



**Information Commissioner's Office**  
Promoting public access to official information  
and protecting your personal information

**Freedom of Information Act 2000 (Section 50)**  
**Decision Notice**

**Dated 13 July 2006**

**Public Authority: Maldon District Council**  
**Address: Princes Road**  
**Maldon**  
**Essex**  
**CM9 5DL**

**Summary Decision and Action Required**

**The Commissioner's decision in this matter is that the Public Authority has dealt with the complainant's request in accordance with Part I of the Act.**

**No remedial action is required.**

**Background**

**1. Freedom of Information Act 2000 (the 'Act') – Application for a Decision and the Duty of the Commissioner**

1.1 The Information Commissioner (the 'Commissioner') has received an application for a decision whether the complainant's request for information made to the Public Authority has been dealt with in accordance with the requirements of Part I of the Act.

1.2 Where a complainant has made an application for a decision, unless:

- a complainant has failed to exhaust a local complaints procedure, or
- the application is frivolous or vexatious, or
- the application has been subject to undue delay, or
- the application has been withdrawn or abandoned,

the Commissioner is under a duty to make a decision in accordance with the requirements of Part I of the Act and to issue a Decision Notice to both the complainant and the public authority.

**2. The Complaint**

The complainant has stated that on 7 February 2005 he made the following request for information to Maldon District Council ("MDC"):

*I am writing to you to ask if you would be prepared to release your own file of papers supplying details of the many complaints [two named individuals] have made.*

It is clear from the context of the request that the complainant wanted access to information about complaints made against him.

In a letter dated 15 March 2005, MDC advised the complainant that the information could not be disclosed due to the provisions of the Data Protection Act 1998 ("the DPA"). MDC also claimed that sections 30 and 31 of the Act exempted the information from disclosure. No further explanation was provided.

On 17 March 2005, the Complainant contacted the Commissioner. He asked for the Commissioner's opinion as to whether he was entitled to the information he required.

At this point the complainant had not exhausted MDC's internal complaints procedure. The Commissioner therefore asked the complainant seek an internal review.

The complainant did ask MDC to carry out an internal review. It completed its review on 10 June 2005. At this point MDC did disclose some information to the Complainant, but maintained that the balance of the information was exempt under s.40(2) of the Act (personal information about a third party). MDC said that it thought it probable that s.44 of the Act (prohibitions on disclosure) also applied, due to the provisions of s.7 (4) of the DPA. (S.7(4) of the DPA can prevent personal data relating to another individual being disclosed when a data subject exercises the right of subject access.) MDC also said that it no longer sought to rely on s.30 (investigations and proceedings) or s.31 (law enforcement) of the Act as grounds for exempting the requested information from disclosure.

MDC continued to cite s.40(2) of the Act as its basis for exempting the requested information from disclosure. It argued that the requested information contains personal data, about the individuals who the complainant believed had complained about him, and that disclosure of this personal data would contravene the Second Data Protection Principle. MDC did not specify which requirement of the Second Principle it thought would be breached.

MDC went on to say that it thought it probable that s.44 of the Act applies, exempting the informants' letters about the complainant from disclosure. MDC also said that s.7(4) of the DPA applies. It argued that disclosing the letters referred to above would involve disclosing information about another individual who has not consented to the disclosure of the information. MDC concluded that it would not be reasonable in the circumstances to comply with the complainant's request.

At that point the complainant asked for the Information Commissioner's

assistance..

### **3. Relevant Statutory Obligations under the Act**

**Section 1(1)** provides that –

“Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him.”

**Section 40** provides that -

“(1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.

(2) Any information to which a request for information relates is also exempt information if-

- (a) it constitutes personal data which do not fall within subsection (1), and
- (b) either the first or second condition below is satisfied.

(3) The first condition is-

(a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of “data” in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-

- (i) any of the data protection principles, or
- (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and

(b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.

(4) The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject’s right of access to personal data).”

**Section 44** provides that -

“ (1) Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it-

- (a) is prohibited by or under any enactment,
- (b) is incompatible with any Community obligation, or

(c) would constitute or be punishable as a contempt of court.  
(2) The duty to confirm or deny does not arise if the confirmation or denial that would have to be given to comply with section (1)(1)(a) would (apart from this Act) fall within any of the paragraphs (a) to (c) of subsection (1).”

#### **4. Review of the case**

The Commissioner began his investigation of this case by contacting MDC to ask for a copy of the requested information. The Commissioner also invited MDC to detail its reasons for relying on the various exemptions it had cited in its correspondence with the Complainant.

MDC provided the information that the Commissioner had requested. It did not, though, provide any additional explanation of its reliance on the exemptions. It argued that it had already explained its use of the exemptions in the course of correspondence with the complainant.

The Commissioner then went on to examine the requested information and MDC’s application of the exemptions in the Act to it. In particular, he considered whether disclosure of the requested information to the complainant would breach the data protection principles.

As part of his objective of resolving this case, the Commissioner also considered whether it would be possible for MDC to provide an anonymised copy of the requested information to the complainant, i.e. one with information identifying the informant removed.

#### **5. The Commissioner’s Decision**

The Commissioner’s decision in this matter is that the Public Authority was justified in relying upon the exemption at section 40(2) of the Act relating to third party data. However, while the Council argued that disclosure would result in a contravention of the second data protection principle, the Commissioner considers that the relevant principle is the first principle.

The Commissioner is satisfied that the requested information does constitute personal data, the subjects of which are the individuals that the complainant named in his original request. The information is clearly about those individuals and the complaints they may have made to MDC. They are explicitly identified throughout the requested information.

The complainant’s request was refused on the basis that it was a request for third party data (that is data of which the applicant was not the subject) and that disclosure would breach one of the data protection principles. In its refusal notice, the Council cited the second data protection principle.

This provides –

*“Personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with*

*that purpose or those purposes.”*

The Council contends that since the disclosure of personal data in response to a request for information under s.1 of the FOI Act had not been specified in a fair collection notice given to the relevant data subjects, this principle would be contravened.

The Commissioner considers that this is not a correct interpretation of the Data Protection Act. If the Council were correct in its interpretation, no disclosures of third party data would be permitted in response to FOI requests except where data subjects had been given prior notice. This would include cases where requests for information identified individuals acting in a public or official capacity in addition to information relating to their private lives.

The Commissioner considers that the correct interpretation of Principle 2 in this context is that the disclosure of third party data in response to a request submitted in accordance with other statutory rights is not inherently incompatible with any other lawful purpose for which information may be obtained. Principle 2 may, however, restrict the purposes for which a third party to whom personal data are disclosed may subsequently process those data.

The Commissioner considers that the central issue in considering whether or not the FOI Act requires the disclosure of personal data is not the second data protection principle, but rather the first principle.

Considering the complaint in the context of the first principle, the Commissioner is satisfied that disclosing the information to the complainant would contravene the requirement of the first data protection principle that personal data must be processed fairly and lawfully. One factor to consider in determining whether the processing of personal data is fair is the expectation of the data subject. In particular, it is necessary to consider whether the informants in this case would expect information identifying them to be disclosed by MDC to the subject of their complaint. The Commissioner is satisfied that that they would not, and that the disclosure of personal information about them to the complainant would be unfair. The Commissioner also considers that disclosure of information identifying the informants would be likely to involve a breach of confidence and to that extent the processing of personal data would be unlawful.

The Commissioner is satisfied that the information requested by the complainant identifies the individuals who complained about him. MDC has already provided certain information to the complainant identifying the informants. Given this, and the nature of the information, it would not be possible for MDC to provide an anonymised version of the requested information.

The Commissioner is not convinced of the relevance of s.7(4) of the DPA to the complainant's request. S.7(4) only comes into play in the context of a subject access request made under the DPA by an individual seeking access

to information about himself. In this case, no subject access request was made. However, given the strength of the argument that the requested information should not be disclosed because it would be unfair to do so, the Commissioner has not considered this matter further.

Section 40 of the Act provides an absolute exemption where disclosure of personal data about someone other than the complainant would contravene any of the data protection principles. The exemption is no subject to the public interest test which the Commissioner has, therefore, not considered.

## **6. Action Required**

In view of the matters referred to above the Commissioner hereby gives notice that in exercise of his powers under section 50 of the Act he does not require that any remedial steps be taken by MDC.

## **7. Right of Appeal**

Either party has the right to appeal against this Decision Notice to the Information Tribunal (the "Tribunal"). Information about the appeals process may be obtained from:

Information Tribunal  
Arnhem House Support Centre  
PO Box 6987  
Leicester  
LE1 6ZX

Tel: 0845 600 0877  
Fax: 0116 249 4253  
Email: [informationtribunal@dca.gsi.gov.uk](mailto:informationtribunal@dca.gsi.gov.uk)

Any Notice of Appeal should be served on the Tribunal within 28 days of the date on which this Decision Notice is served.

**Dated the 13th day of July 2006**

**Signed .....**

**Phil Boyd  
Assistant Commissioner**

**Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire, SK9 5AF**