

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 October 2023

Public Authority: Hampshire County Council
Address: The Castle
Winchester
Hampshire
SO23 8UJ

Decision (including any steps ordered)

1. The complainant requested information from Hampshire County Council ("the Council") relating to school transport collection and drop off for the village of Meonstoke. The Council withheld some of the requested information, citing section 40(2) of FOIA (personal information) as its basis for doing so.
2. The Commissioner's decision is that the Council is entitled to rely on section 40(2) of FOIA to withhold the information it has withheld on this basis. However, he also finds that some information redacted by the council as it does not fall within the scope of the request does, in fact, fall within scope of the request, and that this information should be disclosed.
3. The Commissioner requires the Council to take the following step to ensure compliance with the legislation.
 - Disclose the information redacted from the final sentence of the email sent at 08:19 on 4 November 2022.
4. The Council must take this step within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of FOIA and may be dealt with as a contempt of court.

Request and response

5. On 18 October 2022, the complainant wrote to the Council and requested information in the following terms:

“Re: School transport collection and drop off for Meonstoke (taking children to and from Droxford Junior School).

On Friday 14th October 2022 some parents were informed that the collection and drop off location would be changing.

Please provide me with:

 - 1) Copies of communications between HCC staff and/or external contractors regarding this change (from January 1st 2022 to present).
 - 2) A copy of the risk assessment I am told was carried out regarding this move.
 - 3) Details of the decision-making process regarding this move.
 - 4) Details of HCC policy, if there is one, regarding changing locations of school bus collection and drop off points in terms of parental and school consultees.
 - 5) How many parents were informed of the change in location on Friday October 22nd.
 - 6) How many children use this drop-off and collection point.”
6. The Council disclosed information falling within the scope of the request, but it redacted some sections, citing section 40 of FOIA as its basis for withholding this information.
7. At internal review the Council disclosed further information, including some of the information that had previously been redacted. However, it continued to withhold other information under section 40 of FOIA.

Scope of the case

8. When the Council wrote to the complainant regarding the outcome of the internal review it cited section 40(1) of FOIA as the basis for withholding this information. However, it described the withheld information as relating to staff members, rather than the personal data of the requestor. The Council has confirmed to the Commissioner that

section 40(1) was cited in error and its basis for withholding the information is section 40(2).

9. During the course of the Commissioner's investigation the Council disclosed further information to the complainant that it had previously withheld.
10. This notice considers whether the Council is entitled to rely on section 40(2) of FOIA to withhold the information it has continued to redact from the emails it has disclosed. The Commissioner has also considered whether the Council is correct in stating that further information it has redacted does not fall within the scope of the request.

Reasons for decision

Section 40(2) – Personal information

11. This reasoning covers whether the Council is entitled to rely on section 40(2) (personal information) of FOIA to refuse to provide the majority of the information it has redacted from the emails it has disclosed.
12. 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.
13. Section 3(2) of the Data Protection Act 2018 defines personal data as:
"any information relating to an identified or identifiable living individual."
14. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
15. In this case, the withheld information comprises the names and contact details of members of staff within the Council's school transport team and employees working for the bus company that provides school transport services. Therefore, the Commissioner is satisfied that the withheld information is personal data as the information relates to and identifies the staff members.
16. 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."

17. 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.
18. 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.
19. The Commissioner considers that the complainant is pursuing a legitimate interest and that disclosure of the requested information is necessary to meet that legitimate interest.
20. However, the Council has argued that the disclosure of names of members of staff and their contact details would infringe on their interests, fundamental rights and freedoms. The Council added that it considers staff names and contact details to only be disclosable for the top three levels of each directorate's organisation charts. This is because that information could reasonably be expected to be found in the public domain. The Council therefore argues that the members of staff would not reasonably expect for their name and contact details to be released to members of the public and this would therefore override the legitimate interests in disclosure.
21. The Commissioner accepts that junior staff members would not reasonably expect for their name and contact details to be disclosed to the world at large under FOIA. In order for the Council to be accountable and transparent about its decisions, actions and spending of public money, there is a reasonable expectation that details about the actions and decisions of senior council staff may need to be disclosed. However, in the case of more junior staff, these are primarily accountable for their actions to the council itself rather than to the public as a whole.
22. Additionally, a disclosure of the names and contact details of council staff can lead to unwanted and unwarranted contact from third parties, greater receipt of phishing attempts and greater risk of malicious contacts etc. A disclosure of the names and contact details would therefore be unexpected and likely to cause a degree of distress.
23. In this case the Commissioner notes that the withheld information relates to more junior staff, and the circumstances of the case do not provide sufficient reasons to outweigh the rights of these staff.
24. The Commissioner has therefore determined that there is insufficient legitimate interest to outweigh the fundamental rights and freedoms of the staff members. Therefore, he considers that there is no legal basis for the Council to disclose the withheld information and to do so would be in breach of principle (a).

25. The Commissioner's decision is therefore that the Council was entitled to rely on section 40(2) of FOIA to refuse to provide the information.

Section 1(1) – duty to provide information held

26. Section 1(1) of FOIA states that:

“Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.”

27. The Council stated in its submissions to the Commissioner, that some information fell outside the scope of the complainant's request for information. It has redacted this from the information disclosed on this basis.

28. Having examined the redacted information, the Commissioner observed that there were two parts of the emails which did not match the description of the information withheld under section 40(2) (names and contact details of members of staff within the Council's school transport team and employees working for the bus company that provides school transport services) and were therefore redacted as the information was not within the scope of the request:

- The first sentence of an email sent at 09:54 on 22 April 2022,
- Part of the final sentence of an email sent at 08:19 on 4 November 2022.

29. The Commissioner wrote to the Council, quoting the relevant sections and asked the Council to confirm whether it considered that these two sections fall within the scope of the request, and to explain why they do not if that was their decision.

30. The Council confirmed that this was the basis for redacting these two sections. It argued that this information related to other bus routes.

31. Regarding the information within the first sentence of the email sent at 09:54 on 22 April 2022, the Commissioner accepts that this information is not in scope as it does not relate to collection and/or drop off for Meonstoke.

32. However, the Commissioner does not accept that the information redacted from the final sentence of the email sent at 08:19 on 4 November 2022 does not fall within the scope of the request. This

information relates to the bus stop at the bottom of Bucks Head Hill, which serves Meonstoke.

33. In the absence of any compelling argument from the Council to the contrary, the Commissioner's decision is that this information falls within the scope of part 1 of the request, and that it should therefore be disclosed.

Right of appeal

34. 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

35. 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.
36. 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

**Victoria James
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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