

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 March 2017

Public Authority: Durham County Council
Address: County Hall
Durham
DH1 5UL

Decision (including any steps ordered)

1. The complainant has requested information relating to whether councillors have received any instructions or advice about communicating with him specifically. The Commissioner's decision is that Durham County Council has correctly applied section 40(1) to the request. She does not require any steps to be taken.

Request and response

2. On 5 July 2016, the complainant made the following request for information on the WhatDoTheyKnow website¹:

"Have councillors received instructions or suggestions from Durham County Council on how to respond to a fathers' rights campaigner who is raising a concern about this case: [link to website redacted]

Or have councillors been instructed not to respond, or respond in a minimal way?

What were the instructions/suggestions and who issued them?"

3. The council responded on 8 August 2016 (although it appears that this response was not put on the WhatDoTheyKnow website until 21 September 2016). It provided a redacted copy of an email dated 29
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¹ https://www.whatdotheyknow.com/request/fathers_rights_campaigner_2

June 2016 and explained the following:

"Elected Members are generally advised not to enter into detailed correspondence about individual cases relating to safeguarding adults and children although an acknowledgement of a contact may be sent. We encourage members to forward questions to the relevant service contact so that they may be addressed by them according to the statutory responsibilities of the Council.

The advice to members is usually provided by the relevant Service and Legal and Democratic Services."

4. The complainant asked for clarification of the response provided and, on receipt of that clarification, on 24 September 2016 he asked the following:

"Have councillors received any instructions/advice about communicating with me specifically".

5. The council responded on 26 September 2016 explaining that the request constitutes a request for the complainant's own personal data, which would be exempt under section 40(1) of the FOIA, and therefore he would need to submit a subject access request under section 7 of the Data Protection Act 1998 ('the DPA').
6. The complainant replied to the council on 28 September 2016 stating that he is not asking for his personal information rather he is requesting information about the functioning of the council. He then repeated the question, '...did councillors receive instructions or advise not to communicate with me?'
7. On the same day, the council reiterated its position that the complainant is asking for information about himself and therefore it is exempt under section 40(1) of the FOIA.
8. Further correspondence continued until 12 October 2016 with both the complainant and the council maintaining their positions.

Scope of the case

9. The complainant contacted the Commissioner on 28 September 2016 to complain about the way his request for information had been handled. He said the following:

"This is a clear case of an authority trying to evade the question and hoping that I will give up. Please would you tell them to answer properly."

10. On 25 October 2016, the complainant clarified to the Commissioner that:

"Any instructions to councillors will have been issued by email and therefore that information will be in recorded on their servers and other computers. Therefore they should provide me with the information."

11. The Commissioner has considered whether the council was correct to apply the exemption at section 40(1) of the FOIA to question "Have councillors received any instructions/advice about communicating with me specifically".

Reasons for decision

Section 40(1) – the exemption for personal data

12. Under section 40(1) any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.
13. This exemption is absolute and requires no public interest test to be conducted. In addition, in relation to such information public authorities are not obliged to comply with the obligation to confirm or deny whether they hold the requested information, by virtue of section 40(5)(a).
14. Section 1 of the Data Protection Act 1998 ('the DPA') defines personal data as follows:

"personal data" means data which relate to a living individual who can be identified –

from those data, or

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 intentions of the data controller or any other person in respect of the individual.”

15. The Commissioner has issued detailed guidance on determining what information constitutes personal data². This guidance sets out several steps in establishing whether information is personal data, with the first step being whether an individual can be identified from the information and the second step being whether the information relates to the individual in some way, e.g. is it information which is obviously about a particular individual, is the information linked to an individual or is it information used to inform or influence actions or decisions affecting an identifiable individual.
16. The Commissioner understands that the complainant considers that the request relates to internal instructions to councillors by someone in the council. However, as he has related the request directly to himself, by asking whether the instructions/advice are about communicating with him specifically, then information held by the council within the scope of the request would constitute his own personal data as defined by the DPA.
17. Based on the above, the Commissioner is satisfied that any information which may be held within the scope of this self-referencing request, would be complainant's own personal data. The Commissioner therefore finds that section 40(1) is engaged and as this is an absolute exemption there is no public interest test to apply. As section 40(1) applies the Council was not required to comply with section 1(1)(a) because section 40(5)(a) would apply.

Other matters

18. As mentioned in paragraph 5, the complainant was advised by the council to submit a subject access request under section 7 of the DPA.
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² <https://ico.org.uk/media/for-organisations/documents/1554/determining-what-is-personal-data.pdf>

https://ico.org.uk/media/for-organisations/documents/1549/determining_what_is_personal_data_quick_reference_guide.pdf

He was informed that he would need to describe the information he wants, provide proof of his identity and a £10 cheque.

19. During the course of this investigation, the Commissioner also advised the complainant to make a subject access request to the council and provided the complainant with a link to the following advice detailing how to do so:

<https://ico.org.uk/for-the-public/personal-information/>

20. Given the finding in this decision notice, the Commissioner repeats the advice that the complainant should make a subject access request to the council in order to obtain his own personal data.

Right of appeal

21. 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

22. 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.
23. 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

Deborah Clark
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF