws.rtf](http://www.osspsc.gov.uk/judgmentfiles/j3680/[2015]%20AACR%2034ws.rtf)

³ <http://www.bailii.org/ew/cases/EWCA/Civ/2015/454.html>

⁴ <http://www.informationtribunal.gov.uk/DBFiles/Decision/i914/20121219%20Decision%20EA20120015,%200049%20&%200085.pdf>

the identity of the applicant may have a bearing on the application of section 14(1), unlike exemptions to disclosure in Part II of FOIA which are in general applicant-blind.

33. In its responses to the complainant, the College explained that the requests were considered to be vexatious for the reason that the complainant will already have had access to information relating to the legal proceedings by being a party to the legal proceedings. For his part, the complainant has disputed the application of section 14(1) by noting the broad scope of his request – which by making reference to all documents records includes letters, memos, notes of conversations, audio and visual recording – before challenging the College's position that he would be in possession of all the information.
34. In its submissions to the Commissioner, the College summed up its position as follows:

Something is vexatious if inter-alia it is an action or request brought without sufficient grounds for doing so the by-product of which is to cause annoyance. It therefore falls to analyse the merits or otherwise of the request that is made.

A request therefore would I submit be vexatious if it were otiose, in other that it served no purpose and related to information already known of or in possession of the person that was requesting additional information.

[...]

Legal authority (for example in the case of Attorney General v Barker) indicated that the hallmark of vexatious proceedings was they had little or no basis and whatever the intention may be the effect is to subject the Defendant to inconvenience, harassment and expense out of all proportion to gain.

We would submit that such requests fall fairly and squarely within that bracket.

35. Although section 14(1) is not qualified by the public interest test, the Upper Tribunal in *Dransfield* expressed the view that it may be appropriate to ask the following question: *Does the request have a value or serious purpose in terms of the objective public interest in the information sought?* This goes to the heart of whether a request is proportionate and justified in the circumstances.

36. When assessing the purpose and value of a request, the Commissioner's guidance⁵ cautions it will be rare that a public authority will be able to produce evidence that their only motivation is to cause disruption or annoyance (paragraph 47). The Commissioner goes on say in the following paragraph that if the request does not obviously serve to further the requester's stated aims or if the information requested will be of little wider benefit to the public, then this will restrict its value, even where there is clearly a serious purpose behind it.
37. Weighing up the objective public interest considerations, the Commissioner considers that two principal factors exist which support a finding that the request is vexatious. Firstly, the information being pursued relates to a highly personalised matter and there is nothing to suggest that disclosure would be of any real benefit to the wider public. Secondly, the right of recourse through the courts exists in order to allow a person to seek justice by means of an independent arbiter. The Commissioner accepts that unreasonable persistence may be an indicator of vexatiousness, most obviously characterised by a requester attempting to reopen an issue which has already been comprehensively addressed by the public authority, or otherwise subjected to some form of independent scrutiny.
38. In the view of the Commissioner, these factors do hold significant weight in the context of the test of vexatiousness. She is also mindful however of the complainant's assertion that the requests were designed to capture information that went beyond the records seen as part of the legal proceedings. Whether or not any such information is held, on this reading the making of the requests can be seen as a genuine attempt to learn more about how the College's legal position developed – giving the requests value, even if there was unlikely to be any substantial public interest in the information.
39. In previous decisions the Commissioner has acknowledged that it is human nature that the making of a request will frequently be driven by a particular agenda or vested interest. Disagreement with a public authority's actions, however, does not necessarily connote that a related request is vexatious. Nor does the fact that there is a fractious relationship between the applicant and public authority. In this case, there is nothing in the way that the requests were framed that indicated the complainant was merely intending to harass or vex the College. For example, they do not contain any intemperate or tendentious language.

⁵ <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

There is though a thin line between persistence and obsessiveness, with the vexatious nature of a request only emerging when it seen as part of a wider pattern of behaviour.

40. The College has not fully explained why the claim of vexatiousness only applies to requests 6 and 7 and does not encompass any of the other requests, which all refer more or less to the same issue. With respect to these particular requests, however, the College considers that the value of compliance would be out of all proportion to the level of inconvenience, harassment and expense incurred by the College. This argument would appear to have little merit if the requests were viewed in isolation. The argument will gain strength though when it is remembered that the requests followed on from legal proceedings which will have burdened the College, both financially and in terms of resources used.
41. The onus would nevertheless be on the College to demonstrate that the level of inconvenience, harassment and expense meant that complying with the request could not be justified – in other words that the line had been crossed between what is an appropriate use of FOIA and what is not. In this case, the College has failed to evidence such a position.
42. The Commissioner considers that the nature of the arguments raised by the College are ones she has previously accepted support the application of section 14(1) of FOIA. She has found though that the College has not submitted sufficient evidence or arguments to support its assertion that the request was effectively an abuse of the rights provided by the legislation. For this reason, the Commissioner must conclude that section 14(1) of FOIA is not engaged.

Section 32 – court records etc

43. In addition to its reliance on section 14(1), the College has argued that section 32 of FOIA will be engaged in respect of the papers that have been filed or served in relation to the proceedings involving the named company. The College has failed to cite the specific limb of the exemption it is relying on. The Commissioner has proceeded though on the basis that the College's arguments corresponds with sections 32(1)(a) and (b) of FOIA, which state:

32. (1) Information held by a public authority if it is held only by virtue of being contained –

(a) any document filed with, or otherwise placed in the custody of, a court for the purposes of proceedings in a particular cause or matter,

(b) any document served upon, or by, a public authority for the purposes of proceedings in a particular cause or matter

44. In *Alistair Mitchell v Information Commissioner* (EA/2005/0002, 10 October 2005)⁶ the Information Tribunal considered what type of court records would be covered by section 32(1)(a) and (b); saying 'documents to which (a) and (b) relate will routinely include pleadings, witness statements and exhibits served as part of a litigant's (or in criminal proceedings most often the prosecution's) case as well as lists of documents, material served under an obligation to disclose and documents such as skeleton arguments prepared by advocates' (paragraph 33). Critically, the phrase 'only by virtue of' in the exemption implies that if the public authority also holds the information elsewhere it may not rely upon the exemption.
45. The Commissioner's guidance on section 32⁷ explains that the exemption is unusual in that it seeks not to protect the information which is covered in itself but rather to exempt from disclosure the fact that the information is contained in a court record or a document held for the purposes of an enquiry or arbitration. The guidance goes on to say that the thinking behind the exemption appears to be that it would be undesirable to interfere with the existing rules regarding access to/publication of information contained in court records or held for the purposes of inquiries or arbitration.
46. The Commissioner has decided that pleadings, witness statements and other documents produced for the legal proceedings are the personal data of the complainant. The Commissioner has therefore only been required to consider whether any remaining information captured by the requests would be subject to the exemption. In her view, it is not.
47. As stated, section 32(1) will only apply to information that was originally acquired for the purpose of proceedings and will not be engaged if the information was originally acquired via some other route and still held for that other purpose. The College has stated that the information to which the exemption had been applied was only produced in response to the claim. The Commissioner considers that this is too simple a description of the information covered by the requests. She accepts that

⁶http://www.informationtribunal.gov.uk/DBFiles/Decision/i47/mitchell_v_information_commissioner.pdf

⁷ https://ico.org.uk/media/for-organisations/documents/1180/awareness_guidance_9_info_contained_in_court_records.pdf

objectively-speaking the scope of the requests would include court pleadings and witness statements which, if not the complainant's personal data, would likely be caught by the exemption. However, she has also found that the requests would cover other supporting documents that are not the complainant's personal data, which will have been held by the College before the legal proceedings commenced and would still be held for a business purpose at the time the request was made.

48. The Commissioner has therefore concluded that neither of the exemptions in section 32(1) is engaged.

Personal Data

49. Within the documents that have been disclosed to the complainant, the College has redacted the names of a number of officials under section 40(2) of FOIA. Some of these individuals were the recipients or senders of correspondence exchanged with the complainant and have not therefore been considered further as part of this notice on the basis that the records relate to him and would therefore be his personal data. The Commissioner's analysis of the application of section 40(2) only refers to the remaining redacted names.
50. The Commissioner has also observed that included within the bundle of withheld information is the personal data of other third parties. In particular, the names of candidates/learners enrolled on training courses and in certain cases their national insurance numbers and signatures. It also contains the names of internal and external moderators and quality officers. The College has not sought to apply section 40(2) of FOIA to this information. The Commissioner is conscious though of the care with which personal data should be handled and her dual role as the regulator of FOIA and the DPA. It is in respect of this role that the Commissioner has decided unilaterally to consider whether this information may be placed in the public domain via a disclosure under FOIA.
51. Section 40(2) of FOIA effectively incorporates a two-stage test, both parts of which need to be met in order for the exemption to be engaged. Firstly, the requested information must constitute the personal data of a third party. Secondly, disclosure of the personal data would breach a data protection principle in the Data Protection Act 2000 (DPA).
52. Personal data is defined by section 1 of the DPA as data which relates to a living individual who can be identified from that data, or from that data in combination with other information. In other words, information will only be classified as personal data where it 'relates to' an 'identifiable' individual. A name will typically represent the clearest

example of personal data. Even in the absence of a name, however, it may be possible to directly link information to an individual using other pieces of contextual data accessible to a member of the public. In that example, the information would 'relate' to the individual and would therefore be his or her personal data.

53. The Commissioner is satisfied that the names redacted by the College, and the information she has identified elsewhere, constitute personal data and therefore the first stage of the test attached to section 40(2) is satisfied. Consequently, she has gone on to consider the second stage, namely whether disclosure contravenes a data protection principle.
54. For the purposes of a disclosure under FOIA, it is only the first principle that is likely to be relevant. In accordance with this principle, personal data can only be disclosed if it would be fair, lawful and meet one of the conditions in Schedule 2 (and Schedule 3 conditions if the information represents sensitive personal data). If the application for disclosure does not meet any of these conditions, then it would fail.
55. The Commissioner's guidance on 'personal data'⁸ sets out at paragraph 41 his approach to assessing whether the first principle is satisfied. This confirms the starting point for the Commissioner is to consider whether disclosure would be fair to the data subject(s). In the context of this test, the guidance acknowledges that 'fairness' can be a difficult concept to define. Broadly speaking, however, it will involve balancing the consequences of any disclosure and the reasonable expectations of an individual with general principles of accountability and transparency. In order to strike the correct balance, it is necessary to consider the circumstances in the round.
56. Various factors will potentially effect whether an individual should have a reasonable expectation that his or her personal data would be disclosed upon request. These will typically include whether the information represents sensitive personal data as defined by section 3 of the DPA, if the information refers to an individual's public or private life, and the seniority of the individual to whom the information relates. The Commissioner is aware that the complainant may already be familiar with the identities of some of the data subjects as a result of his communications with the College. Notwithstanding this, it is for the Commissioner to decide whether it would be appropriate to place

⁸ <https://ico.org.uk/media/for-organisations/documents/1213/personal-information-section-40-and-regulation-13-foia-and-eir-guidance.pdf>

information in the public domain by virtue of a disclosure under the legislation.

57. Section 2 of the DPA sets out eight categories of sensitive personal data, (a) – (h), which includes, for example, information consisting of an individual's political opinions (section 2(b)) or his or her religious beliefs (section 2(c)). This is information that is unlikely to be fair to disclose as it comprises information that individuals will regard as the most private. The Commissioner is content that the information does not fall within any of the definitions of sensitive personal data. She has therefore gone on to consider the way in which the personal data is featured in the requested information.
58. The expectations of an individual will be influenced by the distinction between his or her public and private life. The data subjects are referred to in their professional life - either in their capacity as trainer/moderator or participant on an official course – and the Commissioner's approach is that it is more likely to be fair to release information that relates to the public rather than private life of an individual. In order to ascertain the reasonable expectations of an individual, however, it is also necessary to assess the nature of an individual's role and the context in which the personal data is recorded. Factors that will need to be taken into account in this regard will include the seniority of an individual's role, whether the role is public facing and whether the position involves responsibility for making decisions on how public money is spent.
59. It is clear that a number of the individuals whose personal data has been redacted are senior officials within their respective organisations. With regard to the other data subjects, while not necessarily senior the Commissioner does consider it likely that many of them will hold a public facing role to some lesser or greater degree. In the Commissioner's view, these considerations would strengthen the position that disclosure would be fair. Further, there is no implicit or explicit indication that the names of the individuals, as opposed to say National Insurance numbers, had been provided on a confidential basis.
60. The College maintains though that the release of the personal data would be unfair for the purposes of the first data protection principle. This is primarily on the basis of the distress caused to the data subjects. In the Commissioner's view, the College has failed to demonstrate that the level of distress would be as severe as suggested, considering instead that the distress would be on the lower end of the scale. Nevertheless, the Commissioner would accept that, in the circumstances, each of the data subjects would have a reasonable expectation that his or her personal data would not be disclosed.

61. The Commissioner's guidance explains that despite the reasonable expectations of individuals and the fact that damage or distress may result from disclosure, it may still be fair to provide the information if there is an overriding legitimate interest in disclosure to the public. Under the first principle, the disclosure of the information must be fair to the data subject, but assessing fairness involves balancing their rights and freedoms against the legitimate interest in disclosure to the public (paragraph 80).
62. The guidance goes on to explain in the following paragraph that legitimate interests include the general public interest in transparency, public interest in the issue the information relates to and any public interest in disclosing the specific information. There may for example be occasions when the requirement to demonstrate accountability and transparency in the spending of public funds will outweigh the rights of individuals. The private interests of the requester, or even of a small group of people, are not relevant in this context.
63. The information in which the personal data is contained is generally administrative in nature – providing an audit trail for the training courses. The importance of transparency means that a legitimate interest in disclosure will always exist. The Commissioner has not though been provided with, nor has she been able to locate, any arguments which indicate that disclosure of the personal data in this specific case was necessary for the purposes of accountability. She has therefore concluded that the legitimate interest in the personal data is relatively weak.
64. Based on this conclusion, the Commissioner has found that section 40(2) of FOIA is engaged as the release of the personal data would not constitute fair processing pursuant to the first data protection principle.

Other matters

65. In order to clarify and understand the College's position under the legislation, the Commissioner has needed to engage with the solicitors acting on behalf of the College on a number of separate occasions. She has also been required to serve two Information Notices on the College in order to obtain information essential for the purposes of making a decision.
66. In most cases the Commissioner will rely on the co-operation of the relevant parties to carry out an investigation. Where this assistance is not provided voluntarily or in a timely fashion, however, the Commissioner may issue an Information Notice under section 51 of FOIA

which will formally require a public authority to supply her with the information she describes within a specified time period.

67. The need to take the step of serving an information notice is always regrettable. The Commissioner is therefore particularly concerned that she had to use the powers afforded to her under section 51 of FOIA on two occasions in order to engineer a position from which she could make a decision. Connected to this, the Commissioner has found unhelpful the College's failure to set out its position with respect to the requested information in a clear and analytic way. In the Commissioner's view, the nature of the engagement has served to complicate the investigative process and cause unnecessary delays.

Right of appeal

68. 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

69. 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.
70. 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

Alun Johnson
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Cheshire
SK9 5AF

Annex A – Information Requests (11 June 2015)

1. Copies of all electronic and print records of activities in relation to contract [contract reference redacted] and [name of company redacted].
2. Copies of all documentation relating to activities in relation to contract [contract reference redacted] and [name of company redacted].
3. Copies of all emails and letters between staff of Calderdale College which relates to [contract reference redacted] and [name of company redacted].
4. Copies of all letters and emails between staff of Calderdale College and the 10 companies and their employees engaged by [name of company redacted].
5. A copy of all emails, records, letters and contracts made between Chadwick Lawrence LLP and the 10 companies engaged by [name of company redacted] under [contract reference redacted].
6. Copies of all letters, emails, records and documentation in relation to the civil claim brought against Calderdale College by [name of company redacted] in [date redacted].
7. Copies of all records, emails, letters in relation to the claim brought by [name of company redacted].
8. Copies of all emails, letters and records between Calderdale College and Chadwick Lawrence LLP in relation to [contract reference redacted] and [name of company redacted].
9. Copies of all records, both print and electronic, of the legal advice received by Calderdale College from Chadwick Lawrence LLP in relation to [contract reference redacted] and the civil claim brought by [name of company redacted] in her Majesty's High Court.
10. Copies of records of any other advice Calderdale College sought from other sources in relation to [contract reference redacted] and [name of company redacted].
11. Copies of the records of all the legal reviews undertaken during the court/legal proceedings.