

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 11 June 2007

Public Authority: Sunderland City Council
Address: PO Box 100
Civic Centre
Sunderland
SR2 7DN

Summary

1. The complainant asked the Council for information held about the Tyne and Wear Anti-Fascist Association ("TWAFA"). In its response the Council provided to the complainant most of the information requested, but redacted the names and certain contact information in relation to TWAFA and Council staff. The Council also withheld TWAFA annual reports. The Council cited the exemptions contained in sections 38(1), 40 and 41 of the Freedom of Information Act ("the Act"). Following discussions with the Commissioner, the Council released a redacted copy of a TWAFA annual report. The Commissioner has decided that sections 38 and 40 are engaged and that the public interest lies in favour of maintaining the section 38 exemption. However, he has decided that the Council was in breach of section 17 (1) of the Act as it failed to supply a refusal notice within 20 working days. It also failed to complete a review of its decision within the time specified in its complaints procedure.

The Commissioner's Role

2. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

3. Having revised an earlier information request, on 19 February 2005 the complainant wrote to the Council requesting the following information:

'All information concerning Sunderland City Council and the Tyne & Wear Anti-Fascist Association, income and expenditure, grants and communications, within the last five years.'

4. On 21 March 2005 the Council wrote to the complainant stating that parts of the information requested may be exempt from disclosure and that another estimated 14 days would be required in order to consider his request. On 14 June 2005 the complainant emailed the Council complaining that he had still not received a response to his request for information. On 30 June 2005 the Council emailed the complainant stating that it would need a few days longer to respond to him. On 4 July 2005 the Council wrote to the complainant enclosing some of the information which he had requested. The Council explained, however, that certain identifying information had been redacted from the documents provided. In doing so the Council cited the exemptions provided by section 38(a) and section 40 of the Act. The Council also withheld certain documents under the exemption provided by section 41 of the Act, as it considered that the information was provided in confidence and that to disclose the contents of the documents could result in an actionable breach of confidence.
5. On 8 July 2005 the complainant wrote to the Council asking for a review of its decision to withhold certain information, and pointing out that TWAFa was publicly funded and that the use of public money should be open to scrutiny, including details of individuals who received the funding. The complainant also asked for copies of all TWAFa annual reports held by the Council. After several reminders from the complainant, the Council responded to him on 7 October 2005 with the result of its review of his information request. The Council provided further copies of correspondence and accounts, some of which had been obtained from TWAFa to complete Council records. However, the Council confirmed its original decision not to disclose personal identifying information. It also withheld copies of the TWAFa annual reports.
6. The Council said that, in withholding the information, it had taken into account representations made to it about the potential risk to individuals should their details be made public. The Council also pointed out its legal obligations in regard to equalities legislation and in promoting community cohesion. It considered that the exemption provided by section 38 of the Act applied to the personal identifying information and contact details of individuals as disclosure would, or would be likely to, endanger their physical or mental health. The Council also considered that people should be able to communicate with a public body in confidence unrestricted by concerns that the information could be placed in the public domain, particularly where the information would cause harm to them or others.
7. The Council further considered that certain information was also exempt under section 40 of the Act where the documents contained information personal to an individual. In addition, the Council believed that the exemption contained in section 41 of the Act applied to some information which had been provided in confidence. The Council added that, in the course of its review, two further documents produced by TWAFa had been identified, and it considered that section 41 also applied to that information.

8. The Council said that a distinction had been drawn between the identifying information relating to its own staff and to that of TWAFAs staff. In doing so it stated that identifying information was withheld only in relation to junior Council staff to whom the Council had a duty of care. It considered that there was a clear public interest in bodies such as the Council maintaining the confidence of its staff in its willingness to take such action as was reasonable in order to safeguard their welfare and to avoid compromising their safety.
9. In relation to identifying information about those receiving funds, the Council accepted that the general principle was that the public should be entitled to sufficient information in order to understand how the funds were used. However, the Council considered that the obligation of confidentiality was absolute where breach of such confidentiality could give rise to legal action against an authority; and, in the circumstances, disclosure of the details of TWAFAs officials was necessarily exempt under the Act, and public interest considerations did not apply.

The Investigation

Scope of the case

10. On 17 October 2005 the complainant contacted the Commissioner to complain about the way in which his request for information had been handled. The complainant specifically asked the Commissioner to consider whether the names of TWAFAs officials should be disclosed. The Commissioner's investigation therefore involved assessing the nature of the information withheld by the Council and determining whether the Council had correctly applied the exemptions in sections 38, 40 and 41 to that information. Details of the exemptions are set out in the Legal Annex to this Decision Notice.

Chronology

11. On 10 April 2006 the Commissioner wrote to the Council to request copies of all relevant documents, including those withheld from the complainant. He also requested clarification of the application of the exemptions to the withheld information. The Council provided to the Commissioner all relevant information and documents and expanded on its reasons for applying the exemptions to the information sought.
12. The Council told the Commissioner that its response to the complainant dated 7 October 2005 outlined the reasons for its refusal to provide the requested information in full. It added that only personal information relating to relatively junior Council employees and TWAFAs officials, and the addresses of those staff and associated organisations, had been redacted. All other redactions had been made to remove information not within the scope of the request. Where names had been redacted, in the case of Council employees, the redactions were based on sections 38 and 40 of the Act. In the case of the information withheld by virtue of section 38, the Council had taken into account that staff had expressed

- genuine fear for their personal safety if identified, and that release of their names or contact details would be likely to cause them stress and anxiety. In the case of junior staff section 40 had also been applied as they had a reasonable expectation that they would not be identified to any external bodies other than those with which they had to routinely engage.
13. The Council said that, in considering the question of the public interest, it accepted that the broad detail of funding arrangements should be provided, to achieve transparency about the destination of public funding. However, in considering the effect of releasing information subject to the public interest test, the Council took account of its responsibility to promote community cohesion, and the effects on individuals, the community (including Council employees), and the wider public of releasing information that was likely to be inflammatory. The Council said that it also had regard to the principle that members of the community should not be deterred from communicating with the Council on sensitive matters by concerns that the detail of their communications would be made public.
 14. The Council told the Commissioner that the names of TWAFAs representatives and copies of TWAFAs annual reports had been withheld in full on the basis of the section 41 exemption, as these were supplied in the genuine expectation that they would be treated as confidential by the Council, and that an actionable breach of confidence would arise if that expectation was disregarded. It was clear from representations made by TWAFAs that its staff feared for their safety should their identities be made public, and that this fear was based on previous events detailed in a dossier submitted to the Council. However, towards the end of the Commissioner's investigation, it was established that only one relevant annual report was held by the Council at the time of the complainant's information request. Following subsequent discussions with TWAFAs the Council agreed to release that report to the complainant, subject to redactions to remove information under the section 38 and 40 exemptions. As a result of this development the Commissioner has had no need to consider the applicability of section 41 to the information contained in the annual reports.
 15. During the course of the investigation the Commissioner was contacted by TWAFAs, which reiterated its serious concerns about the request for information. TWAFAs explained that it was a voluntary body involved in campaigning against extremist organisations, and that it also participated in political work such as anti-racist education and tackling hate crime. TWAFAs provided evidence of harassment and intimidation and stated that it was fearful of the potential threat to its staff and contacts should their details be released. TWAFAs also explained that it no longer published its office address as it had suffered harassment at its previous address. In addition, it had been targeted at the venues of other organisations when meetings with them had been held. TWAFAs added that, when information had previously been provided about its activities, details (together with inflammatory comments) had appeared on extremist websites.

Analysis

Procedural matters

16. Where a public authority to any extent refuses a request for information it is required under section 17(1) of the Act to provide to the applicant, within the time limit set out in section 10, a notice detailing the refusal. In this case the complainant first made a revised request for information on 19 February 2005, but did not receive a substantive response from the Council until 4 July 2005, some 18 weeks later. Section 10(1) of the Act states that a public authority must comply with section 1(1) promptly and, in any event, not later than the 20th working day following the date of receipt of the request. Clearly, the Council's response was outside the statutory time limit by a considerable margin, and therefore failed to comply with section 17(1) of the Act.

Exemptions

Section 38(1)(a) and (b)

17. Section 38 provides an exemption in relation to information which, if disclosed, would, or would be likely to, endanger the health or safety of an individual. The Council applied this exemption to identifying information relating to junior members of its staff. The Council has said that its staff had expressed concerns for their safety should their details be made public, and considers that it has a duty of care as an employer to ensure that its staff are not put at risk. In relation to the public interest test the Council believes that, in this particular case, its responsibility to the community in general and to its employees in particular outweighs the public interest in disclosing the redacted information.
18. While the Council did not specifically apply section 38 to the contact details of TWAFa, the Commissioner believes that this exemption applies to details of organisations associated with TWAFa and to its address. However, while section 38 can be applied to such information, the Commissioner considers that the disclosure of information relating to living individuals is more appropriately dealt with under section 40 of the Act.
19. In deciding to redact certain personal and contact details from the information provided to the complainant, the Council was clearly influenced by representations both from its own staff and from TWAFa. That organisation had expressed serious concerns about possible harassment, based on previous experience when the release of contact details had resulted in incidents of harassment, including physical and oral abuse. TWAFa presented to the Council a comprehensive dossier of evidence to substantiate its case.
20. While there can be no absolute certainty that the release of the withheld information would put the individuals and organisations concerned at risk, there is sufficient evidence to lead the Commissioner to conclude that there is a real likelihood that they would be singled out for harassment, intimidation and possible violence by others. The Commissioner is therefore satisfied that section 38 is

engaged in relation to the organisations whose details were redacted from the information released to the complainant, as the publication of that information could endanger the health and safety of those involved with those organisations. However, the Commissioner considers that section 40 is the exemption which should be applied to any individuals specifically named in the documents.

Public interest test

21. Section 38 is a qualified exemption and is therefore subject to the public interest test. The complainant considers that a body that is in receipt of public funding should be transparent about its activities. The Council has said that, while it accepts the principle of openness about the way in which public funds are used, it believes that it has a duty to protect the physical and mental wellbeing of the individuals concerned and the ability of others to communicate with the Council without fear of harassment.
22. The Commissioner recognises that there is significant and legitimate public interest in the public funding of voluntary organisations such as TWAFa, and about the way in which the money is utilised. However, the information which has now been provided to the complainant includes all the details held about grants made to TWAFa, and its audited accounts. As the complainant's main concern was to verify that the funding was being used legitimately, the Commissioner believes that the information provided to him satisfies that purpose. Therefore, the Commissioner does not believe that the disclosure of contact details of TWAFa or Council staff, or of other associated organisations, would enhance the public understanding of TWAFa's activities in that regard. In view of the potential risk to the health and safety of the staff of the organisations whose details have been withheld the Commissioner considers that, in all the circumstances of this case, the public interest in maintaining the exemption outweighs the public interest in disclosing the withheld information.

Section 40(2)

23. The core function of section 40 is to protect personal data relating to living individuals rather than organisations. The names and contact details of individuals included in the documents in question clearly represent personal data as they relate to personal information about third parties. The information will constitute exempt information if one of the two conditions referred to in section 40(2) is satisfied. In considering the first condition (section 40(3)(a)), the Commissioner has had regard to whether any of the data protection principles would be breached by releasing the information. The first data protection principle requires that personal data should be processed fairly and lawfully and, in particular, that it should not be processed unless at least one of the conditions in schedule 2 of the Data Protection Act 1998 is met.
24. The information at issue concerns the names and contact details of TWAFa officials and certain Council staff. The Council has applied the section 41 exemption to details of TWAFa officials but, for the reasons given in the previous paragraph, the Commissioner believes that section 40 is more appropriate to this information, and has not, therefore, considered the application of section 41. As

the Commissioner is satisfied that the information is third party personal data, he has to consider whether disclosure would contravene the first data protection principle. Having done so, the Commissioner does not consider that any of the conditions under Schedule 2 are relevant, with the exception of condition 6(1) which requires the balancing of the legitimate interests of the complainant and those of the data subjects.

25. TWAFa has expressed serious concerns about the possible consequences should the information be released, and has provided to the Council a dossier setting out in detail those concerns. In addition, TWAFa has provided to the Commissioner evidence of previous incidents of harassment following disclosure of similar information. The Council has also explained why it has concerns in relation to its own staff.
26. The complainant has argued that he has a legitimate interest in knowing the names of those in receipt of public funds. However, the Commissioner accepts that disclosure could cause distress to the individuals concerned and that they have a legitimate expectation that their details should not be placed in the public domain. Therefore, the Commissioner has decided that, in this case, the interests of the data subjects outweigh those of the public. Having concluded that none of the conditions in Schedule 2 of the 1998 Act are met, and having regard to the concerns of TWAFa and the Council, the Commissioner has decided that releasing the information in this case would not allow for fair and lawful processing and would breach the first data protection principle. It should therefore remain withheld.

The Decision

27. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:

The exemptions under sections 38(1) and 40(2) were correctly applied, although the Commissioner believes that section 40 rather than section 41 applies to certain information provided by TWAFa.

However, the Commissioner has also decided that the following element of the request was not dealt with in accordance with the Act:

The Council failed to comply with section 17(1) of the Act as the time limit for responding to the information request was exceeded.

Steps Required

28. The Commissioner requires no further steps to be taken.

Other Matters

29. Although it does not form part of this Decision Notice the Commissioner wishes to highlight the following matter of concern:

On 8 July 2005 the complainant asked for a review of the Council's decision to withhold some of the information requested. Although a certain amount of correspondence passed between the complainant and the Council following the review request, the Council did not respond definitively until 7 October 2005. Section 17 of the Act requires public authorities to provide particulars of any procedure for dealing with complaints about the handling of requests for information. In the Council's case, the procedure at the time was for an initial review by the Directorate (stage 2) followed by a further review on behalf of the Chief Executive if the complainant remained dissatisfied (stage 3). The target time for completion of each review was 15 working days. In the circumstances, however, the Council decided that the stage 2 review would be inappropriate and that the Assistant Chief Executive should decide the issues, which would constitute the stage 3 review. That being the case, the target time for the response was 15 working days from the date of the complainant's request. The Commissioner has recently issued guidance on time limits for carrying out internal reviews. The Commissioner recognises that there may be exceptional circumstances where it may be reasonable for reviews to take longer than target times, but in his view in no case should the time taken exceed 40 working days. In this case, it was three months before the response was sent, 65 working days after the request. The Council has informed the Commissioner that it has since changed its review procedure.

Right of Appeal

30. Either party has the right to appeal against this Decision Notice to the Information 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

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

Dated the 11th day of June 2007

Signed

**Graham Smith
Deputy Commissioner**

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

Legal Materials Annex

Relevant Sections of the Freedom of Information Act 2000

Section 1(1) states 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 the information of the description specified in the request; and
 - (b) if that is the case, to have that information communicated to him.”

Section 2(2) states that:

- “In respect of any information which is exempt information by virtue of any provision of Part II, section 1(1)(b) does not apply to the extent that –
- (a) the information is exempt information by virtue of a provision conferring absolute exemption, or
 - (b) in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.”

Section 10(1) states that –

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

Section 17(1) states that -

“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.”

Section 17(7) states that –

- “A notice under subsection (1), (3) or (5) must –
- (a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and
 - (b) contain particulars of the right conferred by section 50.”

Section 38 states that:

- “(1) Information is exempt information if its disclosure under this Act would, or would be likely to -
- (a) endanger the physical or mental health of any individual, or
 - (b) endanger the safety of any individual.”

Section 40 states that:

- (1) Any information to which a request for information relates is exempt information if it is 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.

Section 41 states that:

- (1) Information is exempt information if –
 - (a) it was obtained by the public authority from any other person (including another public authority, and
 - (b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.