

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 October 2014

Public Authority: Kettering Borough Council

Address: Municipal Offices
Bowling Green Road
Kettering
NN15 7QX

Decision (including any steps ordered)

1. The complainant has requested information from Kettering Borough Council ("the council") about the identities of two individuals; one a council warden and the other a member of the public. The council withheld the information under the exemption provided by section 40(2) of the Freedom of Information Act ("the FOIA").
2. The Commissioner's decision is that the council has correctly applied section 40(2).
3. The Commissioner does not require any steps to be taken.

Request and response

4. On 1 February 2014, the complainant wrote to the council and requested the following information in respect of an earlier incident:
"I would like to know the name of the woman who came to my house and also the name of the inconsiderate person who complained..."
5. The council responded on 6 February 2014 and refused the request under section 40(2).

6. The council subsequently provided an internal review on 14 May 2014 in which it maintained its position.

Scope of the case

7. The complainant contacted the Commissioner on 6 June 2014 to contest the council's response.
8. The Commissioner considers that the scope of this case is the determination of whether the council has correctly applied the exemption provided by section 40(2).

Reasons for decision

Section 40(2) – Third party personal data

9. Section 40(2) provides that:

"Any information to which a request for information relates is also exempt information if–

- (a) it constitutes personal data which do not fall within subsection (1), and*
- (b) either the first or the second condition below is satisfied."*

Section 40(3) provides that:

"The first condition is–

- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene–*
 - (i) any of the data protection principles..."*

Is the withheld information personal data?

10. Personal data is defined by section 1 of the Data Protection Act 1998 ("the DPA") as:

"...data which relate to a living individual who can be identified–

- (a) from those data, or*
- (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,*

and includes any expression of opinion about the individual and any indication of the data controller or any person in respect of the individual..."

11. In order for the exemption to apply the information being requested must constitute personal data as defined by section 1 of the DPA. In this instance the Commissioner is aware that the complainant has requested the names of two individuals; the first is a warden employed by the council, and the second is a member of the public who referred a matter of concern to the council. On this basis, the Commissioner is satisfied that the withheld information constitutes personal data.

Would disclosure breach the data protection principles?

12. The data protection principles are set out in schedule 1 of the DPA. The Commissioner considers that the first data protection principle is most relevant in this case. The first principle states that personal data should only be disclosed in fair and lawful circumstances, the conditions of which are set out in schedule 2 of the DPA.
13. The Commissioner's considerations below have focused on the issues of fairness in relation to the first principle. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the data subject and the potential consequences of the disclosure against the legitimate public interest in disclosing the information.

Reasonable expectations of the data subject

14. When considering whether the disclosure of personal data is fair, it is important to take account of whether the disclosure would be within the reasonable expectations of the data subject. However, their expectations do not necessarily determine the issue of whether the disclosure would be fair. Public authorities need to decide objectively what would be a reasonable expectation in the circumstances.
15. In this case the council has explained that the first individual is employed by the council as a warden, and that the complainant ultimately disputes the warden's actions whilst investigating a fly-tipping incident. The council has explained that the warden's actions are on behalf of the council, and that the disclosure of their name would be unfair in respect of their junior position. Furthermore, the warden has confirmed that they do not consent to their identity being publically disclosed in relation to the matter.
16. The council has advised the Commissioner that it has not considered the withholding of the second individual's identity to be a matter of

continued dispute, as the complainant did not refer explicitly to this aspect in his request for an internal review.

17. However, to avoid any uncertainty, the Commissioner considers that this second individual, who is a member of the public that referred a fly-tipping concern to the council, would not reasonably expect that their identity would be disclosed into the public domain in relation to a complaint or concern that they had raised.

The consequences of disclosure

18. The council considers that should it release the identity of the warden, it would allow this individual to be directly contacted by the complainant. The council has specifically referred the Commissioner to the tone and content of the complainant's correspondence, and is concerned that the disclosure of the warden's identity may lead to harassment.
19. The Commissioner further considers that the release of the member of the public's name would allow that individual to be directly contacted, and that this may result the individual being subject to harassment. Additionally, the Commissioner considers that the routine disclosure of individual's names in such circumstances would result in members of the public being unwilling to refer matters of concern to the council.

Balancing the rights and freedoms of the data subject with the legitimate interests in disclosure

20. The council has advised the Commissioner that the warden's line manager has reviewed the substantive matter, and has not identified that any maladministration or improper action on the part of the warden. The council considers that this addresses any public interest in the substantive matter, and that the disclosure of the warden's identity would not serve any public benefit.
21. The Commissioner further considers that the public interest in the matter has been addressed by the council's review of the matter by the line manager of the warden, and that no legitimate interest would be met through the disclosure of the member of the public's name.

Conclusion

22. There is always some legitimate public interest in the disclosure of any information held by public authorities. This is because disclosure of information helps to promote transparency and accountability amongst public authorities. This in turn may assist members of the public in understanding decisions taken by public authorities and perhaps even to participate more in decision-making processes.

23. However, in the circumstances of this request, the Commissioner has identified that the public interest in the matter has already been addressed through the council's review of its actions. The disclosure of either the warden's or the member of the public's name would not meet any outstanding public need, and would cause those individuals undue distress, and additionally place them at risk of harassment. It is clear to the Commissioner that the warden's actions are undertaken on behalf of the council, rather than as an individual, and that the public disclosure of the warden's name has no benefit in ensuring that the council is undertaking its duties correctly. Additionally, the disclosure of the member of the public's name would undermine the confidence that such individuals would expect in referring their concerns to the council, and the risk of harassment may inhibit such individuals from referring concerns to the council in the future.
24. The Commissioner has therefore concluded that disclosing the identity of either individual would not be fair under the first principle of the DPA, and that the exemption provided by section 40(2) is engaged.

Right of appeal

25. 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@hmcts.gsi.gov.uk

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

26. 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.
27. 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
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