

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 October 2016

Public Authority: Bury Metropolitan Borough Council

Address: Town Hall
Knowsley Street
Bury
Lancashire
BL9 0SW

Decision (including any steps ordered)

1. The complainant has requested information from Bury Metropolitan Borough Council ("the Council") about a named individual who is a former councillor. The Council refused to confirm or deny that it held relevant information under the exemptions provided by section 40(5) and section 41(2) of the Freedom of Information Act ("the FOIA"). The complainant subsequently contested the Council's application of these exemptions.
2. The Commissioner's decision is that the Council has correctly applied the exemption provided by section 40(5)(b)(i).
3. The Commissioner does not require any steps to be taken.

Request and response

4. On 3 November 2015 the complainant requested:

We require copies of all documents and e-mails confirming when Bury MBC were first informed about the charges brought forward by the Police in the case of ex councillor [redacted name].

We also require all emails and documents confirming what Safeguarding measures were implemented on receipt of notification from the Police. REF AF296422

We request all documents and e-mail's there has ever been between Bury Council and Oldham council pertaining to ex Bury Councillor [redacted name]. REF AF296426

We understand a letter of commendation was supplied to the Court by Bury MBC in The [redacted name] court proceedings. We require a copy of this Council document. REF 296427

5. On 27 November 2015 the Council responded. It refused to confirm or deny that it held relevant information under the exemptions provided by section 40(5) and section 41(2).
6. On 15 December 2015 the complainant requested an internal review.
7. On 5 February 2016 the Council provided the outcome of its internal review. It maintained its original position.

Scope of the case

8. The complainant contacted the Commissioner on 29 March 2016 to complain about the Council's response.
9. The Commissioner considers the scope of this case to be the determination of whether the Council has correctly applied the exemption provided by section 40(5)(b)(i).

Reasons for decision

Context

10. The Commissioner understands that the request relates to an individual who is a former councillor. As of the date of the request, this individual had been subject to court proceedings. General information about the circumstances and outcome of these court proceedings is already in the public domain. The request seeks information about whether actions have occurred within the Council that are related to these court proceedings, or otherwise related to the individual.

Section 40(5) – exemption from the duty to confirm or deny

11. Section 40(5) provides that:

The duty to confirm or deny–

(a) Does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and

(b) Does not arise in relation to other information if or to the extent that either–

(i) the giving to a member of public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or

(ii) by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed).

12. In the circumstances of this case the Commissioner recognises that the Council is relying upon section 40(5)(b)(i). This section provides an exemption from the duty to confirm or deny that information is held when doing so would disclose the personal data of third parties, and by this contravene any of the data protection principles provided by the Data Protection Act ("the DPA").

Is the requested information the personal data of third parties?

13. Personal data is defined by section 1 of 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. Information will relate to a person 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 or else impacts on them in any way.
15. The Commissioner notes that the request is composed of three parts; each part given a specific reference by the requester.
16. The two parts referenced as "AF296422" and "296427" seek information about whether specific actions have occurred within the Council in

relation to the individual and the court proceedings they have been subject to. The part referenced as "AF296426" seeks information about whether the Council has communicated with another public authority in respect of the individual.

17. The Commissioner considers that the act of confirming or denying that information is held in relation to each part would also confirm or deny that the specific actions referenced in each part have occurred. On this basis the Commissioner is satisfied that the act of confirming or denying that information is held would in itself disclose the individual's personal data.

Is any of this personal data 'sensitive'?

18. Section 2 of the DPA defines sensitive personal data as personal data that consists of information about the following:

- an individual's mental or physical health,
- their political opinions,
- their sex life,
- their racial or ethnic origin,
- their religious beliefs,
- whether they are a member of a trade union,
- the commission or alleged commission of an offence by them, or any proceedings for any offence they have committed or are alleged to have committed.

19. The Commissioner recognises that, with the exception of that part of the request which the requester has labelled "AF296426", the remainder of the request seeks information in clear reference to court proceedings and safeguarding matters.

20. On this basis the Commissioner is satisfied that the act of confirming or denying that information is held would disclose sensitive personal data that falls within the definition of "*the commission or alleged commission of an offence by them, or any proceedings for any offence they have committed or are alleged to have committed.*"

Would disclosure breach the data protection principles?

21. 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, and schedule 3 of the DPA for sensitive personal data.

22. 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 the potential consequences of the disclosure against the legitimate public interest in disclosing the information.

The reasonable expectations of the data subject

23. When considering whether the disclosure of personal information 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.
24. In this case the Council considers that such disclosure would not be reasonably expected by the individual. The request is phrased specifically in reference to actions that may or may not have occurred within the Council in respect of the individual and the court proceedings that they have been subject to.
25. It is also evident to the Commissioner that the individual is no longer an elected Councillor, and further, that the court proceedings that the individual was subject to do not appear to relate to their former public duties as an elected representative. The Commissioner considers that these factors give further credence to the view that the individual would not reasonably expect the information to be disclosed.

The consequences of disclosure

26. The Council has drawn the Commissioner's attention to the identity of the requester, and argues that it is reasonably likely the requester has access to privileged information about the individual that is not in the public domain. The confirmation or denial that information is held may therefore disclose more information to the requester that would otherwise be the case for another member of the public.

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

27. In the circumstances of this case, the Commissioner is aware that some information about the individual's court proceedings is already in the public domain. However, should the Council confirm or deny that information is held about specific actions, this will disclose additional personal data, including that which is sensitive.

28. There is no indication that this disclosure would be reasonably expected by the complainant. There is also limited legitimate interest in disclosure, as the substantive matter has been addressed through the courts and any extant concerns relating to safeguarding matters must be referred to the appropriate public authority.
29. Having considered the above factors, the Commissioner recognises that disclosure would infringe on the rights and freedoms of the individual, and considers that there is limited legitimate interest to warrant this.

The Commissioner's conclusion

30. Having considered the above factors the Commissioner is satisfied that disclosure would not be fair under the first principle of the DPA.
31. On this basis the Commissioner upholds the Council's application of section 40(5)(b)(i), and does not need to consider the application of section 41(2).

Right of appeal

32. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

33. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
34. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF