

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 November 2012

Public Authority: Guildford Borough Council
Address: Millmead House
Millmead
Guildford
Surrey
GU2 4BB

Decision (including any steps ordered)

1. The complainant has requested information relating to the severance package of two named employees of Guildford Borough Council (the Council). The Council refused this request and cited the exemption provided by section 40(2) (personal information) of the FOIA.
2. The Commissioner's decision is that the Council has cited the exemption provided by section 40(2) correctly and so it is not required to disclose the requested information.

Request and response

3. On 21 May 2012, the complainant wrote to the Council and requested information in the following terms:
 - (i) *"...details of any payments...over and above those expected to [named former Council employees] in their normal severance package."*
 - (ii) *"...the reasons for the sudden severance of [named former Council employees]."*
4. The Council responded on 20 June 2012 and refused to disclose the information requested. In response to request (i) the Council cited the exemption provided by section 22 (information intended for future publication) of the FOIA. In response to request (ii) the Council cited the exemption provided by section 40(2) (personal information).

5. Following an internal review the Council wrote to the complainant on 10 July 2012. In relation to request (i), it referred to accounts that had been published and had been brought to the attention of the complainant. In response to request (ii) the citing of section 40(2) was upheld.

Scope of the case

6. The complainant contacted the Commissioner on 31 July 2012 to complain about the refusal to disclose the requested information. The complainant indicated at this stage that he was dissatisfied with the arguments given by the Council in favour of the exemptions cited.
7. The complainant was later asked to clarify if he was satisfied with the information he had been directed to in response to request (ii) in the internal review response. In response to this the complainant indicated that he wished the ICO to consider if the response to request (ii) had been compliant with the FOIA.

Reasons for decision

Section 40

8. The Council has cited section 40(2), which provides an exemption for information that is the personal data of an individual other than the requester and where the disclosure of that personal data would be in breach of any of the data protection principles. The task for the Commissioner here is twofold; first, it must be addressed whether the information constitutes the personal data of an individual other than the requester. Secondly, consideration must be given to whether disclosure of this personal data would be in breach of any of the data protection principles.
9. The Council has been clear that this exemption is cited in response to request (i). The Commissioner has also considered this exemption in relation to request (ii). During the investigation, the Council was asked to confirm whether its position was that the information published in the accounts brought to the attention of the complainant represented the only information it held that fell within the scope of request (ii). In response to this the Council stated:

"We believe disclosure of any more detailed information would be personal information and restricted by s.40 of the Freedom of Information Act as the data protection principles would be contravened."

10. The Commissioner has taken this as an indication that the Council does hold further information falling within the scope of request (ii) to that disclosed through the accounts and that it is now citing section 40(2) in relation to that information. This analysis therefore covers both the information falling within the scope of request (i) and that falling within the scope of request (ii) that was not disclosed through the published accounts. The Commissioner comments further on the citing of section 22 in the *"Other matters"* section below.
11. Turning first to whether the information requested in this case is the personal data of any individual aside from the complainant, the definition of personal data is given in section 1(1) of the Data Protection Act 1998 (DPA) as follows:

"'personal data' means 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".*
12. The view of the Commissioner is that the information in question here clearly constitutes the personal data of the individuals named in the request. The wording of the request means that any information falling within the scope of it would both relate to and identify the individuals named in the request. This information does, therefore, constitute personal data as defined in section 1(1) of the DPA.
13. Turning to whether the disclosure of this personal data would be in breach of any data protection principle, the Commissioner has focussed on the first data protection principle, which requires that personal data be processed fairly and lawfully, and whether disclosure would be, in general, fair to the individual named in the request. In forming a view on whether disclosure would be fair, the Commissioner has taken into account the reasonable expectations of the data subject, the consequences of disclosure upon the data subject and whether there is legitimate public interest in the disclosure of the information in question.
14. Covering first consequences to the data subject, the view of the Commissioner is that disclosure of the information would be likely to result in distress to the data subjects. Based on the background description given by the complainant of the events to which the request relates, it appears likely that those events would have been distressing to the individuals named in the requests. As a result, the conclusion on this point is that disclosure into the public domain of information relating to these events would be likely to cause distress to the data subjects.

15. Turning to the reasonable expectations of the data subjects, the view of the Commissioner is that it is likely that the data subjects would hold a strong expectation of privacy in relation to any information concerning this particular subject matter. In general an employee would expect that information relating to them that is held by their employer, or former employer, would be kept confidential and the strength of this expectation would increase in line with the sensitivity of the information.
16. Furthermore, the Council has stated that the data subjects have specifically asked that the information in question be kept confidential. Also notable is that part of the information requested here concerns a financial arrangement between employer and employee; information in relation to which most people would hold a strong expectation of privacy.
17. On the issue of whether there is any legitimate public interest in the provision of this information, the Commissioner recognises that any compensation that was paid from Council funds would have meant the expenditure of public money. Given this, the Commissioner also recognises that there is some legitimate public interest in this information. The Commissioner does not, however, believe that this public interest is of significant weight as it is likely that the sum of any public money in question would be, in public spending terms, very minor.
18. In conclusion, the Commissioner has recognised a legitimate public interest in this information on the basis that this concerns the possible expenditure of public money. However, his view is also that it is likely that the data subjects would suffer distress through the disclosure of the information and that these individuals would hold a strong expectation of confidentiality in relation to any information on this subject matter. Given these factors, the Commissioner finds that the public interest is outweighed and that it would be unfair and in breach of the first data protection principle to disclose this information.
19. Overall the Commissioner has found that compliance with the request would involve the disclosure of personal data and that this disclosure would be in breach of one of the data protection principles. The conclusion here is, therefore, that the exemption provided by section 40(2) of the FOIA is engaged and so the Council is not required to disclose the requested information.

Other matters

20. The response giving the outcome of the internal review gave the impression that all of the information previously withheld under the exemption provided by section 22 had been disclosed. As covered

above, however, the Council suggested when in correspondence with the ICO that further relevant information was held that had not been disclosed.

21. The Council should ensure that it is aware of the circumstances in which section 22 will apply when considering citing this exemption in future; it can be cited only where the specific information that has been requested is to be published. It is not acceptable to cite this exemption where, for example, there is an intention to publish similar information to that requested, or only part of the requested information, or where the requested information is obscured within other information.

Right of appeal

22. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

23. 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.
24. 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

Jon Manners
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