

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 October 2023

Public Authority: Mid and East Antrim Borough Council
Address: 1 – 29 Bridge Street
Ballymena
BT43 5EJ

Decision (including any steps ordered)

1. The complainant requested from Mid and East Antrim Borough Council (the Council) information regarding the score sheets – job evaluation of Duty Manager (Amphitheatre Leisure). The Council refused the request and cited sections 36(2)(b)(i), 36(2)(b)(ii) and 36(2)(c) (prejudice to the effective conduct of public affairs) of FOIA.
2. The Commissioner's decision is that the Council did not deal with the request under the correct access regime. The information requested is the complainant's personal data and is therefore exempt under FOIA by virtue of section 40(1) (personal information).
3. The Commissioner does not require the Council to take any steps as a result of this decision.

Request and response

4. On 30 May 2023 the complainant wrote to the Council and requested information in the following terms:

"Under the Freedom of Information I am requesting a copy of the score sheets for my recent job evaluation of Duty Manager (company name redacted)."

5. On 5 June 2023 the Council responded, it withheld the information and cited sections 36(2)(b)(i) and (ii) and section 36(2)(c) (prejudice to the effective conduct of public affairs) of FOIA.
6. On 11 June 2023 the complainant asked for an internal review. The Council provided its review response on 22 June 2023. It maintained its original position to withhold the requested information under the exemptions cited.

Reasons for decision

7. The Commissioner has viewed the withheld information and the Council's submissions. He is satisfied the information is exempt from disclosure under FOIA by virtue of section 40(1) (personal information). As the regulator of the Data Protection Act 2018 (DPA), the Commissioner's decision is that it is appropriate to proactively apply this exemption in cases where it clearly applies, but the public authority has failed to cite it.

Section 40 – personal information

8. Section 40(1) of FOIA provides that any information to which a request for information relates is exempt information if it constitutes personal data of which the requester is the data subject.
9. Section 3(2) of the DPA defines personal data as:

“any information relating to an identified or identifiable living individual.”
10. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
11. The withheld information in this instance, is the job evaluation which includes the score sheet produced by job evaluators when evaluating the complainant's role (Duty Manager). This information relates to and would identify the complainant, therefore, the Commissioner deems the withheld information to be the complainant's personal data.
12. The Commissioner's decision is that the withheld information appropriately engages section 40(1) of FOIA, and the Council was correct not to disclose it under FOIA. This is because the appropriate information access regime to consider an applicant's own personal data, is the Data Protection Act 2018.
13. In this case, there is no requirement to consider section 36 of FOIA, as the Commissioner is satisfied that the withheld information is exempt under section 40(1) of FOIA.

14. Section 40(1) is an absolute exemption and there is no requirement for the Commissioner to consider the public interest. He is also not required to consider whether or not the complainant would be content to have their personal data published to the world at large. If the exemption applies, the information is not available via FOIA.
15. The Commissioner's conclusion is that the information is the complainant's own personal data and is exempt from disclosure under section 40(1) of FOIA.

Other matters

16. It's an organisation's, not an individual's, responsibility to recognise the most appropriate access regime upon receiving a request. When an individual is requesting access to their own personal data, the appropriate regime is always a subject access request.
17. The Commissioner has not been provided with any evidence to state whether or not the withheld information has been deemed under the DPA as part of any subject access consideration, and the Council's decision communicated to the complainant. If it has not, the Commissioner recommends that the Council considers the potential access to this information under the DPA and provide a response to the complainant accordingly.

Right of appeal

18. 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

19. 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.
20. 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

Alice Gradwell
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF