

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 April 2023

Public Authority: South West Middlesex Crematorium Board
Address: South West Middlesex Crematorium
Hounslow Road
Hanworth
Feltham
Middlesex
TW13 5JH

Decision (including any steps ordered)

1. The complainant has requested information held by South West Middlesex Crematorium Board (the Board).
2. The Commissioner's decision is that the Board is entitled to rely on section 41(1) - information provided in confidence, of FOIA, as its basis for refusing the complainant's request.
3. However, as the Board failed to issue a valid refusal notice to the complainant within 20 working days, the Commissioner has found a breach of section 17 of FOIA.
4. The Commissioner does not require the Board to take any steps as a result of this decision notice.

Request and response

5. On 23 January 2022, the complainant wrote to the Board about the cremation of a deceased relative. They asked that the "cremation forms" that had been submitted by a third party be shared with them.
6. The complainant subsequently made a number of more formal requests for Cremation Form 1 (Form 1). This included the following request, which was submitted on 7 March 2022:

"I.....would like to once again ask for a copy of Cremation form 1".
7. On 1 September 2022, the Board advised the complainant that the requested information was provided in confidence and is the personal data of the person who supplied it. It went on to say that this information would only be disclosed to that person, or to law enforcement authorities.

Scope of the case

8. The complainant has argued that there is statute which allows for the release of the withheld information, and that the Board has failed to take this into account when refusing their request.
9. The complainant has also referred to an information request made by another individual in relation to the same cremation. In that case, the Board released some information contained within the Cremation Register; this included details of both the third party who completed Form 1, and the deceased relative. The complainant has argued that the Board should take a similar approach to their request, and release all the information contained within Form 1.
10. During the Commissioner's investigation, the Board reviewed its handling of the request, and confirmed that it now wished to rely on section 41 (information provided in confidence), section 44 (prohibitions on disclosure), section 40 (personal information), and section 21 (information reasonably accessible), of FOIA, as its basis for refusing to provide the withheld information.
11. The Commissioner will consider each of the exceptions set out above in turn when deciding whether the Board is entitled to refuse the complainant's request.

Reasons for decision

Section 41(1) – Information provided in confidence

12. Under section 41(1) of FOIA, a public authority is entitled to withhold information if:
- (a) the information was obtained from another person, and;
 - (b) disclosure would constitute a breach of confidence.

Was the information obtained from another person?

13. The information which has been requested consists of an application form (Form 1) which was submitted to the Board by a third party. The Commissioner is therefore satisfied that it is information obtained from another person.

Would disclosure constitute a breach of confidence?

14. When determining whether disclosure constitutes an actionable breach of confidence, the Commissioner will consider the following tests:
- Does the information have the necessary quality of confidence?
 - Was the withheld information imparted in circumstances importing an obligation of confidence?
 - Would unauthorised disclosure cause detriment to the party providing the information or to another party?
 - Is there a public interest defence?

Does the information have the necessary quality of confidence?

15. Information will have the necessary quality of confidence, if it is not otherwise accessible, and if it is more than trivial.
16. Form 1 requires the applicant to provide information about themselves and the deceased person; they are also required to provide some instructions regarding the proposed cremation. The applicant is also required to sign a declaration which confirms that they believe that the information that they have provided is accurate, and that they are aware that it is an offence to wilfully make any false statements.
17. The Commissioner accepts that the information that has been requested is therefore not trivial, and is of importance to the applicant.

18. With regard to the question as to whether the information is otherwise accessible, as referenced in paragraph 9 of this decision notice, the Commissioner has been made aware that a small part of the information contained within Form 1 (which was included within the Cremation Register) has been released in response to another request.
19. However, the Commissioner is satisfied that, in this case, the release of all of the information as it is set out within Form 1 in response to the complainant's request would reveal something new, and would provide previously unknown context to the information.
20. The Commissioner is therefore satisfied that despite the release of certain information contained within the Cremation Register in response to a previous request, all of the withheld information retains the necessary quality of confidence.

Was the withheld information imparted in circumstances importing an obligation of confidence?

21. The complainant has referred to section 35(2)(b) and 35(3) of [The Cremation \(England and Wales\) Regulations 2008](#) (the Cremation Regulations 2008):
 - 35 (2) The register and documents—
 - (b) may, with the permission of the cremation authority, be open to inspection by any other person.
 - (3) The cremation authority may issue to any person a copy of, or an extract from, the register or a document.
22. The complainant has indicated that they believe that there is no obligation of confidence to the third party who completed Form 1 as section 35 of the Cremation Regulations 2008 provides a right of access to the information that they have requested.
23. The Board has explained that it is signed up to, and has a commitment to follow, the standards set out within the Institute of Cemetery and Crematorium Management's "[Charter for the Bereaved](#)" (the Charter).
24. Whilst the Charter confirms that the law provides access to the burial register and records to any party, free of charge, with regard to the cremation register and records, the Board points out that the Charter states that:

The public in general do not have a legal right to inspect cremation forms and certificates however, the applicant for a cremation does.

25. The Board has argued that the guidance set out within the Charter indicates how the Board will exercise its discretion when allowing access to information as set out within section 35 of the Cremation Regulations 2008.
26. The Board has said that the details contained within Form 1 relate to the private and family life of the applicant, and that they would not have any reasonable expectation that this information will be released to any other person.
27. The Commissioner accepts that the Cremation Regulations 2008 do not prohibit the Board from releasing information held about a cremation. However, in his view, it is apparent that any access to records provided by this statute is intended to be limited to certain exceptional circumstances and does not, in itself, provide for full disclosure to the world at large in response to a request that is made under FOIA.
28. Having considered all of the information available, the Commissioner is satisfied that the withheld information was provided in circumstances where there was a reasonable expectation from the third party that it would be treated in confidence.

Detriment of the confider

29. The Board has argued that disclosure of Form 1 and its content would breach the applicant's private and family life rights under human rights legislation, and would cause harm to the applicant. Furthermore, the Board has said that disclosure of the content of Form 1 would be an actionable breach of the Board's duty of confidentiality to the applicant.
30. In terms of disclosure causing detriment to the confider, the Commissioner is satisfied that where the information relates to a personal or private matter, it should be protected by the law of confidence, even if disclosure would not result in any tangible loss to the confider. He considers a loss of privacy is itself detrimental and is satisfied that this is sufficient for this to meet the test of detriment caused to the confider in this case.

Is there a public interest defence?

31. Although section 41 is an absolute exemption (and there is no requirement to consider the public interest test), it is accepted that if there is an overriding public interest in disclosure it can be a defence to an action of breach of confidentiality.
32. The duty of confidence public interest defence assumes that the information should be withheld, unless the public interest in disclosure exceeds the public interest in maintaining the confidence.

33. The Commissioner takes the view that a duty of confidence should not be overridden lightly, particularly in the context of a duty owed to the confider. In this instance this is relevant to the information which was obtained from an individual who was obliged to submit information in support of an application for a cremation.
34. Disclosure of any confidential information undermines the principle of confidentiality, which itself depends on a relationship of trust between the confider and the confidant. The request relates to a very sensitive matter, and it would be distressing for many individuals if they did not have a degree of certainty that in such circumstances, confidences would be respected. It is therefore in the public interest that confidences are maintained.
35. In addition to the wider public interest in preserving confidentiality, there is also a public interest in protecting the confider from detriment. The Commissioner has already established that it would be a sufficient detriment to the confider to infringe their privacy.
36. However, there is a competing human right in Article 10 which the Commissioner must also take into account; this provides for a right to freedom of expression, which includes the freedom to receive and impart information.
37. In considering the specific circumstances of this case, the complainant has indicated that there are some concerns about the process which has been followed, and they would like a greater understanding of the events which took place prior to the cremation of their relative in order to establish whether proper processes were followed.
38. Whilst the Commissioner has noted the complainant's purpose in seeking the information, it is reasonable for him to interpret this as representing a private interest.
39. Although the complainant may seek the information for a legitimate reason, the Commissioner must consider that there are proper routes for this private interest to be addressed without recourse to the FOIA. He regards it to be particularly pertinent in his consideration of this matter that disclosure under the FOIA would not be to the requester alone, but to the public at large.
40. Having considered the circumstances of this case, the Commissioner does not consider that there would be a public interest defence in disclosing the information. On this basis, the Commissioner finds that section 41(1) of FOIA has been correctly engaged.
41. Given that the Commissioner has found that the Board is entitled to rely on section 41(1) as its basis for refusing to provide all of the withheld

information, he has not found it necessary to consider whether any of the other exemptions that have been cited by the Board are engaged.

Procedural matters

42. Section 17(1) specifies that a refusal notice must be provided no later than 20 working days after the date on which the request was received.
43. In this case, the Board took a considerable amount of time to respond to the complainant's request; they had to submit several requests before they received a response. Furthermore, when the Board did finally issue a refusal notice, it failed to cite an exemption under FOIA.
44. Given the above, the Commissioner has found a breach of section 17(1) of the FOIA.

Other matters

45. The Commissioner faced significant difficulty in investigating this matter due to unacceptable delays from the Board. Whilst it initially provided the Commissioner with brief details of its position, it then failed to respond to his subsequent requests for additional information. This was despite the Commissioner making it clear that this information was required in order to make a decision.
46. Whilst the Board has now provided sufficient information for the Commissioner to make a decision, a record has been made of the poor engagement that the Commissioner initially received during this investigation. This matter may be revisited should similar poor engagement be experienced by the Commissioner in any future cases relating to the Board.

Right of appeal

47. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

48. 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.
49. 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

Suzanne McKay
Senior Case Officer
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Wycliffe House
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