

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 25 January 2016

**Public Authority:** Essex County Council

**Address:** County Hall  
Market Road  
Chelmsford  
CM1 1QH

#### **Decision (including any steps ordered)**

---

1. The complainant requested information from Essex County Council ("the council") relating to complaints about a particular named coroner or the coroner's office. The council said that the information held was exempt under section 40(2) of the Freedom of Information Act 2000 ("the FOIA"). This exemption concerns third party personal data. The council disclosed some information during the Commissioner's investigation however it continued to argue that some information was exempt under section 40(2), and it added that all of the information was exempt under section 41(1). This exemption relates to confidential information. The complainant alleged that further information was held, and some additional information was subsequently identified relating to earlier formal complaints and complaint correspondence sent to the council's press office. Given the extent of the additional information identified and the circumstances of the case, the Commissioner has asked the council to consider this information in the steps of this decision notice. In relation to the remaining information, the Commissioner's decision is that the majority of this information was exempt under section 41(1) and some of it was also exempt under section 40(2). However, the Commissioner found that some information was not exempt and he has ordered the disclosure of this information. The Commissioner found breaches of section 10(1), 1(1)(a), 1(1)(b), 17(1) and 17(1)(a)(b) and (c) of the FOIA.
2. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.

- In relation to the press office complaint correspondence, the council should interpret the request to cover any correspondence held at the time of the request referring to any expressions of dissatisfaction with the named coroner or the coroner's office (rather than limiting the request using the search word "complaint"). Once the information has been identified, the council should write to the complainant to either disclose the information or to rely on a valid exemption in accordance with its obligations under the FOIA.
  - In relation to the additional formal complaint correspondence (31 cases), the council should write to the complainant to either disclose the information or rely on a valid exemption in accordance with its obligations under the FOIA.
  - The council should disclose the email from the coroner to the third party toxicology company (part of formal complaint number 7), except that it should redact the date of the email, the name of the third party addressee (employee of toxicology company), and the paragraph beginning "Please see..."
  - In relation to the email dated 23 May 2014 timed 14:35 relating to the investigation by the Judicial Conduct Investigations Office (the majority of which the council has disclosed to the complainant), the council should disclose the redacted information to the complainant.
3. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## **Request and response**

---

4. On 30 July 2014, the complainant requested information from the council in the following terms:

*"This is a formal request under the Freedom of Information Act for the following information:*

*Please supply all correspondence and documentation which mentions complaints to Essex County Council about coroner [name] or about the Essex coroner's office. This includes internal correspondence, as well as correspondence between Essex Council and the coroner's office. This request includes all correspondence and documents which mention complaints made in person, by telephone or in writing by either*

*members of the public or members of the press...*

*I do not require any information which would breach the Data Protection Act. Any information which breaches the Data Protection Act should be specifically redacted to ensure only that information is withheld, rather than the entire document within which that information is contained".*

5. In a further email on 31 July 2014, the complainant added the following clarification:

*"I should have added in my request, I want all of this information since January 1, 2009".*

6. The council responded on 14 May 2015. It confirmed that the information was held however it said that it was exempt under section 40(2) of the FOIA.
7. The complainant requested an internal review on 15 May 2015. He complained about the time it took to respond and about the refusal to provide the information.
8. The council completed an internal review on 9 June 2015. It said that it wished to maintain the refusal to provide the information. The council accepted that it failed to respond on time and it said that it would review its processes to ensure that this does not happen again.

## **Scope of the case**

---

9. The complainant contacted the Commissioner on 17 June 2015 to complain about the way his request for information had been handled. He asked the Commissioner to consider whether the council had correctly refused to provide the information using the exemption under section 40(2). The complainant also complained about the time taken to respond to the request.
10. During the Commissioner's investigation, the council relied on the additional exemption under section 41(1). The Commissioner therefore also considered the use of this exemption as part of his investigation.
11. As discussed in the body of this decision below, the Commissioner noted that some of the withheld information was particularly generic or incidental, particularly in isolation. Given the complainant's stated aims, the Commissioner does not consider that there is merit in taking the time to consider the disclosure of this type of information, which would not add to the understanding of the nature of the substantive complaints

received by the council about the coroner's office and the actions taken by the council in regard to them.

12. For clarity, additional information regarding complaints made to the council's press office and further formal complaints were discovered at a late stage in the Commissioner's investigation as described below. The Commissioner has ordered a step for the council to take in this decision notice in relation to this part of the request. The analysis about the use of the exemptions below relates only to the 7 formal complaints identified by the council initially.

## **Reasons for decision**

---

### **Section 3(2) – Information held for the purposes of the FOIA**

13. Section 3(2) of the FOIA provides that for the purposes of the FOIA, information is held by a public authority if (a) it is held by the authority, otherwise than on behalf of another person, or (b) it is held by another person on behalf of the authority. There are various factors that will assist in this determination however and these have been explained in the Commissioner's published guidance here:

[https://ico.org.uk/media/for-organisations/documents/1148/information\\_held\\_by\\_a\\_public\\_authority\\_for\\_purposes\\_of\\_foia.pdf](https://ico.org.uk/media/for-organisations/documents/1148/information_held_by_a_public_authority_for_purposes_of_foia.pdf)

14. Given that this request relates to complaints about the coroner's office and a named coroner, the Commissioner asked the council to confirm that the information was in fact held by it and was not held on behalf of the coroner's office.
15. The council explained to the Commissioner that any information within the scope of the request, relating to "court proceedings, case files and investigations into sudden death" is not held by the council. It said that this refers to material about inquests which the council has no involvement in. It said that there may be complaints challenging the verdict of an inquest for example. This information is on the council's premises but is held purely on behalf of the coroner's office. The council said that the Coroner's Court is a body distinct from the council and is not subject to the FOIA. The council confirmed that it would provide to the complainant information about requesting access to such records as governed by the appropriate regulations relating to coroner's records.
16. However, the council said that it did consider that it held some information for its own purposes falling within the scope of the request.

It explained that the council employs a number of staff to assist with the administration of the coroner's service, and the council would therefore hold information relating to the administration of the service, which does not fall within the class of information referred to in the paragraph above. It said that in the context of this request, that would include complaints information. The council said that it held information relating to seven complaints regarding the coroner's service and some limited information regarding the disciplinary case regarding a judicial investigation into the named coroner.

17. The Commissioner considered the "Guide to Coroner Services" published by the Ministry of Justice under section 42 of the Coroners and Justice Act 2009 here for ease of reference:

<https://www.gov.uk/government/publications/guide-to-coroner-services-and-coroner-investigations-a-short-guide>

Under section 11, the document provides guidance about the complaints process. It explains that if a person is dissatisfied with a coroner's personal conduct they should normally raise this with the coroner concerned. If the coroner is unable to deal with the complaint satisfactorily, a complaint may be made to the Judicial Conduct Investigations Office ("the JCIO"). It further explains that if a person needs to complain about the way a coroner or his or her staff handled an investigation, they should first write to the coroner and copy the letter to the local authority funding the service. They may also complain directly to the local authority. If the individual remains dissatisfied, a complaint may be made to the Local Government Ombudsman.

18. Based on the council's comments and the explanation in the Guide to Coroner Services above, the Commissioner considers that the complaint information identified was held by the council for the purposes of the FOIA.

### **Section 1(1) and 10(1) – General right to access information held within 20 working days**

19. Section 1(1)(a) and 1(1)(b) of the FOIA provide for a general right to access recorded information held by public authorities. The general obligations are to confirm or deny that information is held within the scope of the request and if it is held, to provide that information unless it is exempt. The response should be provided within 20 working days in accordance with section 10(1).

20. As mentioned above, the council identified some information it held falling within the scope of the request. It disclosed one email held relating to the coroner's disciplinary action with a redaction. The council said that it considered that this disclosure was appropriate in view of the information already in the public domain. For clarity, the council explained that this complaint was made directly to the JCIO and the council were not asked to have any involvement in it, so that is why no further information was held. The council also disclosed a table providing summary information about the seven complaints previously mentioned. It was summarised in a way that the council considered was suitably anonymous.
21. Following receipt of the above information, the complainant alleged that more information was held. In particular, he said that he had made a number of complaints to the press office about the coroner's office and he was aware that others working for other publications had made complaints. He said that this information had clearly not been included in the response despite the fact that it was within the scope of the request. The Commissioner queried whether the complainant would wish to receive further copies of his own correspondence or correspondence involving other journalists working for the same publication since it seemed likely that he would already have access to this information. The complainant explained that he considered that there was still merit in pursuing this part of the request because it was important to know whether the council was recording the complaints.
22. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and argument. He will also consider the actions taken by the authority to check that the information was not held and he will consider if the authority is able to explain why the information was not held. For clarity, the Commissioner is not expected to prove categorically whether the information was held. He is only required to make a judgement on whether the information was held "on the balance of probabilities".<sup>1</sup>
23. Initially, the council sought to maintain that it did not hold any further information having conducted a search of its formal complaints. When the Commissioner specifically referred to complaints made to the press office by the complainant and others, the council confirmed that it did

---

<sup>1</sup> This approach is supported by the Information Tribunal's findings in *Linda Bromley and Others / Environment Agency* (31 August 2007) EA/2006/0072

hold some further information. It explained that it had not identified this information previously because it had understood that the request was limited to formal complaints. The council explained that a journalist would only normally be referred to the corporate complaints process if dissatisfied with a response provided by the press office and the issue cannot be resolved informally. It said that if the journalist does not wish to make a formal complaint, the matter is treated as general correspondence and the fact that a complaint has been received is not captured.

24. The council explained that its Vuelio system logs contacts from journalists predominantly seeking statements or clarifications from the authority on a wide range of council activity. It said that it captures email correspondence or summaries of telephone contacts, and provides an accurate record of formal council statements. It said that the system is therefore not a tool which has complaints management as one of its purposes. It said that the system does not allow users to record complaints, which would allow them to be easily retrieved in an electronic search.
25. As a result of the above, the council said that it had searched its Vuelio system within the specified date range in the request (from 1 January 2009). It said that a search using the word "coroner" identified 1575 instances, and a search on the word "complaint" had identified 12 instances of relevant correspondence. It said that it had decided to search in this way because of the wording of the complaint, which had asked for information which "mentions complaints".
26. The Commissioner explained to the council that he was not satisfied that the search described was thorough enough to identify reasonably all the information which would fall within the scope of this request. He was able to demonstrate that this was the case because the council had provided the complete bundle of information it had identified using the word "coroner". Reading through the beginning of that bundle, the Commissioner was able to identify relatively easily further instances of complaints made within the scope of the request which had not been identified by the council. For clarity, the Commissioner would interpret a complaint broadly to include any expression of dissatisfaction. The council indicated that it was prepared to accept this. As the Commissioner was not satisfied that the council had properly considered this part of the request, identifying all the relevant information and whether or not it was exempt, the Commissioner has ordered a step for the council to take in this decision notice regarding this information.
27. As a side issue, the council confirmed that in response to the issues identified as a result of responding to this particular request, the council will improve processes and train staff in this area on improved definition

and identification of complaints, and will from now on consistently refer journalists to the formal complaints process to better capture this information.

28. In relation to the formal complaints identified, the council confirmed that it had checked that it had identified all the relevant information. It said that it had originally searched its corporate complaints system for information within scope, checking both its current system and the system it used prior to April 2015. It said that all formal complaints were recorded via this system, either through the mechanism provided by the online complaint form or by manual recording by a member of the customer service team. It said that following the complainant's concerns, it had checked its records again and could confirm that there were no other formal complaints recorded other than the seven identified already.
29. The Commissioner was only made aware of the clarification provided by the complainant that he wanted the search to go back to 1 January 2009 at a relatively late stage in the investigation. Following this, and the council's response about the formal complaint searches, the Commissioner queried why the council had only identified seven complaints from 2013 -2014 and no earlier formal complaints. The Commissioner explained that it seemed unlikely that no earlier formal complaints were made.
30. In response, the council said that it had checked again and regrettably, it had identified a further 31 cases falling within the scope of the request. It said that it had conducted a revised search taking into account that the service formerly belonged to the Legal Services department, and it would now need to review this additional correspondence to consider the extent to which it could be disclosed. In the circumstances, the Commissioner has decided to ask the council to consider this additional information in one of the steps associated with this decision notice.
31. The council said that there were no complaints recorded prior to May 2011. It explained that the council's formal complaints system "Respond" was introduced shortly before this date. It said that the earlier complaints would have been deleted or destroyed however this was in line with the council's retention schedule. The council said it would normally keep records of complaint correspondence relating to "routine" complaints for a year. In this instance, it has retained some records older than that because these had not been deleted yet however, it was not obliged to hold this information in accordance with the retention schedule.



32. The council also explained that the practice within the press team is to transfer (copy and paste) or otherwise summarise correspondence or phone calls on the Vuelio system. The Vuelio system then becomes the formal record and all associated documentation (emails, handwritten notes of phone calls) are not required to be kept in line with the council's retention schedule after a year. This is the case in relation to formal complaints as well. Moreover, the council's policy is to delete the mailboxes of employees who have left the council after four months. The council said that it is possible that some material falling within the scope of the request would have been deleted for these reasons.
33. The Commissioner's investigation has established that the council had not properly identified the full extent of all the information falling within the scope of the request, and this remains the case in relation to the press office complaint correspondence in particular. As noted, steps have been ordered in relation to this outstanding information. The Commissioner finds that the council breached its obligations under section 10(1) and 1(1)(a) to identify requested information within 20 working days.
34. As the council did not provide any information at the time of the request but was able to do so subsequently, the Commissioner also considers that the council breached its obligations under section 10(1) and 1(1)(b) to provide information which is not exempt within 20 working days.

### **Section 41(1) Information Provided in Confidence**

35. This exemption provides that information is exempt if it was obtained by the public authority from any other person and the disclosure would constitute an actionable breach of confidence. The Commissioner has published detailed guidance relating to this exemption, which for ease of reference may be accessed here:

<https://ico.org.uk/media/for-organisations/documents/1432163/information-provided-in-confidence-section-41.pdf>

36. For clarity, the council said that it wished to apply this exemption to all the withheld information relating to the seven formal complaints identified initially.

### **Was the information obtained from another person?**

37. When the Commissioner considered the withheld information, he noted that there was a significant amount of information that was particularly generic or incidental, particularly when considered in isolation, including a good deal of information that was clearly not obtained from another

person. It included for example, the council's standard online complaints template and diversity information captured by the headings on that template, standard acknowledgements or sentences, administrative emails, council employee names and contact details, and case reference numbers. Given the complainant's stated aims, the Commissioner does not consider that there is merit in taking the time to consider the disclosure of this type of information in isolation, which would not add to the understanding of the nature of the substantive complaints received by the council about the coroner's office and the actions taken by the council in regard to them.

38. A notable exception was an email from the coroner to the third party company providing toxicology services. Apart from the name of the third party company employee (considered under section 40(2) below) and one paragraph relating to the specific complaint (beginning "Please see..."), the Commissioner did not consider that this information had been obtained from another person. It includes more general comments which have wider application than the circumstances of the particular complaint made by the relative of the deceased. It is therefore not exempt under section 41(1).
39. The withheld information also comprised, as one would expect, a great deal of information that had clearly been obtained from another person in the form of written complaints submitted to the coroner's office. The information also includes the council's responses to those complaints. With respect to the latter information, the Commissioner's guidance on section 41 referred to above states:

*"If the requested material contains a mixture of both information created by the authority and information given to the authority by another person, then, in most cases, the exemption will only cover the information that has been given to the authority..."*

*However, the authority must also consider whether the disclosure of the information it created would reveal the content of the information it obtained from the other person. If it would then the exemption may also cover the material it generated itself".*

40. The Commissioner considered that with the exception of the generic or incidental details already mentioned, the information created by the authority itself in its responses would reveal the content of the information obtained from the other person. The response to a complaint will obviously be closely tied in with the nature of the complaint made, and will likely reveal the nature of the complaint to a greater or lesser extent. The Commissioner's view was that this

information should also be regarded as having been obtained from another person.

### **Would disclosure constitute an actionable breach?**

41. As noted above, the Commissioner was satisfied that some of the information had been obtained from another person. In relation to that information only, the Commissioner went on to consider the test set out in *Coco v A N Clark (Engineers)* [1968 FSR 415] concerning an actionable breach of confidence.
42. The test in the latter case states that a breach of confidence will be actionable if:
  - The information has the necessary quality of confidence
  - The information was imparted in circumstances importing an obligation of confidence; and
  - There was an unauthorised use of the information to the detriment of the confider
43. Information will have the necessary quality of confidence if it is not otherwise accessible, and if it is more than trivial. Information which is known only to a limited number of individuals will not be regarded as being generally accessible. Information which was important to the confider cannot be considered to be trivial.
44. Further, following the decision of the High Court in *Home Office v BUAV and ICO* [2008] EWHC (QB), the Commissioner recognises that with the introduction of the Human Rights Act 1998 ("the HRA"), all domestic law, including the law of confidence, has to be read in the context of the HRA. In relation to personal information, this involves the consideration of Article 8 which provides for a right to privacy. The High Court found at paragraph 33 that:

*"It is beyond question that some information, especially information in the context of personal matters, may be treated as private, even though it is quite trivial in nature and not such as to have about it any inherent 'quality of confidence'".*
45. The Commissioner considered all of the information that in the Commissioner's view had been obtained from another person. Complaints to the coroner's office are clearly going to involve sensitive information. The detail of such complaints is not trivial information.
46. In relation to whether or not the information can be regarded as publicly available, the Commissioner considered the comments made by the complainant in his complaint to the Commissioner as follows:

*"I believe firmly that any details which were aired in an inquest should be released. Inquests are funded by the public, held in the public interest, conducted in public and the information is owned by the public. It is ludicrous, in my submission, to suggest that any detail which has been given in a public courtroom should be exempt from release under Freedom of Information."*

47. Firstly, it is worth bearing in mind that not all of the complaints made will concern individual cases that ended in an inquest. Furthermore, the Commissioner did not consider that it was necessary to establish whether any of the information had in fact been heard at an inquest in each specific complaint, because in the Commissioner's view, this does not automatically mean that the information is "publicly accessible" as suggested by the complainant for the reasons outlined below.
48. The council obtained a statement from the area coroner explaining that the coroner's remit is limited to the questions set out in section 5 of the Coroner's and Justice Act 2009. That is to determine who has died, when and where they died and how they came by their death. Section 5(3) specifically forbids an expression of opinion on any other matter. The coroner's role is not to apportion blame or guilt, or to consider matters after the death. Even delays in the inquest being held are not a matter for the court. The area coroner also explained that even when information is aired in court, the procedure is covered by very strict disclosure rules after the inquest.
49. Moreover, the complainant is not asking for details from an inquest in isolation. He is asking in relation to complaints made to the coroner's office. The link between these two matters cannot be said to be in the public domain merely because there may have been an inquest connected to the same complaint.
50. Even if information is to be regarded as confidential, a breach of confidence will not be actionable if it was not communicated in circumstances that created an obligation of confidence. An obligation of confidence may be expressed explicitly or implicitly. The Commissioner's view is that when an individual makes a complaint to a public authority, they generally do not expect the full detail of that complaint to be made publicly available. That is particularly so in relation to information that has a sensitive subject matter, as complaints about the coroner's service from the relatives of the deceased inevitably would. The understanding of confidence may reasonably be regarded as implicit in the circumstances. In addition, the council highlighted the reference to confidentially in its complaints policy, which states:

*"We will maintain the confidentiality of all personal information and not disclose it outside Essex County Council without your permission unless we are legally obliged to do so".*

The council said that whilst the above statement acknowledges the possibility of disclosure if it is necessary to do so, there is a clear explicit commitment from the council to present customers with a channel of communication which they can assume protects their personal details, opinions and the subject matter of their complaint to an appropriate degree. The Commissioner agrees with this.

51. Having satisfied himself that the information had the quality of confidence and was imparted in circumstances giving rise to a duty of confidence, the Commissioner considered whether unauthorised disclosure could cause detriment. In many cases, it may be difficult to argue that a disclosure of information would result in the confider suffering a detriment in terms of any tangible loss. Often the real consequence of a disclosure would be that it would be an infringement of privacy and dignity. This view is supported by the fact that in *Attorney General v Guardian Newspapers [1990] 1AC 109*, Lord Keith of Kinkel found that it would be a sufficient detriment to the confider if information given in confidence was disclosed to persons whom the confider *"...would prefer not to know of it, even though the disclosure would not be harmful...in any positive way"*.
52. Further to the above, Article 8 of the HRA recognises the importance of individuals having the privacy of their affairs respected and in line with this an invasion of privacy such as this would be a sufficient detriment to the confider.
53. In this case, the Commissioner considers that the disclosure of the details of formal complaints made about the coroner's service, which in this instance were all made by relatives of the deceased, would be likely to cause emotional distress in the circumstances, and would represent an infringement of their privacy and dignity. The Commissioner considers that this would be so even if it was possible to redact all details which would or could identify the confider as suggested by the complainant. The council expressed appropriate concern about the sensitivity of the information and explained that even in an anonymous form, the confider would still be able to tell that some of the details of their complaint had been disclosed and it is entirely possible that direct quotations from that correspondence may appear in the press or elsewhere, which would be distressing. Therefore, the Commissioner was satisfied that the disclosure of this information would cause detriment.

54. The Commissioner also considered whether there would have been a public interest defence available if the council had disclosed the information. As section 41(1) is an absolute exemption, there is no public interest test under section 2 of the FOIA. However, case law suggests that a breach of confidence will not be actionable in circumstances where a public authority can rely on a public interest defence. The duty of confidence public interest test assumes that the information should be withheld unless the public interest in disclosure exceeds the public interest in maintaining the confidence.
55. The Commissioner takes the view that a duty of confidence should not be overridden lightly, particularly in the context of a duty owed to an individual. Disclosure of any confidential information undermines the principle of confidentiality itself which depends on a relationship of trust between the confider and the confidant. It is the Commissioner's view that people would be discouraged from confiding in public authorities if they did not have a degree of certainty that such confidences would be respected. It is therefore in the public interest that confidences are respected.
56. In the circumstances of this particular case, the Commissioner's view is that it is important that those submitting complaints about the coroner's service to the public authority have confidence that this information will not be fully disclosed, or disclosed in any disproportionate way. This may ultimately lead to some people not making complaints in the first place. This is counter to the public interest as it could prejudice the effective functioning of the coroner's service in the future.
57. Aside from the wider public interest in preserving confidentiality, there is a public interest in protecting the confider from detriment. The Commissioner has already established that he considers that it would be a sufficient detriment to the confider to infringe their privacy and dignity. As already noted, the importance of a right to privacy is recognised by Article 8 of the HRA.
58. However, there is a competing human right in Article 10 which provides for a right to freedom of expression, which includes the freedom to receive and impart information and the general test for an actionable breach also provides that if there is a public interest in disclosing the information that exceeds the public interest in preserving its confidentiality as discussed above, the breach will not be actionable.
59. The Commissioner has considered the circumstances of this case. The complainant's complaint suggests to the Commissioner that he was primarily interested in establishing the circumstances surrounding a formal warning given to a named coroner for committing misconduct. As

already noted above, the council held very little about this since the investigation about personal conduct was carried out by the JCIO. What little information it did hold has largely been provided by the council already. In relation to the other complaints, the council provided a table summarising the basic nature of the complaint received and the council's response. In the Commissioner's view, this was a proportionate way to address the legitimate public interest in understanding more about complaints made to the coroner's office.

60. In light of the above, there is no evidence available to the Commissioner indicating that there is sufficient wider public interest supporting the release of the full details of the complaints. The Commissioner therefore takes the view that the public interest in preserving the principle of confidentiality is much stronger in the circumstances of this case and that there would be no public interest defence available if the council disclosed the information. The Commissioner therefore considers that the exemption under section 41(1) was correctly engaged.

#### **Section 40(2) – Third party personal data**

61. This exemption 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 Data Protection Act 1998 ("the DPA").
62. For clarity, this exemption was applied to some of the information that the Commissioner has found was exempt under section 41(1) for the reasons described above, or which the Commissioner decided not to investigate because it was considered to be generic or incidental in isolation in view of the complainant's stated aims (see paragraph 37 above) The Commissioner has therefore not found it necessary to consider the application of section 40(2) to this information, which represents the majority of the information to which this exemption was applied. The exceptions are as below.
63. As discussed above, the Commissioner found that section 41(1) did not apply to the majority of an email sent by the coroner to the third party company toxicology service. Redactions were made to this correspondence using the exemption under section 40(2) and the Commissioner has considered these in more detail below, with the exception of one paragraph which relates to the specific complaint (beginning "Please see...", which the Commissioner considers was exempt under section 41(1)).
64. Although the council did not redact the date that the email was sent by the coroner to the third party company, the Commissioner's view is that there is a risk that this date could identify an individual in view of the

fact that there was an inquest in relation to this particular complaint and he has therefore considered the application of section 40(2) to this information.

65. The Commissioner has also considered the one redaction made to the email disclosed to the complainant by the council dated 23 May 2014 relating to the named coroner's disciplinary case.

### **Is the withheld information personal data?**

66. Personal data is defined by the DPA as any information relating to a living and identifiable individual. In relation to the email between the coroner and the third party company, the Commissioner noted that the council had sought to withhold the name of an employee of the coroner's service mentioned in the first line of the email. This information is personal data because it identifies a living individual.
67. It also sought to withhold the name of the third party company using section 40(2). The information would not identify an individual and the Commissioner does not therefore consider that it is personal data. It cannot be exempt under section 40(2).
68. The council also applied the exemption to the name of the employee at the third party company, to whom the correspondence was addressed. The employee name clearly identifies an individual and therefore represents personal data.
69. As mentioned above, although not withheld by the council using this exemption, the Commissioner considers that there is a risk of identifying the individual who made the complaint using the date of the email to assist, in view of the fact that there was an inquest connected to this complaint. The Commissioner therefore considers that the date of the email should be regarded as personal data in this instance.
70. In relation to the one redaction made to the disclosed email dated 23 May 2014 regarding the investigation by the JCIO, this relates to the individual coroner's disciplinary case. The Commissioner is satisfied that it is personal data.

### **Would disclosure breach the Data Protection Principles?**

71. 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 the disclosure against the legitimate public interest in disclosing the information.

### **Reasonable expectations and consequences of disclosure**

72. When considering whether a disclosure of personal information is fair, it is important to take account of whether the disclosure would be within the reasonable expectations of the individual or individuals concerned. However, their expectations do not necessarily determine the issue of whether the disclosure would be fair. Public authorities need to decide objectively what would be a reasonable expectation in the circumstances.
73. Dealing first with the employee of the coroner's service mentioned in the first line of the email between the council and the third party company. The Commissioner notes that this name is publicly available, and that the individual is in a fairly senior post, which is highly qualified. The role is also public facing and part of a public service. The Commissioner had regard to the context of the email within which the name is mentioned and he does not agree that disclosure of the name in this context would be outside the reasonable expectations of the individual concerned or that adverse consequences are likely.
74. In relation to the name of the employee of the third party toxicology service, it was not clear whether the individual concerned was a senior member of the company. Even if that was the case however, the Commissioner's view is that third party names, in the context of particular transactions with a public authority, may attract a greater expectation of confidence than members of the public authority's own staff. A public authority's own staff members are public servants with specific expectations. The Commissioner has had regard to the particular circumstances of this email, and in view of that, he has decided that it would not have been within the reasonable expectations of the individual that their specific name would be disclosed, and this may cause distress.
75. In relation to the date of the email, there is a reasonable possibility that this information may lead to the identification of the deceased's family and the individual who made the complaint. As already described in this notice, the Commissioner accepts that individuals make complaints such as this with a reasonable expectation of confidence and the disclosure may cause distress. If the identity of a person making a complaint to the council was revealed, this may also affect the willingness of some people to make complaints about the coroner's service to the authority in future, which could in turn prejudice the council's ability to assess the effectiveness of the service in the future.

76. In relation to the redaction from the disclosed email dated 23 May 2014, the Commissioner notes that this information relates to a disciplinary matter involving the particular coroner, who was investigated by the JCIO and was found guilty of misconduct for delaying an inquest and failing to keep interested parties informed. The JCIO published a statement on its website about the formal warning, and the council had also issued a press release. The council decided to disclose the entire contents of this email, with the exception of this one redaction, in view of the information that was already in the public domain about this matter. The council explained that it considered that it would be unfair to disclose the redacted information because the disclosure of this information would be "excessive".
77. The Commissioner's view is that the redacted information appears only to confirm the information that is already known about this matter in the light of the published information. It does not reveal anything significant over and above what is already known or which would not be obvious in the circumstances. The Commissioner therefore does not consider that its disclosure would be outside the reasonable expectations of the coroner involved, or that it would be likely to cause her additional distress.

### **Balancing the rights and freedoms of the data subject with the legitimate interests in disclosure**

78. The complainant has argued that there is a public interest in understanding more about the complaints made about the coroner's office. He considers that this is particularly so in the light of the investigation in 2014 by the JCIO as well as his own concerns and others known to him about the operation of the service. The complainant has also stressed that the coroner is public-funded, with a mandate to operate in the public interest.
79. There is always some legitimate interest in the disclosure of information that is held by public authorities. This is because disclosure helps to encourage the general aims of achieving transparency and accountability. It also assists people in understanding the actions of public authorities and to be more involved in that process. However, as with the disclosure of any information, there is always the question of degree and the circumstances will not always warrant the disclosure of every last detail of a particular matter in order to satisfy the legitimate public interest. Public authorities have to be mindful of their obligation to protect the right to privacy that individuals have where that is reasonable.
80. In relation to the redactions made to the email between the coroner and the third party company, the council has confirmed to the complainant

that a complaint was received in 2014 regarding the performance of a third party company providing toxicology services. It has also confirmed that the council acknowledged the poor performance of the contractor and that it took action to address this. The Commissioner has found that the majority of this email was not exempt under section 41(1). The Commissioner does not consider that the disclosure of the limited information redacted under section 40(2) would add so significantly to the public interest to the extent that it would be justified even in light of the distress the disclosure may cause. The Commissioner therefore considers that the name of the third party employee and the date of the email is exempt information under section 40(2).

81. The Commissioner does not consider however that the name of the employee of the coroner's service was exempt under section 40(2). Given the factors already mentioned, and the fact that there is a public interest in understanding the actions taken in relation to this matter, the Commissioner considers that overall it would be fair to disclose the employee name. There is no evidence to indicate that the disclosure would be unlawful.
82. In relation to the one redaction made to the email about the coroner's disciplinary case, there is a legitimate public interest in the disclosure of information held by public authorities to help to encourage the general aims of increasing transparency and accountability unless it would be otherwise inappropriate. The Commissioner does not agree that the disclosure would be likely to be outside of the coroner's reasonable expectations or that it would be likely to cause her additional distress. While the disclosure does not appear to add to what is already known or which would already be obvious in the circumstances, the Commissioner considers that the disclosure would be fair and necessary because of the general principles of transparency and accountability underpinning the FOIA. There appears to be no reason to withhold it. There is also no evidence to indicate that the disclosure would be unlawful. The Commissioner therefore does not accept that the redacted information was exempt under section 40(2).

### **Procedural issues**

83. The complainant complained about the length of time that the council had taken to respond to this request. The request was made on 30 July 2014 but the council did not respond until the following year, on 14 May 2015. As already acknowledged, this was a breach of the council's obligations under section 10(1) and 1(1)(a) and (b) to respond to a request within 20 working days. It was also a breach of its obligation under section 17(1) to issue a refusal notice within 20 working days. As the council relied on the exemption under section 41(1) at a late stage, it also breached its obligations under section 17(1)(a), (b) and

(c) to identify that an exemption applies, state the exemption and explain the reasons for its application.

84. The Commissioner expressed concern about the excessive length of time taken by the council to respond to the request. The council acknowledged that the delay was unacceptable. It said that an organisational change underway at the time resulted in some confusion over responsibility for the request. It said that this was an isolated case however and it had taken steps to ensure that such a breach is unlikely to reoccur. It said that its improved process now identifies all information requests, allocates them to "Information Champions", tracks performance against the statutory timescales and reviews the legality of responses. The Commissioner is satisfied that the council has acknowledged its service failure and has taken steps since to improve its performance.

## **Other Matters**

---

85. The Commissioner was concerned that on two occasions as the investigation progressed, the Commissioner identified a substantial amount of additional information that was held by the council falling within the scope of the request. Regrettably, these errors have further compounded the substantial initial delay that the complainant experienced whilst awaiting a response to this request. The Commissioner trusts that the council will make improvements in its handling of requests in the future and ensures that it gives adequate consideration to the identification of all information held within the scope of a request from the start to avoid unreasonable delays. If there is doubt about the information sought, the authority should consult the requester.

## Right of appeal

---

86. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

87. 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.
88. 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**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**