

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 May 2016

Public Authority: Isle of Wight Council

Address: County Hall
High Street
Newport
Isle of Wight
PO30 1UD

Decision (including any steps ordered)

1. The complainant has requested a chain of emails which passed between a small number of senders and recipients during October 2013, under the subject heading of 'Wightlink Support'. The Isle of Wight disclosed the emails it holds to the complainant but withheld the names of some of their senders and recipients.
2. The Commissioner's decision is that the Isle of Wight Council has correctly applied section 40(2) of the FOIA to the information it withheld from the complainant.

The Commissioner does not require the public authority to take any further steps in this matter.

Request and response

3. On 31 August 2015, the complainant wrote to the Isle of Wight Council ("the Council") to request information in the following terms:

"Please provide me with a copy of the email trail which took place between 10th October and 15th October 2013 with the subject heading: Wightlink Support, involving the Council and representatives of the office of Andrew Turner MP. I understand the various parties on this email include [a former Isle of Wight Council Director], [named person 1] and [named person 2], as well as possibly the MP himself.

Please disclose the email train in full, from the original email sent from Wightlink on 10th October to the final email sent from Stuart Love to Ian Stephens on 15th October. In particular, I would be grateful if you could ensure this includes:

- Emails sent on Sunday 13th October by [named person 1] and [named person 2] to the Isle of Wight Council, including [the former Isle of Wight Council Director] as a CC recipient."
4. The complainant made clear to the Council that he requires the names of the senders and recipients of the emails to be unredacted. He asserted that there is a public interest in knowing who is writing and receiving the emails.
 5. On 10 September, the Council responded to the complainant's request. The Council provided the complainant with redacted copies of the emails he had requested and it advised him that disclosure of the identity of the email senders and recipients would constitute a breach of the Data Protection Act.
 6. The complainant wrote again to the Council on 10 September. He explained his reasons for wanting the names of the senders/recipients of the emails and he asserted his belief that, if the emails were sent by [named persons 1 and 2], they were acting in their capacity of representatives of the Member of Parliament.
 7. The complainant also asked the Council to explain the basis for not disclosing to him the redacted names.
 8. The Council conducted an internal review of its handling of the complainant's request and wrote to you on 14 October to explain its final decision.
 9. The Council's reviewer informed the complainant that the names and contact details of the individuals concerned is personal data and that it considers section 40(2) of the FOIA to be engaged.
 10. The Council advised the complainant that the private senders and recipients of the emails would not expect their details to be placed into the public domain and that there is no over-riding public interest in disclosing this information. Consequently, the Council determined that disclosure would breach the first data protection principle and it upheld its decision to withhold the names.

Scope of the case

11. The complainant contacted the Commissioner on 21 January 2016 to complain about the way his request for information had been handled. The complainant advanced a number of arguments why the redacted names should be disclosed to the public.
12. The Commissioner has investigated whether the Council is entitled to rely on section 40(2) of the FOIA to withhold the redacted names of the senders and recipients of the emails which were sent to the complainant on 10 September 2015.

Reasons for decision

Section 40(2) – the personal data of a third party

13. The Council has relied on section 40(2) of the FOIA to withhold the names and contact details of the senders and recipients of the email it holds and which were disclosed to the complainant in September 2015. The Council has relied on section 40(2) on the grounds that the names and email addresses are the personal data and the disclosure of this information would contravene the provisions of the Data Protection Act 1998 ("the DPA").
14. Section 40(2) provides an exemption from the duty to disclose information which is the personal data of any third party and where disclosure would breach any of the data protection principles contained in the DPA or section 10 of that Act.
15. In order to rely on the exemption provided by section 40, the requested information must constitute personal data as defined by the DPA. 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 or, 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 intention of the data controller or any other person in respect to the individual.'

16. In the Commissioner's opinion this information is undoubtedly personal data.
17. The Commissioner is required to consider whether disclosure of the name and email addresses of the senders and recipients of the requested emails would breach any of the data protection principles contained in Schedule 1 of the DPA. He considers that the first data protection principle is the one most relevant in this case.

The first data protection principle

18. The first data protection principle has two components:
 1. Personal data must be processed fairly and lawfully, and
 2. Personal data shall not be processed unless one of the conditions in Schedule 2 of the DPA is met.

The Council's representations

19. The Council has explained to the Commissioner that it holds the email chain solely because a private individual chose to copy the emails to one of the Isle of Wight Council's Directors. The Council has assured the Commissioner that the emails were not processed by the Council for any of its own purposes and it did not participate in the email exchange other than to request that it is excluded from that correspondence.
20. The Council has provided the Commissioner with the email chain associated with the complainant's request. Two of the emails – both dated 15 October 2013 confirm the Council's request to dissociate itself from correspondence relating to Wightlink Support.
21. During its consideration of the complainant's request, including the period when it was undertaking its internal review, the Council consulted with the parties to seek their views on disclosure of the emails and their personal details.
22. One of the persons named by the complainant in his request confirmed that s/he was not the sender of any emails.
23. A second person named by the complainant objected to his/her personal details being disclosed on the grounds that this would be unfair processing and would therefore contravene the first data protection principle. This person also confirmed that in sending those emails, s/he was acting in a personal and private capacity and not on behalf of the local MP.

24. The private individual, who copied the Council into the email chain, expressed his objection to having his/her personal details being placed into the public domain.

The Commissioner's conclusions

25. The Commissioner has considered the Council's representations and those made by the complainant. He agrees with the Council that the withheld information is the personal data of identifiable individuals.
26. He has noted the complainant's assertion that, *"in choosing to correspond [...] with senior individuals in a public authority [...] which is subject to FOI, [the named persons] were effectively waiving any rights they could otherwise have to privacy as private citizens"*.
27. This assertion is clearly incorrect: The individuals concerned did not correspond with the Council themselves and that the Council only holds the email chain by virtue of it being copied into it by a third individual. It is for this reason that the Commissioner considers the disclosure of their personal details under the FOIA would be unfair and would contravene the first data protection principle.
28. The Commissioner is persuaded that the senders and recipients of the emails acted in their personal capacities and not in any capacity associated with the local MP.
29. The Commissioner has considered whether any of the conditions in Schedule 2 of the DPA would warrant the disclosure of the personal details of the senders and recipients of the emails. In particular the Commissioner has considered the sixth condition in Schedule 2. This states:

"The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject."
30. In this case, the Council considered it was appropriate to disclose the contents of the email exchange, notwithstanding that it had no involvement in those emails other than to illustrate that the Council wanted to be seen not to be involved in the matter which the emails concern. The Council's action was taken in order to satisfy any necessary and legitimate interests of the public may have in connection to Wightlink.
31. Given that there is no evidence to show that the emails were sent by or on behalf of the local MP and that the senders of the emails did not

correspond with the Council themselves, having had no apparent intention of doing so, the Commissioner considers that the disclosure of their personal details would be unwarranted in respect of their right to correspond privately. He considers that provisions of condition 6 cannot be satisfied and in consequence of this, the unfairness of disclosure of these individual's personal would be greater.

32. The Commissioner's decision is that the Council is entitled to rely on section 40(2) of the FOIA to withhold the names and email addresses of the senders and recipients of the emails previously disclosed to the complainant. He requires no further action to be taken by the Council in this matter.

Right of appeal

33. 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

34. 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.
35. 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
Group Manager
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