

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 January 2019

Public Authority: Education Authority Northern Ireland

Address: Alberta.Park@eani.org.uk

Decision (including any steps ordered)

1. The complainant has requested information from the Education Authority of Northern Ireland ("EANI") in relation to a whistleblowing investigation. The EANI refused to disclose part of the requested information, citing the exemption as set out in section 40(2) of the FOIA as a basis for non-disclosure.
2. The Commissioner's decision is that the EANI has correctly applied section 40(2) of the FOIA to the withheld information. Therefore the Commissioner requires no steps to be taken.

Request and response

3. The complainant wrote to the EANI and requested information in the following terms, in relation to an investigation report:

"As your investigation has now been concluded, we request a copy of the investigation report in accordance with the terms of the Freedom of Information Act."

4. The EANI responded to the complainant's request on 30 October 2017. It stated that it held the requested information, however it refused to disclose that information, citing section 40(2) of the FOIA as a basis for non-disclosure.
5. The complainant sought an internal review of the EANI's response on 7 December 2017, the result of which was provided to him on 21 December 2017. The reviewer upheld the original decision to apply section 40(2), however he concluded that some sections of the report could be disclosed, with the remainder being redacted as per the provisions of section 40(2).

Scope of the case

6. The complainant contacted the Commissioner on 12 February 2018 to complain about the way his request for information had been handled.
7. The Commissioner wrote to the EANI seeking its detailed submissions on 25 October 2018. The EANI responded to the Commissioner on 21 November 2018, providing its submissions as to its application of the above exemption.

Reasons for decision

Section 40(2)-personal data of third parties

8. Section 40(2) of FOIA states that information is exempt from disclosure if it constitutes personal data and either the first or the second condition in section 40(3) is satisfied. The first condition in section 40(3) states that the disclosure of personal data would (i) contravene any of the data protection principles, or (ii) section 10 of the Data Protection Act 1998 ("DPA"). In this case the EANI has explained that it considers that disclosing the withheld information to the complainant would be unfair and would breach the first data protection principle. Therefore, this satisfies the first condition in section 40(3) of FOIA. The DPA 1998 has since been superseded by the General Data Protection Regulation ('GDPR') and the Data Protection Act 2018, however the Commissioner has considered the DOJ's handling of the complainant's request at the actual time of the request, which was before the GDPR and Data Protection Act 2018 were in force.

9. 'Personal data' is defined under section 1(1) of the DPA as data which relates to a living individual who can be identified from that data, or from that data and other information which is in the possession of the data controller or is likely to come into possession of the data controller.
10. The Commissioner considers that the information withheld under section 40(2) is personal data, as it consists of information relating to EANI employees, both current and former, as well as that of other associated parties, who are living individuals and could be identified from the information.

Would disclosure of the withheld information be unfair?

11. The Commissioner has considered whether the disclosure of this information would be fair. In considering whether disclosure of personal information is fair the Commissioner takes into account the following factors:
 - the individuals' reasonable expectations of what would happen to their information;
 - the consequences of disclosure, (if it would cause any unnecessary or unjustified damage or distress to the individual concerned); and
 - the balance between the rights and freedoms of the data subject and the legitimate interests of the public.

Reasonable expectations of the data subjects

12. The EANI explained that the withheld information contains the personal information of current and former employees, who were involved in the whistleblowing investigation which was the subject of the report. The report contains extensive amounts of personal data, including to a large extent confidential witness statements which were provided by these individuals during an ongoing investigation. The EANI considers that those individuals would have a reasonable expectation of their personal data being kept confidential and not disclosed into the public domain. The withheld information also contains the expressions of opinion of other individuals in relation to the employee relationships, the investigation in general and the outcome of same, and the EANI considers that the individuals involved would reasonably expect that personal information not to be disclosed into the public domain.

Would disclosure cause damage and distress to the data subjects?

13. The EANI has informed the Commissioner that it did not consider it appropriate under the circumstances to seek the consent of the data subjects to disclosure of their information, so the Commissioner has no first-hand indication of whether damage or distress would be caused to the data subjects by disclosure of the withheld information.
14. However, having viewed the withheld information the Commissioner considers that, due to the reasonable expectations of the data subjects in this situation, disclosure of the withheld information and the likelihood of identification of individuals from this would constitute an intrusion into their privacy, which would be likely to cause them a significant degree of distress, given the nature of the information. Some of the individuals are still employees of the EANI, and are part of a close-knit community working in close proximity together. The EANI also considers that disclosure would have an effect on employee relations in the locality mentioned in the report, which could cause further distress to the individuals. The Commissioner has gone on to consider whether this intrusion would be unwarranted, or whether there is any legitimate interest in disclosure of the data subjects' personal information.

Balancing the rights and freedoms of the individuals with the legitimate interests in disclosure

15. In cases where complying with an information request would involve disclosing personal data, the Commissioner will always be mindful of the importance of protecting the privacy of individuals. Therefore, in order to find in favour of disclosure, it would need to be shown that there is a compelling interest in disclosure which would make it fair to do so.
16. The Commissioner has considered whether there is any wider legitimate interest in the disclosure of the information in question. Clearly disclosure is of interest to the complainant, and there would be a wider interest in seeing the evidence considered by the EANI in its investigation, which would assure the public that the investigation was thorough and that all circumstances were taken into account. However, as the resulting intrusion into the individuals' privacy would be highly likely to cause damage and distress, the Commissioner cannot see any wider legitimate interest which would outweigh the rights and freedoms of the individuals.

17. The Commissioner, having considered all aspects of the complainant's request and the EANI's response, concludes that it would be unfair to disclose the withheld information and that no legitimate interest exists in favour of disclosure which would outweigh the rights and freedoms of the data subjects involved.

Right of appeal

18. 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

19. 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.
20. 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

Deirdre Collins

Senior Case Officer

Information Commissioner's Office

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