

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 June 2020

Public Authority: Gloucestershire County Council
Address: Shire Hall
Westgate Street
Gloucester
GL1 2TG

Decision (including any steps ordered)

1. The complainant has requested information from Gloucestershire County Council ("the Council") regarding the staffing and resourcing allocated to the Lead Local Flood Authority Function so that it can execute the responsibilities delegated to it under the Flood and Water Management Act 2010.
2. The Commissioner's decision is that the Council was entitled to withhold the requested information under section 40(2) of the FOIA.
3. The Commissioner does not require the Council to take any steps as a result of this decision notice.

Request and response

4. On 13 June 2019, the complainant wrote to the Council and requested information in the following terms:

"Please treat this email as an official request from the Cheltenham Flood and Drainage Panel - under the Freedom of Information Legislation..."

We request the following information:-

1. Funding

FDGiA - Please advise details of how much has been secured by the LLFA from the FDGiA scheme over the last 5 years and provide summary details of how this has been (is being) deployed. from 2013-2018.

Local Levy - Please advise details of any local levy allocations that the LLFA has secured and how this has been deployed over the last 5 years from 2013-2018.

If significant funding has been secured in 2019 please advise how much.

2. Headcount GLOUCS LLFA

What is the total Headcount of Permanent staff employed by the LLFA (in FTEs)?

Please provide us with the LLFA organisation chart detailing the titles of each position.

Please also indicate the length of service at the Gloucs LLFA for each member of staff in the LLFA team.

Please advise how many years of experience in flood risk management each permanent member of the team holds.

What is the Headcount of Part Time staff employed by the LLFA ? Please give details of number and percentage of FTE hours worked by each part time member-

What is the headcount of Seconded staff (if any) ? Please provide details of any staff dedicated, on secondment , to the LLFA

3. Shared Resourcing

If you have shared resourcing arrangements with other LLFAs please provide brief summary details.

4. Delegation of Powers - GLOUCS LLFA

In the event that the LLFA has delegated its powers to another organisation (e.g., to IDBs or local councils) please provide details of which powers have been delegated and provide details of the organisations holding these delegated authorities.

5. Qualifications - GLOUCS LLFA

Please provide details of the formal qualifications relevant to flood risk management that the GLOUCS LLFA staff hold.

Institute of Civil Engineering (ICE) Qualifications

Please advise details of how many staff hold recognised ICE qualifications in the field of flood risk management and the level held

- Technical, Incorporated, or Chartered Grade.

DEFRA and EA qualifications

Please advise details of any DEFRA or EA flood risk management qualification holders detailing which qualification and how many people hold the specific qualification.

SUDS qualifications

Please advise details of all professional or vocational qualifications and experience held by members of the Gloucs LLFA management and team.

Memberships

Please provide details of how many staff hold relevant professional memberships and provide details of the institutes they belong to,

E-Learning Modules

Please advise whether how many of your staff have successfully completed E-Learning Modules on Flood risk Management and Sustainable drainage.

Flood risk and Drainage Modelling

Please provide details of qualifications held by LLFA staff on Flood Risk Modelling practice and theory.

Other Qualification

Please advise details of other relevant qualifications and experience held by members of the current LLFa team.

Seniority - Length in Office

Please provide details of :-

How many years each member of staff have been working at the LLFA at Gloucs Council

How many years they each team member had spent in flood risk management in aggregate.

Clarification

Please do not hesitate to contact us if you require any additional information or clarification form us about this request."

5. The Council responded on 11 July 2019. It provided some information within the scope of the request but refused to provide the remainder. The information provided fell under points 1 to 4, as numbered above. For the withheld information, within point 5, the Council cited the following exemption as its basis for doing so: section 40 of the FOIA – Personal Information.
6. On 16 August 2019, the complainant requested an internal review, outlining the parts of the response that they were not satisfied with. Specifically, the complainant considered that the following information should be provided:

"1- Qualifications - GLOUCS LLFA

Please provide details of the formal qualifications relevant to flood risk management that the GLOUCS LLFA staff hold.

2- Institute of Civil Engineering (ICE) Qualifications

Please advise details of how may staff hold recognised ICE qualifications in the field of flood risk management and the level held - Technical, Incorporated, or Chartered Grade.

3- DEFRA and EA qualifications

Please advise details of any DEFRA or EA flood risk management qualification holders detailing which qualification and how many people hold the specific qualification.

4- SUDS qualifications

Please advise details of all professional or vocational qualifications and experience held by members of the Gloucs LLFA management and team.

5- 5-Memberships

Please provide details of how many staff hold relevant professional memberships and provide details of the institutes they belong to,

6-E-Learning Modules

Please advise whether and how many of your staff have successfully completed E- Learning Modules on Flood risk Management and Sustainable drainage.

7-Flood risk and Drainage Modelling

Please provide details of qualifications held by LLFA staff on Flood Risk Modelling practice and theory.

8-Other Qualification

Please advise details of other relevant qualifications and experience held by members of the current LLFA team.

9-Seniority - Length in Office

Please provide details of How many years each member of staff have been working at the LLFA at Gloucs Council. How many years they each team member had spent in flood risk management in aggregate."

7. Following an internal review the Council wrote to the complainant on 14 October 2019. It provided the complainant with further information, which consisted of the job profiles for the four distinct roles within the team. However, it also explained that the remaining information was withheld under section 40 of the FOIA.

Scope of the case

8. The complainant contacted the Commissioner on 17 October 2019, to complain about the way his request for information had been handled.
9. During the Commissioner's investigation, the Council provided further information to the complainant. However, it continued to withhold the information requested at points 1, 3, 7 and 8 (as numbered in paragraph 6 above).
10. The Council explained that it considered that this withheld information remained exempt from disclosure under section 40(2) of the FOIA.

11. The complainant advised the Commissioner that they were still not satisfied with the Council's response. The Commissioner considers the scope of her investigation to be to establish whether the public authority is entitled to withhold the requested information under section 40(2) of the FOIA.

Reasons for decision

Section 40 personal information

12. Section 40(2) of the FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied
13. In this case the relevant condition is contained in section 40(3A)(a)¹. This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the General Data Protection Regulation ('GDPR').
14. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA'). If it is not personal data then section 40 of the FOIA cannot apply.
15. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, she must establish whether disclosure of that data would breach any of the DP principles.

Is the information personal data?

16. Section 3(2) of the DPA defines personal data as:

"any information relating to an identified or identifiable living individual".

17. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.

¹ As amended by Schedule 19 Paragraph 58(3) DPA.

18. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
19. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
20. In the circumstances of this case, having considered the withheld information, the Commissioner is satisfied that the information relates to the data subjects.
21. She understands that the complainant does not want to identify individuals and that they require the information to determine if the department has the relevant qualifications.
22. Despite not having names of the officers, having the number of officers in a specific team and then which qualifications are held within the team, is information that both relates to and potentially identifies those concerned. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
23. The Council has provided the information it holds to the Commissioner, for consideration. A key factor in this case has been to determine whether or not individuals are identifiable from the withheld information.
24. The Commissioner notes that the complainant has requested the qualifications held by the specific department within the Council.
25. The Commissioner also notes that the complainant has not requested the names of the individuals within the department. The complainant evidently considers that the information would be sufficiently anonymous not to comprise personal data.
26. As explored in her guidance on determining what is personal data², the Commissioner considers that it is necessary to consider whether individuals would be identifiable "*by a determined person with a particular reason to want to identify individuals*". This is because a

² <https://ico.org.uk/media/for-organisations/documents/1554/determining-what-is-personaldata.Pdf>

disclosure which is ordered under the FOIA is a disclosure to the world at large, and not only to the person making the request.

27. In her guidance on anonymisation³, from page 31 onwards, the Commissioner explains that "*removing number relating to five or 10 individuals or fewer may be a reasonable rule of thumb for minimising the risk of identifications*". This is particularly the case with regard to a known geographical location.
28. The Commissioner considers that the individuals working within the department, could potentially be identified by "a determined person" from the requested information, owing to the very small numbers involved.
29. She is satisfied that the risk of identification is sufficient that the information falls within the definition of "personal data" in section 3(2) of the DPA.
30. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under the FOIA. The second element of the test is to determine whether disclosure would contravene any of the DP principles.
31. The most relevant DP principle in this case is principle (a).

Would disclosure contravene principle (a)?

32. Article 5(1)(a) of the GDPR states that:

"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject".

33. In the case of an FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.
34. In order to be lawful, one of the lawful bases listed in Article 6(1) of the GDPR must apply to the processing. It must also be generally lawful.

Lawful processing: Article 6(1)(f) of the GDPR

³ <https://ico.org.uk/media/for-organisations/documents/1061/anonymisation-code.pdf>

35. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f), which states:

"processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child"⁴.

36. In considering the application of Article 6(1)(f) of the GDPR in the context of a request for information under the FOIA, it is therefore necessary to consider the following three-part test:-

i) **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;

ii) **Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question;

iii) **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.

37. The Commissioner considers that the test of 'necessity' under stage (ii) must be met before the balancing test under stage (iii) is applied.

Legitimate interests

38. In considering any legitimate interests in the disclosure of the requested information under the FOIA, the Commissioner recognises that such interests can include broad general principles of accountability and transparency for their own sakes, as well as case specific interests.

⁴ 2 Article 6(1) goes on to state that:- "Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks".

However, section 40(8) FOIA (as amended by Schedule 19 Paragraph 58(8) DPA) provides that:-

"In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the GDPR would be contravened by the disclosure of information, Article 6(1) of the GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted".

39. Further, a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.
40. In this case, the complainant is of the view that they, along with the local council and community, have a legitimate interest in *"...understanding the level of experience and technical qualifications held by the LLFA experts, because we and the council are required to... rely on the recommendations of the LLFA for critical planning decisions..."*
41. They have also explained that the Council and public need to know what level of skill and experience is present at the LLFA function in relations to complex drainage and flood risk models being presented for scrutiny in an application.
42. The Council's view is that, whilst it considers there is a legitimate interest in demonstrating accountability, particularly in demonstrating that posts within the Council have been fairly and competitively recruited to, it considers that the actual qualifications and length of service of specific individuals is personal information and not of legitimate interest.
43. The Council explained that it considers providing copies of the actual role profiles, which show the responsibilities and duties of each role, as well as the knowledge skills, experience and qualifications candidates for the role are expected to have, satisfies the legitimate interest.
44. The Commissioner has considered the Council's views, set out above, but is satisfied that, in the circumstances of the case, there is a legitimate interest in the disclosure of the requested information.

Is disclosure necessary?

45. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under the FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.
46. The Commissioner is satisfied that the specific information requested in this case has not otherwise been made available to the public and that, therefore, in this case there are no less intrusive means of achieving the legitimate aims identified.

Balance between legitimate interests and the data subject's interests or fundamental rights and freedoms.

47. It is necessary to balance the legitimate interests in disclosure against the data subjects' interests or fundamental rights and freedoms. In doing so, it is necessary to consider the impact of disclosure. For example, if the data subjects would not reasonably expect that the information would be disclosed to the public under the FOIA in response to the request, or if such disclosure would cause unjustified harm, their interests or rights are likely to override legitimate interests in disclosure.
48. In considering this balancing test, the Commissioner has taken into account the following factors:
- the potential harm or distress that disclosure may cause;
 - whether the information is already in the public domain;
 - whether the information is already known to some individuals;
 - whether the individual expressed concern to the disclosure; and
 - the reasonable expectations of the individual.
49. In the Commissioner's view, a key issue is whether the individuals concerned have a reasonable expectation that their information will not be disclosed. These expectations can be shaped by factors such as an individual's general expectation of privacy, whether the information relates to an employee in their professional role or to them as individuals and the purpose for which they provided their personal data.
50. The Commissioner is mindful that disclosure under the FOIA is disclosure to the world at large and not just to the requestor. It is the equivalent of the Council publishing the information on its website.
51. The Council has explained that the information, whilst not special category data, is information that is particular to the individual staff members and that, in its view, there is a reasonable expectation that this information would remain out of the public domain.
52. It is likely that when these officers were appointed to the roles they hold, they will have gone through a recruitment process and checks will have been made to ensure the Council was satisfied the officers have the appropriate qualifications, in line with the job specifications provided.

53. The Commissioner also notes that the Council has provided some of the requested information in an aggregated format and has confirmed that *"the posts were recruited to in a competitive market and every individual had to satisfy the qualification and experience criteria in order to be successfully recruited to the post."*
54. The Council explained that the relevant individuals have been asked whether they are willing to consent to the disclosure of their personal data but advised that they did not consider it necessary when the job profiles have been released.
55. It explained that if the details of individuals' qualifications are put into the public domain, this increases the likelihood of someone being able to use the details to build up a picture of an individual or increases the likelihood of identity fraud.
56. The Commissioner has viewed the withheld information and is satisfied that it contains personal information about the members of staff based within the specific team at the Council.
57. The complainant has argued that there is a legitimate public interest in understanding the qualifications and experience that are present within the Statutory Consultee LLFA function at the Council, that are applied to make the decisions and recommendations that they do to local councils.
58. The Commissioner considers that disclosure of the withheld information would be distressing to those involved, as they had no expectation that their personal information could be made public. Disclosure under the FOIA would confirm to the world at large information of a personal or private nature and the Commissioner considers this would be an unwarranted intrusion into the lives of the data subjects.
59. The Commissioner has investigated cases with similar circumstances where requestors were asking for records of employees qualifications,

such as FS50819174⁵, FS50849126⁶, FS50668506⁷ and FS50849126⁸. The Commissioner has taken a consistent line relating to these issues as within these cases; there is a clear precedent that, despite there being some legitimate interest in releasing the qualifications of public authority employees, there are less intrusive means of satisfying the broader interests.

60. The Commissioner accepts that there is some interest to the public in the withheld information. However, she does not consider that this outweighs the rights and freedoms of the third parties identified in the information requested.
61. Based on the above factors, the Commissioner has determined that there is insufficient legitimate interest to outweigh the data subjects' fundamental rights and freedoms. The Commissioner therefore considers that there is no Article 6 basis for processing and so the disclosure of the information would not be lawful.
62. Given the above conclusion that disclosure would be unlawful, the Commissioner considers that she does not need to go on to separately consider whether disclosure would be fair or transparent.
63. The Commissioner has therefore decided that the Council was entitled to withhold the information under section 40(2) of the FOIA.

⁵ <https://ico.org.uk/media/action-weve-taken/decisionnotices/2019/2616304/fs50819174.pdf>

⁶ <https://ico.org.uk/media/action-weve-taken/decision-notices/2019/2615914/fs508491261.pdf>

⁷ <https://ico.org.uk/media/action-weve-taken/decisionnotices/2017/2014311/fs50668506.pdf>

⁸ <https://ico.org.uk/media/action-weve-taken/decision-notices/2019/2615914/fs50849126-1.pdf>

Right of appeal

64. 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@justice.gov.uk

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

65. 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.
66. 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
Head of FOI Casework and Appeals
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF