

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 November 2014

Public Authority: Carmarthenshire County Council
Address: County Hall
Carmarthen
SA31 1JP

Decision (including any steps ordered)

1. The complainant requested information about a named individual's employment. Carmarthenshire County Council ('the Council') stated that the information requested was exempt under section 40(2) of the FOIA. During the course of the Commissioner's investigation, the Council confirmed that it did not hold some of the information requested and maintained that other information held was exempt under section 40(2) of the FOIA. The Commissioner's decision is that the Council correctly applied section 40(2) to the information it holds relevant to the request. The Commissioner does not require any steps to be taken.

Request and response

2. On 15 July 2014, the complainant wrote to the Council and requested information in the following terms:

"I would like to make a freedom of information request regarding [name redacted] (Cure the NHS) who states that she was a Social Worker with the Council when living in Dyved [sic]. I would like to know:

- 1) what year [name redacted] was registered as a social worker with you
- 2) her qualifications
- 3) what department did she work in
- 4) what was her grade
- 5) how long did she work with you, given start and end dates".

3. The Council responded on 14 August 2014 and stated that the information requested was exempt under section 40(2) of the FOIA.
4. On 14 August 2014 the complainant wrote to the Council and asked it to review its decision to withhold the information requested.
5. The Council provided the outcome of its internal review on 8 September 2014 and upheld its decision that the information requested was exempt under section 40(2) of the FOIA.

Scope of the case

6. The complainant contacted the Commissioner on 17 September 2014 to complain about the way her request for information had been handled.
7. During the course of the Commissioner's investigation, the Council confirmed that it did not hold any information relevant to parts 1 and 2 of the request as the information had been destroyed in accordance with its retention guidelines as the individual no longer worked for the Council.
8. The scope of the Commissioner's investigation into this complaint is therefore to determine whether the Council should disclose the information held relevant to parts 3, 4 and 5 of the request or whether it was correct in relying on section 40(2) of the FOIA.

Reasons for decision

Section 1 – information held

9. The Council confirmed that it only holds a limited amount of information relating to the individual's employment with the Council. As such, it does not hold information relevant to parts 1 and 2 of the request.
10. The Commissioner has first considered whether the Council holds any further information that would fall under the scope of the request.
11. During the course of his investigation the Council explained that the personnel file relating to the named individual had been destroyed in line with its normal retention guidelines. The limited information the Council holds relevant to the request has been obtained from electronic data it still holds.
12. In light of the fact that the individual's employment with the Council ended several years earlier, the Commissioner is satisfied with the

Council's explanation that it no longer holds detailed employment records for the individual as the personnel file has been destroyed. The Commissioner is therefore satisfied that the Council does not hold any information relevant to parts 1 and 2 of the request.

Section 40 – the exemption for personal data

13. Section 40(2) of the FOIA states that information is exempt from disclosure if it constitutes the personal data of a third party and its disclosure under the FOIA would breach any of the data protection principles or section 10 of the Data Protection Act 1998 ('the DPA').
14. The Council considers that the information requested constitutes the personal data of the individual concerned and that disclosure would breach the first data protection principle.

Is the requested information personal data?

15. In order to rely on the exemption provided by section 40, the information being requested must constitute personal data as defined by section 1 of the DPA. It defines personal information as data which relates to a living individual who can be identified:
 - from that data,
 - or from that data and other information which is in the possession of, or is likely to come into the possession of, the data controller.
16. In considering whether the information requested is "personal data", the Commissioner has taken into account his own guidance on the issue¹. The two main elements of personal data are that the information must "relate to" a living person, and that person must be identifiable. Information will "relate to" a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them, has them as its main focus or impacts them in any way.
17. The withheld information in this case comprises the start and end dates that the individual worked for the Council, the department she worked in and her salary grade. The withheld information clearly comprises data which relates to the individual concerned as it represents biographical information about her. The Commissioner therefore accepts that the

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http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Data_Protection/Detailed_specialist_guides/PERSONAL_DATA_FLOWCHART_V1_WITH_PREFACE001.ashx

information in the context of this request is personal data as defined by the DPA.

Would disclosure breach one of the data protection principles?

18. Having accepted that the information requested constitutes the personal data of a living individual other than the applicant, the Commissioner must next consider whether disclosure would breach one of the data protection principles. He considers the first data protection principle to be most relevant in this case. The first data protection principle has two components:

- personal data shall be processed fairly and lawfully; and
- personal data shall not be processed unless at least one of the conditions in DPA schedule 2 is met.

Would disclosure be fair?

19. In considering whether disclosure of the information requested would comply with the first data protection principle, the Commissioner has first considered whether disclosure would be fair. In assessing fairness, the Commissioner has considered the reasonable expectations of the individual concerned, the nature of those expectations and the consequences of disclosure to the individual. He has then balanced against these the general principles of accountability, transparency as well as any legitimate interests which arise from the specific circumstances of the case.

20. The Council's position is that employees would have a reasonable expectation that the information concerned would not be disclosed, essentially into the public domain, in response to an FOIA request. The Council referred to its Privacy Notice, which has been in place for several years and is easily accessible on its website which states the following:

"Job applicants, current and former employees

When individuals apply to work for the Council, we will only use the information they supply to process their application and to monitor equal opportunities statistics.

Personal information about unsuccessful candidates will be held for six months after the recruitment process has been completed, it will then be destroyed securely by shredding and/or deleted.

Once a person has taken up employment with the Council we will compile a personnel file relating to their employment, The information

contained in this will be kept secure and will only be used for purposes directly relevant to that person's employment".

21. As the individual concerned no longer works for the Council, she has not been consulted about disclosure of the information requested, The Council confirmed that the post the individual occupied was a public facing role, which would include contact with members of the public. However, the individual did not represent her department or the Council to the public at large. Further, the individual did not occupy a post which is considered to be a senior position within the Council, nor was she responsible for major policy decisions or for expenditure of public funds.
22. The Council considers the limited information that it holds about the individual does not relate to her current employment (her work life) but to a previous post held several years ago. The Council is of the view that disclosure would represent an intrusion into the individual's right to privacy.
23. The Commissioner notes that the requested information relates to the individual's professional life. However, the Commissioner is mindful that not all information relating to an individual's professional or public role is automatically suitable for disclosure. He notes that whilst there may be little expectation of privacy with regard to information relating to an individual's work duties, there may still be an expectation that personnel (HR) details will not be disclosed.
24. The Commissioner notes that, in this case, the individual in question no longer works for the Council but during her employment she occupied a post which is not considered to be a senior position within the Council. The Commissioner has taken into account the fact that the individual occupied a position with a limited public facing role, she did not have responsibility for the major policy decisions or expenditure of public money. The Commissioner is satisfied that the individual would have had a reasonable expectation that her personal data would not be disclosed into the public domain.
25. Given the reasonable expectations of confidentiality described above, the Commissioner agrees that disclosure of the information requested into the public domain would give rise to an unfair and unwarranted intrusion on the individual's privacy in the circumstances of this case.
26. The Commissioner accepts that there is a legitimate public interest in disclosure of information which would promote accountability and transparency. However, in light of the reasonable expectations of the individual concerned, the Commissioner does not consider that any legitimate interests of the public in accessing the information are sufficient to outweigh her right to privacy.

27. In conclusion, the Commissioner finds that disclosure would be unfair and would therefore contravene the first data protection principle. As the Commissioner has decided that the disclosure would be unfair, and therefore in breach of the first principle of the DPA, he has not gone on to consider whether there is a Schedule 2 condition for processing the information in question. The Commissioner therefore upholds the Council's application of section 40(2) to the information.

Right of appeal

28. 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

29. 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.
30. 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

Anne Jones
Assistant Commissioner
Information Commissioner's Office
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