

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 27 September 2007**

**Public Authority:** East Sussex County Council  
**Address:** County Hall  
St Anne's Crescent  
Lewes  
East Sussex  
BN7 1SW

### Summary

---

The complainant asked the Council for a copy of a letter that its Director of Children's Services had written to a Crown Court judge.

The Council withheld the letter under s36 (prejudice to the effective conduct of public affairs), s40 (personal information) and s41 (information provided in confidence).

The Commissioner decided that the requested information was exempt under s40. He also found that the Council should have undertaken an internal review of its decision to refuse disclosure as requested by the complainant.

### The Commissioner's Role

---

1. 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

---

2. A mother pleaded guilty in the Crown Court to charges of child cruelty and supplying class A drugs to her son. She was imprisoned and her son was taken into the care of the local authority. The judge asked for an explanation of the actions taken by the Council in relation to the case. A letter was subsequently written to that effect by the Council's Director of Children's Services.
3. On 8 September 2006 the complainant asked the Council for a copy of the letter which had been sent to the judge.

4. The Council withheld the letter. In its refusal notice of 3 October 2007 the Council informed the complainant that the requested information was exempt under s36 (prejudice to effective conduct of public affairs), s40 (personal data) and s41 (information provided in confidence) of the Act.
5. The Council advised the complainant that the health, safety and well-being of the child was paramount and that through no fault of his own he had already been put through the media spotlight. The Council reminded the complainant that it had issued a press release after the court case which stated that no further enquiries would be answered on the basis that it was in the best interests of the child to be allowed to live a normal life.
6. On 19 October 2006 the complainant appealed against the Council's refusal to release the letter. On 7 November 2006 the Council informed the complainant that whilst its usual appeals process was for the Chief Executive to conduct an internal review, it considered it more appropriate for the complainant to refer the appeal directly to the Information Commissioner in this instance.

## The Investigation

---

### Scope and chronology of the case

7. The complainant wrote to the Commissioner on 17 November 2006 to complain about the Council's withholding of the letter. He also complained that the Council had failed to conduct an internal review of its decision to refuse disclosure when he had requested this.
8. On 13 August 2007 the Commissioner requested a copy of the letter from the Council to enable him to ascertain whether the exemptions under the Act had been applied appropriately.
9. He also asked the Council to explain why it considered an internal review to be unnecessary. On 29 August 2007 the Council said it thought that the seniority of its Monitoring Officer who exempted the information precluded a review by its Chief Executive.
10. The Commissioner informed the Council on 31 August 2007 that its Chief Executive was not prevented by reasons of position from reviewing decisions made by its Monitoring Officer. However, in view of the time elapsed since the request was made, the Commissioner decided not to require a retrospective review on this occasion. He asked the Council to ensure that in similar circumstances future reviews are carried out when requested.

## Analysis

---

### Section 40 (personal information)

11. The Council relied on s40(2) of the Act to withhold the letter.
12. The Commissioner has examined the document. It relates to the circumstances of the child and his mother and comprises information which is personal data within the meaning of s1(1) of the Data Protection Act 1998 (DPA). Additionally, some of the information is sensitive personal data within the meaning of s2 of the DPA.
13. The first data protection principle states that personal data shall be processed fairly and lawfully. In the Commissioner's view, disclosure of the requested information without the consent or expectation of the individual concerned would be unfair and would contravene this principle. He is therefore satisfied that the information is exempt from disclosure.
14. The provision in s40(2) confers absolute exemption from disclosure and as such is not subject to the public interest test.
15. The Commissioner advised the complainant that in his view the requested information had been withheld appropriately. The complainant stated that since making his complaint to the Commissioner, the mother of the child had killed herself in prison. Because of this and because of the change in the child's status, he argued that disclosure of the information would not breach the Data Protection Act.
16. The complainant appears to have based this view on the meaning of personal data as defined in s1(1) of the DPA. This states that personal data is data relating to a living individual who can be identified from that data. However, as the decision to exempt the letter from disclosure was made during the mother's lifetime, the Commissioner's investigation into the matter correspondingly relates to the circumstances appertaining at the time. The Commissioner is satisfied that should the complainant's request have been made after the mother's death, references to her in the letter would remain exempt from disclosure. This is because the references to her are enmeshed with the data concerning her son and cannot be disclosed without revealing information about him. The child of course remains identifiable despite any change in his status.
17. The complainant asked the Council to consider redaction of the letter. The Council's view was that redaction rendered the letter meaningless or open to misinterpretation. The Council's expressed concern was that disclosure of any part of the letter would place the child back into the public arena.
18. The Commissioner has looked carefully at the possibility of redaction. In his view all the information in the letter can be linked to the child and his mother. Exposure in the public domain as a consequence of its disclosure would have an impact on the child. The information in the letter therefore constitutes his personal data. Its

release would contravene the first data protection principle and as outlined above is therefore exempt from disclosure.

19. As well as the exemption at s40 of the Act, the Council also relied on the exemptions at s36 (prejudice to the effective conduct of public affairs) and s41 (information provided in confidence) to withhold the information. However, as the Commissioner is satisfied that the exemption at s40 is engaged he has not considered the exemptions at s36 and s41 in this decision notice.

## **The Decision**

---

20. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

## **Steps Required**

---

21. The Commissioner requires no steps to be taken.

## Right of Appeal

---

22. 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](mailto: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 27<sup>th</sup> day of September 2007**

**Signed .....**

**Graham Smith  
Deputy Commissioner**

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

## Annex

### Relevant statutory obligations and provisions under the Act

**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 the 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).

(5) The duty to confirm or deny-

- (a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and
- (b) does not arise in relation to other information if or to the extent that either-
  - (i) he giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the Data Protection Act

- 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or
- (ii) by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed).

(6) In determining for the purposes of this section whether anything done before 24th October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the Data Protection Act 1998 shall be disregarded.

(7) In this section-

"the data protection principles" means the principles set out in Part I of Schedule 1 to the Data Protection Act 1998, as read subject to Part II of that Schedule and section 27(1) of that Act;

"data subject" has the same meaning as in section 1(1) of that Act;

"personal data" has the same meaning as in section 1(1) of that Act.

**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.

**Section 1(1) of the Data Protection Act** defines personal data as:

data which relate to a living individual who can be identified –

- (a) from those data, or
- (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller.

**Section 2 of the Data Protection Act** defines sensitive personal data as personal data consisting of information as to:

- (a) the racial or ethnic origin of the data subject,
- (b) his political opinions,
- (c) his religious beliefs or other beliefs of a similar nature
- (d) whether he is a member of a trade union (within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992),
- (e) his physical or mental health or condition
- (f) his sexual life,
- (g) the commission or alleged commission by him of any offence, or

(h) any proceedings for any offence committed or alleged to have been committed by him, the disposal of such proceedings or the sentence of any court in such proceedings.

**The first data protection principle** as laid out in Schedule 1 of the DPA provides that:

Personal data shall be processed fairly and lawfully and in particular, shall not be processed unless –

- (a) at least one of the conditions in Schedule 2 is met, and
- (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.