

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 January 2025

Public Authority: Bath & North East Somerset Council
Address: Guildhall
High Street
Bath
BA1 5AW

Decision (including any steps ordered)

1. The complainant has requested information relating to a named social worker in the employ of Bath & North East Somerset Council (the Council). The request was refused under section 40(2) (personal information) of FOIA.
2. The Commissioner's decision is that the Council was correct to apply section 40(2) of FOIA to withhold the information falling within points one to five of the request.
3. The Commissioner does not require further steps.

Request and response

4. On 12 December 2023, the complainant wrote to the Council and requested information in the following terms:
 - "1. How many children has the Social Worker [name redacted] removed from families?
 2. How long has [name redacted] worked as a social worker for bathnes?

3. When did [name redacted] receive a promotion and move from Bristol City Council to Bath and north east Somerset.
 4. How many families has [name redacted] been involved with?
 5. How many complaints have been received about the social worker [name redacted]?
 6. Please give a list of all current social workers working for bathnes and all social workers that have worked for you within the last 10 years.
 7. Please give a number of complaints that have been received by bathnes within children and young people services.
 8. How many children have been taken into foster care by bathnes?"
5. The Council responded on 11 January 2024. It cited section 40(2) (personal information) of FOIA to withhold the information falling under points one to six, but provided information relating to points seven and eight.
 6. The complainant requested an internal review on 21 January 2024. The Council responded on 3 April 2024, upholding its original response.

Scope of the case

7. The complainant has argued that the information being requested under points one to five of the request is not personal information, therefore section 40(2) does not apply.
8. No concerns have been raised about the Council responses to the rest of the request.
9. Therefore the scope of the case is to determine if the Council was correct to apply section 40(2) to points one to five of the request.

Reasons for decision

Section 40 - personal information

10. Section 40(2) of FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.
11. In this case the relevant condition is contained in section 40(3A)(a). This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the UK General Data Protection Regulation ('UK GDPR').
12. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA'). If it is not personal data then section 40 of FOIA cannot apply.
13. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the DP principles.

Is the information personal data?

14. Section 3(2) of the DPA defines personal data as:

"any information relating to an identified or identifiable living individual".
15. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
16. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
17. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.

18. The withheld information relates to a named social worker. The social worker is identified in the request and the withheld information clearly relates to them. The Commissioner is therefore satisfied that the withheld information falls within the definition of 'personal data' in section 3(2) of the DPA.
19. The fact that information constitutes the personal data of a third party does not automatically exclude it from disclosure under FOIA. The second element of the test is to determine whether disclosure would contravene any of the DP principles.
20. The most relevant DP principle in this case is principle (a).

Would disclosure contravene principle (a)?

21. Article 5(1)(a) of the UK GDPR states that:

"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject".

22. In the case of an FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.
23. In order to be lawful, one of the lawful bases listed in Article 6(1) of the UK GDPR must apply to the processing. It must also be generally lawful.

Lawful processing: Article 6(1)(f) of the UK GDPR

24. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states:

"processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child".

25. In considering the application of Article 6(1)(f) of the UK GDPR in the context of a request for information under FOIA, it is necessary to consider the following three-part test:-

i) Legitimate interest test: Whether a legitimate interest is being pursued in the request for information;

ii) Necessity test: Whether disclosure of the information is necessary to meet the legitimate interest in question;

iii) Balancing test: Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.

26. The Commissioner considers that the test of 'necessity' under stage (ii) must be met before the balancing test under stage (iii) is applied.

Legitimate interests

27. In considering any legitimate interest(s) in the disclosure of the requested information under FOIA, the Commissioner recognises that such interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case specific interests.
28. Further, a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.
29. It is the Commissioner's view that the complainant has a legitimate interest in transparency and accountability relating to matters of concern about a member of Council staff.

Is disclosure necessary?

30. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.
31. The complainant's submission to the Commissioner relates to their concerns about the conduct of the named social worker and how they are carrying out their role.
32. The Commissioner is satisfied that there is a less intrusive way to meet the legitimate interests described.
33. This is because the Council has confirmed that if a third party wished to challenge the conduct or performance of a council officer, they have the right to submit a corporate complaint and engage with the specific complaints process.

34. Based on the above factors, the Commissioner has determined that there is insufficient legitimate interest to outweigh the data subject's fundamental rights and freedoms. The Commissioner therefore considers that there is no Article 6 basis for the processing and so the disclosure of the information would not be lawful.
35. Given the above conclusion that disclosure would be unlawful, the Commissioner considers that he does not need to go on to separately consider whether disclosure would be fair or transparent.
36. The Commissioner has decided that the Council was entitled to withhold the requested information under section 40(2) of FOIA.

Right of appeal

37. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

38. 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.
39. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Ben Tomes
Group Manager
Information Commissioner's Office
Wycliffe House
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SK9 5AF