

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 June 2017

Public Authority: Arun District Council
Address: Civic Centre
Littlehampton
West Sussex
BN17 5LF

Decision (including any steps ordered)

1. The complainant has requested information from Arun District Council ("the Council") about the qualifications held by an individual employed by the Council. The Council disclosed some information, and withheld some under the exemption provided by section 40(2) of the Freedom of Information Act ("the FOIA"). The application of section 40(2) was contested by the complainant.
2. The Commissioner's decision is that the Council has correctly withheld the information under section 40(2).
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 8 March 2016 the complainant wrote to Council and requested information in the following terms:

[Redacted individual]'s qualifications appear to be deliberately being suppressed and we think that this is wrong. Please supply them at an early moment or according to the Act's provisions.

5. The Council responded on 31 March 2016. It confirmed that information was held but was exempt from disclosure under section 40(2).
6. Following an internal review the Council wrote to the complainant on 6 April 2016. It disclosed some information that the individual had agreed to be disclosed, but stated that the remaining information was withheld under section 40(2).

Scope of the case

7. The complainant contacted the Commissioner on 17 February 2017 to complain about the way his request for information had been handled. The complainant specifically contested the Council's withholding of the remaining information under section 40(2).
8. During the course of investigation by the Information Commissioner's Office, the Council confirmed that information about the individual's role within the Council (namely a 'person specification' document) was already publically available, and provided a copy of this to the complainant on 7 June 2017.
9. The Commissioner therefore considers the scope of the case to be the determination of whether the Council has correctly applied section 40(2).

Reasons for decision

Section 40(2) – Personal information

10. Section 40(2) states 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."*

11. 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?

12. 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...

13. In order for the exemption to apply the information being requested must constitute personal data as defined by section 1 of the DPA. In this instance the Commissioner has considered the nature of withheld information, and has identified that it would clearly relate to the individual named in the request. As such, the information would represent personal data.

Would disclosure breach the data protection principles?

14. 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.

15. 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

16. 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.

17. In the circumstances of this case, the Council sought, and received consent from the individual, to disclose that they hold a foundation degree. The Council therefore disclosed this information to the complainant. The Council considers that the disclosure of further information about the individual's qualifications would not be reasonably expected by the individual. The role held by the individual was that of a junior level within the Council, and the required qualifications for their role were already in the public domain through a 'person specification' document (of which a copy has been provided to the complainant during the course of the Commissioner's investigation).
18. In their submission to the Commissioner, the complainant has disputed whether the individual was suitably qualified and experienced enough to fulfil their role as a council officer. The complainant also argues that there is a public interest in ensuring that council officers are suitably qualified, and that such information should be a matter of public record.

The consequences of disclosure

19. The Council considers that the disclosure of further information about the individual's qualifications would could personal distress.
20. The Council has also referred the Commissioner to the findings contained in decision notice FS50394165¹, in which the Commissioner concluded that *"...the ability of a council to deliver effective services to the community would be hampered if some members of the public disputed decisions made by the council not because of the outcome of a particular decisions but because of the qualifications of the individual who made the decision."*

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

21. The Council considers that the legitimate interest in disclosure has already been met through the public availability of the person specification document, which confirms the essential qualifications necessary for employment in the role. The Council also notes that any

¹ https://ico.org.uk/media/action-weve-taken/decision-notices/2011/666304/fs_50394165.pdf

complaint about the actions undertaken by a council officer must ultimately be submitted to the Council for consideration.

The Commissioner's conclusion

22. There is always some legitimate public interest in the disclosure of any information held by public authorities. This is because disclosure of information helps to promote transparency and accountability amongst public authorities. This in turn may assist members of the public in understanding decisions taken by public authorities and perhaps even to participate more in decision-making processes.
23. Whilst the Commissioner accepts that there is legitimate interest in ensuring that council officers are sufficiently qualified to undertake their role, it is evident that the Council has already disclosed information about one of the individual's qualifications, and that the minimum qualifications and experience required for the role are already publically available in a person specification document. As the Commissioner identified in a similar scenario considered in decision notice FS50558628², this is a proportionate manner in which to provide public assurance that council officers are sufficiently qualified and experienced, without the necessity of disclosing personal data that is held with an expectation of confidence.
24. It is also evident to the Commissioner that any complaint against the decisions and actions of the individual whilst in their role would need to be submitted to the Council through the formal routes available for this.
25. Having considered these factors, the Commissioner has concluded that the disclosure of the individual's personal data would not be fair, and that the Council has correctly applied section 40(2).

² https://ico.org.uk/media/action-weve-taken/decision-notices/2015/1043308/fs_50558628.pdf

Right of appeal

26. 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

27. 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.
28. 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