

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 30 August 2023

**Public Authority:** Cambridgeshire County Council

**Address:** Scott House  
5 George Street  
Huntington  
PE29 3AD

#### **Decision (including any steps ordered)**

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1. The complainant requested various information in respect of a Suicide Cluster Response Group concerning the deaths of Cambridge University Students in 2022. Cambridgeshire County Council (the 'council') refused the request citing section 40(2) (personal information) and section 41 (information provided in confidence) of the Freedom of Information Act (FOIA). The Commissioner's decision is that the council was entitled to rely on both exemptions cited. The Commissioner does not require any steps.

#### **Request and response**

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2. On 18 November 2022, the complainant wrote to the council and requested the following information:

"Please provide the minutes of the Suicide Cluster Response Group which took place concerning the deaths of Cambridge University students in 2022.

Please provide a copy of all reviews which were conducted by or on behalf of the Suicide Cluster Response Group concerning the deaths of Cambridge University students in 2022."

3. The council responded on 16 December 2022. It provide a redacted document and informed the complainant that some of the information was exempt under section 40(2) FOIA. It also considered that other information was exempt under section 41 FOIA.
4. Following an internal review the council wrote to the complainant on 9 March 2023 confirming that it was upholding its original decision.

### **Scope of the case**

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5. The complainant contacted the Commissioner on 14 April 2023 to complain about the way their request for information had been handled.
6. The scope of the following analysis is whether the council is entitled to rely on the exemptions cited as its basis for refusing to disclose the requested information.

### **Reasons for decision**

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#### **Section 40 – personal data**

7. Section 40(2) provides an exemption for information that is the personal data of an individual other than the requester and where the disclosure of that personal data would be in breach of any of the data protection principles.
8. Section 3(2) of the Data Protection Act 2018 defines personal data as:  
“any information relating to an identified or identifiable living individual.”
9. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
10. 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.
11. 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.
12. The withheld information in this case is the names, job titles and email addresses of a number of staff employed directly by the Council and

those of a number of staff employed by third party organisations external to the Council.

13. The Commissioner is satisfied that this information both relates to and identifies the individuals in question. It therefore falls within the definition of "personal data" in section 3(2) of the DPA. None of the individuals are the complainant, so it is third party personal data.
14. The fact that information constitutes third party personal data does not automatically exclude it from disclosure under FOIA. The next step is to consider whether disclosure of this personal data would be in breach of any of the data protection principles. The Commissioner has focussed here on principle (a), which states:

"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject."
15. 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.
16. When considering whether the disclosure of personal information would be lawful, the Commissioner must consider whether there is a legitimate interest in disclosing the information, whether disclosure of the information is necessary, and whether these interests override the rights and freedoms of the individuals whose personal information it is.
17. The council has confirmed that the roles of all of its own employees relevant to this request are below the level of Head of Service, they are not published on its senior manager structure charts, and do not hold budget responsibility. Further, the council does not routinely publish this information and it does not have the consent of those individuals to disclose their personal information. It therefore argued that it does not consider that processing this personal information would be lawful, fair, or transparent, as this would contravene the first data protection principle.
18. In terms of the individuals external to the council, it has confirmed that it does not hold information relating to those individuals in respect of their level of seniority, or whether their job roles include decision making responsibility concerning public money and policy making. It further stated that as the data subjects' are not employees of the council, it does not consider that disclosing their personal information is necessary to understand the council's responsibilities or actions.
19. The council accepts that the complainant has a legitimate interest in the subject matter the request relates to. However, it has argued that this legitimate interest does not extend to all personal information, and the council considers that the legitimate interest is met by the release of the

information it has disclosed, without disclosing the personal details of the individual staff involved.

20. The council has further stated that it does not consider that disclosure of this personal information is necessary to meet the legitimate interests in question and has argued that these interests do not override the fundamental rights and freedoms of the data subjects.
21. The Commissioner has considered the information withheld under this exemption. Whilst he also considers that the complainant is pursuing a legitimate interest in the subject matter of the request, he accepts the council's arguments that disclosure is not necessary to meet that interest. The complainant has already received some information in respect of the subject matter, and those individuals employed by the council are not responsible for public money or on its senior management structure chart. The Commissioner also considers that disclosure of the external data subjects' personal information would not add to either a better understanding of the subject matter, or the council's responsibilities or decisions.
22. As the Commissioner has decided in this case that disclosure is not necessary to meet the legitimate interest in disclosure, he has not gone on to consider the balance between those interests and the rights and freedoms of the individuals concerned. As disclosure is not necessary, there is no lawful basis for this processing and it is unlawful. It therefore does not meet the requirements of principle (a).
23. The Commissioner has therefore decided that the council was entitled to withhold the information under section 40(2), by way of section 40(3A)(a).

#### **Section 41: information provided in confidence**

24. Section 41(1) of FOIA provides an exemption from disclosure for information if:
  - (a) "it was obtained by the public authority from any other person (including another public authority), and
  - (b) the disclosure of the information to the public ... would constitute an actionable breach of confidence."
25. The council relied on section 41 of FOIA in respect of case studies of the deceased individuals. It has confirmed that the withheld information was not generated by the council itself, but obtained /shared by other authorities and partner organisations, or originated from the deceased.
26. The Commissioner accepts this information was obtained by the council from another person, therefore the test at section 41(1)(a) is met.

27. For section 41(1)(b) to be met disclosure of the withheld information must constitute an actionable breach of confidence. In the Commissioner's view a breach will generally be actionable if:
1. The information has the necessary quality of confidence.
  2. The information was communicated in circumstances importing an obligation of confidence.
  3. Unauthorised disclosure would cause detriment to either the party which provided it or any other party.
28. The Commissioner has inspected the information in question. He notes that it relates to a sensitive matter and is not trivial. Additionally, the council has confirmed that the information has only been disseminated to a limited number of recipients and is not otherwise accessible. He is also satisfied that the information was provided in confidence to the council as outlined in paragraph 25 of this notice. He is therefore satisfied that the information has the necessary quality of confidence.
29. The council has also confirmed to the Commissioner that the information was imparted in circumstances importing an obligation of confidence. It added that an explicit condition was set in a meeting that:
- "colleagues reaffirmed they will not take any data shared today beyond the meeting."
30. It further informed the Commissioner that the same consideration has been given to redactions applied to information received from a bereaved family, or which originated from the deceased, in circumstances which typically gives rise to an implicit obligation of confidence such as between a patient and doctor or a client and counsellor.
31. The Commissioner's guidance in respect of section 41<sup>1</sup> confirms that:
- "the duty of confidence owed to a living individual will continue after their death".
- Information such as medical records therefore, will still have the necessary quality of confidence even if the subject is deceased.

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<sup>1</sup> <https://ico.org.uk/media/for-organisations/documents/1432163/information-provided-in-confidence-section-41.pdf>

32. The council stated that public disclosure of the information without the knowledge or consent of the relevant parties would be an unauthorised use of the information resulting in an invasion of privacy which constitutes a detriment to the confiders.
33. The Commissioner notes that detriment is not always a prerequisite, but accepts that disclosure of the withheld information in this case is likely to cause the bereaved families considerable distress. Therefore the three tests are met.
34. The exemption at section 41 is not subject to the public interest test at section 2(2) of FOIA. However, the Commissioner is mindful that an action for breach of confidence will fail if there is a public interest defence to disclosure. Therefore the Commissioner has considered whether there is an overriding public interest in disclosure which is sufficient to set aside the public interest in maintaining the duty of confidence.
35. The council referred to the Commissioner's own guidance in respect of section 41 (see paragraph 31) which clarifies that where a legally enforceable duty of confidence is owed to a living individual, it can be enforced after death by the deceased person's personal representative. The Commissioner's guidance further explains that there is no need to be certain that a personal representative exists who would be able to take action. The important thing is to establish in principle that a personal representative might exist who can take such action.
36. The council considers that disclosure of sensitive or private information about the deceased individuals would be a breach of confidence that could in principle be actionable by any other person such as bereaved relatives and/or personal representatives of the deceased.
37. The council has argued that it could not rely on a public interest defence for breach of confidence. It stated that due to the clear sensitive and private nature of the information, the general interest in transparency is insufficient to override the public interest in maintaining privacy. Additionally, the council has confirmed that there are no exceptional grounds for disclosure such as allegations of misconduct, illegality or gross immorality or risk to public safety.
38. Conversely, the council has argued that there is a strong public interest in protecting the right of privacy and family life as set out in Article 8 of the Human Rights Act in protecting the principle of confidentiality, particularly in a medical context, and in not discouraging parties from confiding in public authorities.

39. The council pointed out the strong presumption in favour of maintaining a duty of confidence, and maintained that there was no overriding public interest in disclosure that would be sufficiently strong to overturn this.
40. The Commissioner recognises that some weight should always be afforded to the general public interest in ensuring that public authorities remain transparent, accountable and open to scrutiny. However, the Commissioner is mindful that the public interest in maintaining a duty of confidence is inherently weighty. The courts are reluctant to overturn a duty of confidence, save in exceptional circumstances and in the context of an overriding public interest in disclosure.
41. However, in this case the Commissioner is mindful that the subject matter of the information is of a highly sensitive nature, and considers the disclosure of this information is likely to cause considerable distress to either the confiders or their relatives. Further, he is not aware that there any exceptional circumstances in this case which could give rise to an overriding public interest in disclosure.
42. Having examined the withheld information in this case, the Commissioner considers that public interest in disclosure falls short of allowing the council to defend a claim of breach of confidence. Therefore he finds that the council was entitled to rely on the exemption at section 41 of FOIA in respect of this information.

## **Right of appeal**

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43. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

44. 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.
45. 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 .....**

**Catherine Dickenson  
Senior Case Officer  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
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SK9 5AF**