ico. Information Commissioner's Office

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: **12 November 2014**

Public Authority: **Salford City Council**

Address: **Salford Civic Centre**
Chorley Rd
Swinton
M27 5DA

Decision (including any steps ordered)

1. The complainant has requested information relating to a complaint made against a named Councillor. Salford City Council (the council) refused to confirm or deny whether it held the requested information, relying on FOIA section 40(5) – personal data.

2. The Commissioner's decision is that section 40(5) applies and therefore Salford City Council is not obliged to confirm or deny whether the information is held. He notes however that the response to the request was issued outside the statutory time limit of 20 working days and therefore the council has breached section 10 of the FOIA.

3. The Commissioner does not require the public authority to take any further action.

Request and response

4. On 12 February 2014, the complainant wrote to the council and requested information in the following terms:

   "*Information used by [named individual] in connection with our complaint against [named Councillor] in respect of his conduct during [specific complaint] (against Social Services, [two named individuals])*

   Additional information that might help us locate the relevant information more readily; (such as who might hold it or where?): Any and all

documents used by [named individual], in particular those he used to make his decision to dismiss, items of correspondence between the parties [named individuals].

5. The council responded on 10 April 2014. It refused to confirm or deny whether it held information falling within the scope of the request. It cited section 40(5)(a) and (b)(i) stating that the information requested, if held, would relate to the complainant and other third parties.

6. Following the complainant's request for an internal review on 22 April 2014, the council wrote to the complainant on 20 June 2014. It upheld its original position.

7. The Commissioner understands that outside of the FOIA, the council has provided the complainant with all of the information deemed to fall within the scope of the request save for a very limited amount of 3rd party personal data.

Scope of the case

8. The complainant contacted the Commissioner on 22 July 2014 to complain about the way his request for information had been handled. He wrote further on 18 August 2014. In particular he asserted his belief that that the council's reliance on FOIA section 40(5)(a) and (b) constituted an inappropriate use of the Data Protection Act (DPA) as the matter was first and foremost a public interest matter concerning the conduct of a local Councillor. He highlighted the fact that both complainant and Councillor had been named in the Press and that the issue under scrutiny was entirely about public accountability.

9. The Commissioner considers that the issue to be decided is whether the council was correct to apply section 40(5) to the request and refuse to confirm or deny whether it holds the information.

Reasons for decision

Section 40(5)(a) and (b)(i)

10. Section 1 of FOIA states that any person making a request for information is entitled to be informed in writing by the public authority whether the information is held.

11. Section 40(5) provides that:

"The duty to confirm or deny –

(a) Does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and
(b) Does not arise in relation to other information if or to the extent that either –
(i) the giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) OF THAT Act were disregarded, or……."

12. The Commissioner notes that it is not unusual for a complainant to make a request for information which, because of his own involvement, he knows to be held. However, in such cases, the Commissioner must disregard this fact.

13. Since disclosure under FOIA is considered to be a disclosure to the world at large, the Commissioner must treat such requests, and their subsequent complaints, as if made by a member of the general public who would have no prior personal knowledge of the events to which the request relates. Therefore, in this decision notice the Commissioner will consider only whether either confirming or denying that the information is held would in itself breach the first data protection principle.

Does the information constitute personal data?

14. Section 1(1) of the DPA defines personal data 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 intentions of the data controller or any other person in respect of the individual".

15. For a public authority to confirm that it holds information relating to a complaint about someone would have the effect of confirming the existence of a complaint against that individual which would be a disclosure of that individual's personal information.

Would disclosure breach the first data protection principle?

16. The data protection principles are set out in schedule 1 of the DPA. The first principle, the most relevant in this case, states that personal data should only be disclosed in fair and lawful circumstances.

17. The Commissioner will look at the consequences to the named individual if the public authority were to reveal that the individual was the subject of a complaint.

18. The council has explained its complaints procedure to the Commissioner and has advised that the procedure includes a provision whereby if a complaint reaches Hearing Panel Stage and it is found that a Member is in breach of the Code of Conduct, details of the complaint may be published. In this case the complaint was rejected following initial assessment.

19. The council has further advised the Commissioner that it has considered what information is in the public domain as opposed to what information the applicant may be aware of. The council has advised that it has not put any information regarding whether or not a complaint has been received into the public domain.

20. With specific regard to the complainant, the council has asserted that an email was received from the complainant asking that the council respect his confidentiality and he received assurances from the council in respect of this request. The Commissioner understands that the complainant has submitted a subject access request to the council which is under consideration.

21. With regard to the other named individual, the council asserts that whilst there is a reasonable expectation that details of complaints might be provided to the council, there is nothing to suggest that individuals involved; in this case a Councillor and the complainant himself, would reasonably expect that the council would subsequently disclose those details to the public at large. The council argues that information about complaints ordinarily remains confidential between the council and those involved. To disclose any details would, it asserts, cause unnecessary distress to those involved and be deemed to infringe the data protection rights of those individuals involved.

22. The council does not feel in this particular case that it was appropriate to seek consent for disclosure when the complainant himself had already requested confidentiality.

23. The Commissioner acknowledges that it is necessary to also consider the legitimate interests of those to whom the information would be released, namely the public at large. Those interests must be balanced against the rights and freedoms of the complainant and the named Councillor. Given the complainant's request for confidentiality and the expectations of the named Councillor that complaints are confidential unless the member has breached the Code of Conduct, the Commissioner is satisfied that there is no legitimate interest in disclosure to the public at large.

24. Therefore, the Commissioner finds that for the council to confirm to the public at large whether it holds information about the complaint would constitute an unfair disclosure of personal data of the complainant and the named Councillor. Accordingly he finds that the council was entitled to rely on section 40(5)(a) and (b)(i) to refuse to confirm or deny whether it holds the requested information

Other matters

25. In addition to the response to the request being issued outside of the statutory time limit of 20 working days, the Commissioner notes that the response to the complainant's request for an internal review took 42 working days.

26. Part VI of the section 45 Code of Practice makes it desirable practice for a public authority to have a procedure in place for dealing with complaints about its handling of requests for information and that the procedure should encourage a prompt determination of the complaint.

27. As the Commissioner has made clear in his *'Good Practice Guidance No 5',* internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the FOIA, the commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days.

28. Whilst the council apologised for the delay it did not offer any reason for that delay. Given the late response to the request and the delay in responding to the request for a review, the Commissioner considers that in handling future cases, the council should ensure that it complies with statutory timescales and adheres to the Commissioner's guidance regarding internal reviews.

Right of appeal

29. 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 7395836
    Email: GRC@hmcts.gsi.gov.uk
    Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

30. 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.

31. 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 ……

Rachael Cragg
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