

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 November 2014

Public Authority: Sheffield City Council
Address: Town Hall
1 Pinstone Street
S1 2HH

Decision (including any steps ordered)

1. The complainant has requested correspondence between two officers of Sheffield City Council (the council) for specific dates. The council provided some of the information but withheld/ redacted other information relying on section 40(2) of the FOIA.
2. The council, during the Commissioner's investigations, provided further information that it had previously withheld/ redacted but maintained that the remaining is exempt under section 40(2) of the FOIA.
3. The Commissioner's decision is that the council has correctly relied on section 40(2) of the FOIA to withhold/ redact this remaining information and fulfilled its obligation under section 1.
4. However, the Commissioner has also found that the council has breached section 10(1) of the FOIA, as it did not provide all of the information which was not exempt within the required 20 working days following receipt of the request.
5. The Commissioner does not require the council to take any steps.

Request and response

6. On 4 November 2013, the complainant wrote to the council and requested information in the following terms:

"Could you please arrange for the provision of all correspondence, in any format, between [name redacted] and

[name redacted], for the period April 2012 to October 2013, where our [Group Name] or any of our community volunteers are mentioned, or through which may be identified."

7. The council responded on the 29 November 2013. It provided the majority of the information but redacted and withheld emails relying on section 40 of the FOIA to do so.
8. The complainant requested an internal review on the 4 December 2013. The council provided its internal review response on the 10 January 2014. It maintained its decision. In its internal review decision the council advised the complainant that it may be able to release the redacted and withheld information of the third parties if it received signed written consent from them.
9. The council also advised the complainant that it had not redacted the names of its members of staff or elected members.

Scope of the case

10. The complainant contacted the Commissioner on the 21 January 2014 as she was not satisfied with the redactions made by the council or its refusal to provide some of the information in its entirety. She has also advised the Commissioner that she considers further information is held.
11. As part of the Commissioner's investigations, he asked the council to provide him with copies of the information that it had withheld and redacted. He also asked the council to state whether it was relying on section 40(1) of the FOIA – the applicants own personal data - or 40(2) of the FOIA – third party personal data - or both.
12. The council has advised the Commissioner that it has provided the complainant with her own personal data, in accordance with the Data Protection Act 1998 (DPA). The information that it has redacted and withheld was done so under section 40(2) of the FOIA – third party personal data.
13. The council has also advised the Commissioner that it originally redacted the names of two people, but following confirmation that their names could be released, provided the correspondence again to the complainant without their names redacted.
14. The council confirmed this was done on the 7 February 2014.
15. With regards to the emails that were provided to the complainant but with redactions. The council provided the Commissioner with a copy of

these in redacted and unredacted form and labelled each of the email trails as Parts 1 – 20 for ease of reference.

16. During the Commissioner's initial investigations the council reviewed the redacted information to consider if all of the redactions were correct.
17. For Part 3 – email sent on 6 September 2013 at 15:34 – the paragraph was redacted but the council has reviewed it and resent it to the complainant with fewer redactions on 23 October 2014.
18. For Part 4 – email sent on 5 September 2013 at 15:17 – the council has, on review, provided the email again redacting only the name of the third party this time. It sent this to the complainant 23 October 2013.
19. For Part 19 – email sent on 30 May 2012 at 16:32 – the council has, on review, provided this email again to the complainant without the sentence being redacted. This was sent on 23 October 2013.
20. The council also considered 5 of the 8 emails that were withheld in their entirety could be released, subject to redactions being made under section 40(2) of the FOIA. These were also provided to the complainant on 23 October 2014.
21. The Commissioner considers the scope of the request is to decide whether the council was correct to withhold/ redact the remaining information it has under section 40(2) of the FOIA.
22. He will then go on to consider if the council holds any further information falling within the scope of the request.
23. The Commissioner will not be considering the redacted email dated 22 August 2013 10:19, as on viewing it, the content does not fall within the scope of the request, as it is about a completely separate issue.

Reasons for decision

Section 40(2) of the FOIA – Third party data

24. Section 40(2) of FOIA states that:

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

25. Section 40(2) of the FOIA provides that third party personal data is exempt if its disclosure would contravene any of the Data Protection Principles set out in Schedule 1 of the DPA.

Is the withheld information personal data?

26. Personal data is defined by the DPA as any information which relates to a living individual who can be identified from that data or from that data along with any other information in the possession or is likely to come into the possession of the data controller.
27. The Commissioner is satisfied that the withheld information falls within the definition of personal data as set out in the DPA because it 'relates to' identifiable living individuals.

Would disclosure contravene any of the Data Protection Principles?

28. The Data Protection Principles are set out in Schedule 1 of the DPA. The first principle and the most relevant in this case states that personal data should only be disclosed in fair and lawful circumstances. The Commissioner's considerations below have focused on the issue of fairness. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the individual and the potential consequences of disclosure against the legitimate public interest in disclosing information.

Reasonable expectations

29. The withheld and redacted information relates to third parties, who are not council employees.
30. The complainant has stated that she considers some of the information is about [Group Name redacted] members and so the information should be released. However, other than the two people the council has had confirmation from that their information can be released, it has not received this confirmation from any of the others.
31. The complainant is of the opinion that because these people are [Group Name redacted] members, then the information should be provided.
32. The Commissioner considers that in most circumstances it is reasonable for the council to require confirmation from each individual in question before releasing identifiable information about them.
33. Also the council state that there are other third parties whose information has been redacted/ withheld other than [Group Name redacted] members.

Consequences of disclosure

34. The council are of the opinion that the withheld/ redacted information would cause distress to the individuals as they would not have had an expectation that this information, which includes their names and contact details, would be provided to the wider public especially as they are not employees of the council.
35. The Commissioner is of the opinion that individuals would generally have a reasonable expectation that information which relates to them personally would not be disclosed to the wider public.

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

36. The council has provided some information in redacted form, redacting personal information of third parties and withholding some of the information in its entirety as it considers this information would identify those third parties. It considers releasing the redacted information it has, has gone some way to satisfy any possible public interest.
37. As these third parties are not council employees, then the Commissioner considers there is greater expectation on how the council processes their personal data and therefore a greater expectation that their information would not be provided to a third party from an information request.
38. On reviewing this case the Commissioner is satisfied that disclosure of the remaining information would be unfair and unnecessary in the circumstances and any public interest does not outweigh the individual's expectations on how their personal data would be processed in this case. Therefore the Commissioner is satisfied that the council has correctly relied on section 40(2) of the FOIA to withhold/ redact the information it has in this case.

Section 1 of the FOIA

39. Section 1 of the FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds the information within the scope of the request, and if so, to have that information communicated to him.
40. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions, applies the civil standard of the balance of probabilities. The Commissioner must decide whether, on the balance of probabilities, the public authority holds any information

which falls within the scope of the request (or was held at the time of the request).

41. The complainant has advised the Commissioner that she wants to know if there was any information held about a complaint regarding one of the officers mentioned in her request. The Commissioner asked the council whether any information was held about this.
42. The council has advised the Commissioner that it has recently issued a neither confirm nor deny response to a different complainant requesting all correspondence about this specific issue. This was brought to the Commissioner to consider and a decision notice FS50534094¹ was issued recently upholding the council's decision to neither confirm or deny whether or not any information is held as per section 40(5)(a) of the FOIA. As to do so would confirm or deny if a complaint was made about an individual, which would breach the DPA.
43. The council has told the Commissioner that it would still rely on section 40(5)(a) of the FOIA to neither confirm or deny if information is held for that specific information.
44. The Commissioner asked the complainant if she wanted to dispute the application of section 40(5)(a) of the FOIA for this part of the request, advising that the Commissioner would most likely still uphold the council's decision to neither confirm nor deny. The complainant has not disputed this, so the Commissioner has not gone on to consider it any further.
45. The Commissioner has also asked the council to explain how it has determined that no more information is held within the scope of the request.
46. The council has told the Commissioner that it has approached the members of staff mentioned in the request, and a search of their mailboxes was conducted to ensure the information held was located, searching the 'sent to and 'sent from' fields of each of the officers emails.

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http://ico.org.uk/~media/documents/decisionnotices/2014/fs_50534094.aspx

47. The council has advised the Commissioner that no paper correspondence is held as all correspondence would have been carried out by email.
48. It also stated that no information relevant to the request has been deleted or destroyed following the request and that correspondence between officers is the council's standard way of communicating.
49. On review of the above, if all the correspondence would be held on the two officer's emails and the council has checked their sent and received mail, finding no further information, the Commissioner has to accept that on the balance of probabilities, no further information is held by the council within the scope of the request.

Section 10(1) of the FOIA

50. Section 10(1) of the FOIA states:

"Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."

51. Therefore a public authority must provide the information it holds to the complainant within 20 working days following the receipt of the request, unless the information is exempt from disclosure.
52. The request was made on the 4 November 2013 and the council responded on the 29 November 2013, providing the information that it considered was not exempt from disclosure. This was provided to the complainant inside the required timeframe of section 10(1) of the FOIA.
53. However, the council provided further information to the complainant on the 23 October 2014, which it previously considered exempt. This further information was provided outside the required 20 working days from receipt of the request. Therefore the Commissioner finds that the council has breached section 10(1) for not providing this further information within the required timeframe.

Other matters

54. As part of the complainant's complaint to the Commissioner, she has raised an issue asking whether or not the council can refuse to respond to FOIA request made under the group name that she is part of.
55. The Commissioner on this issue can only consider a request on a case by case basis, and if there are any requests that have not been

responded to, then the complainant would need to bring that individual request to the Commissioner for consideration once they have exhausted the public authorities appeal process.

56. He would point out though that section 1(1) of the FOIA states:

"Any person making a request for information..."

57. The Commissioner would highlight the word '*person*'. So it is a requirement that you give your real name when making a request for information.

Right of appeal

58. 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

59. 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.
60. 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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