

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 17 December 2009

Public Authority: Bolton Metropolitan Borough Council
Address: Town Hall
Victoria Square
Bolton
Lancashire
BL1 1RU.

Summary

The complainant requested the names of individuals from the Council who attended Common Purpose courses. The Council applied section 40(2) to those names and confirmed its view in an internal review. The Commissioner has determined that there are seven individuals whose names have been withheld. He finds that section 40(2) has been applied correctly for three of those names and incorrectly for four of them. He therefore requires the four names to be released and that the Council breached sections 1(1)(b) and 10(1) of the Act. He has also found breaches of section 1(1)(a), 10(1) and 17(1) in failing to conduct sufficient searches originally, provide a refusal notice, or the non exempt information within the statutory timescales. The Commissioner requires that the four names are released in thirty five calendar days.

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.

Background

2. Common Purpose is a not for profit organization that brings together people from a wide range of backgrounds to help them become more effective leaders in society. On its website it explains that it encourages its alumni to act beyond their own immediate area of responsibility and to not take decisions in isolation.

The Request

3. On 9 April 2009 the complainant requested the following information:
 1. *Please supply information on how much the council has spent on training referred to as 'Common Purpose.'*
 2. *Please supply all the invoices associated with payments for 'Common Purpose' expenditure.*
 3. *Please supply the names of all people who have received any training for 'Common Purpose.'*
4. On 22 May 2009 the public authority wrote to the complainant and explained that it was still trying to obtain one invoice and it would provide a response as soon as it was able.
5. On 27 May 2009 the public authority provided the following response:
 1. It explained that it had spent a total of £28367.71 with Common Purpose.
 2. It provided a copy of the invoices with some redactions:
 - It withheld the purchase order numbers, costs codes and Common Purpose bank account numbers in accordance with section 31(1)(a). It explained that its view was to publish them would prejudice the prevention of crime as it would create a risk of fraud. It conducted a public interest test and explained that it favoured the maintenance of the exemption in this case.
 - It withheld the name of the Council officers attending Common Purpose events. It explained that in its view they were exempt by virtue of section 40(2) as disclosure would contravene the data protection principles. It explained that it felt the disclosure would be unfair in particular to less senior members of its staff.
 3. It explained that these names were exempt by virtue of section 40(2) for the same reasons given above.
6. On 29 May 2009 the complainant requested an internal review. He explained that he was unclear from the response how senior the individuals were that had been blanked out and that he strongly believed that the information should be available to the tax payers and was of great public interest.
7. On 9 July 2009 the public authority provided a clarification to the terms of its response. The public authority explained that Chief Officers were in its view senior enough to disclose this information and that the information about anyone more junior was exempt.

8. Also on 9 July 2009 the complainant replied to this clarification and explained:

'I wish to challenge your view which seems to only designate chief officers as senior officers. I believe some officers of the council below the scale of chief officers or on a par with them can also rightly be referred to as senior officers.

I do wish to challenge the redaction of the names on the common purpose invoices you have already sent to me. Therefore I am asking again for an internal review regarding this point.

I believe the public interest in divulging these names of senior officers overrides any interest senior officers of the council may have for not wanting their names divulged and therefore is subject to a public interest test with a view to the disclosure of the names of all the officers who have attended common purpose meetings paid for by the tax payer.

I think you also need to take into account the fact that when people take up these senior posts they would have an expectation to have their names in the public arena.

There has been more than £28,367.00 spent on these in essence secret meetings. This money is money paid by the tax payer I think it is well within the public interest to reveal the names of senior council officers attending these secret meetings that we have all paid for held under the Chatham House rules.'

9. On 17 July 2009 the public authority communicated the results of its internal review. It explained that it was conducting an internal review into part 3 of the original request only (the names of the Council Officers who had attended the courses). It stated that it had previously stated that they were exempt due to the application of section 40(2), by virtue of section 40(3)(a)(i). It consulted the Commissioner's guidance about section 40(2) and in particular his comments that while senior staff should expect the information to be disclosed, less senior individuals may not. It explained that its policy was to release Chief Officers information, but not to release less senior individuals unless their name is already in the public domain and that it would be fair in all the circumstances to do so.
10. It explained that this approach was considered to be fair in maintaining the balance between openness and the legitimate expectations of the staff. It explained that none of the individuals were Chief Officers and that it considered it unfair to disclose the names of any of them. It also explained that it did not consider that condition 6(1) of Schedule 2 was satisfied either and that the information could be withheld. In addition it explained that there was no public interest element in section 40(2), although it could be taken into account when considering the conditions. It explained that it had satisfied the legitimate public interest in knowing how much the Council spent, how many courses were attended and the benefits to its constituents, but that it did not think there was a legitimate interest in publishing the names of those officers.

The Investigation

Scope of the case

11. On 17 July 2009 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant has exchanged considerable correspondence about this matter and within that correspondence has specifically asked the Commissioner to consider the following points:
- That he believes that the Council's view that Chief Officers are the only rank of Senior Officers who should have their name disclosed is flawed.
 - That the request relates to Senior Officers of the Council and primarily to their public function rather than private life. In particular they relate to their training for their public role. This is particularly true in this case because Common Purpose only offers training to people who have relatively senior roles.
 - That the individuals who take up senior posts would have an expectation to have their names in the public arena as outlined in the Commissioner's guidance on this issue.
 - That the Officers who attended the courses would expect that the public would be able to scrutinise their attendance at very expensive meetings.
 - That if the Council offer development opportunities to less senior members of staff then those staff should be equally accountable.
 - That the Officers would not experience unwarranted damage and distress in this case and should not have attended those meetings in the event that public scrutiny would have this effect.
 - That the Officers that attended the courses had provided their permission for Common Purpose to use their name within its literature and therefore there was no expectation of privacy in this case.
 - That the Commissioner should consider the nature of the meetings and public concern when considering fairness and that Common Purpose is a charity and he believes there is no space for secrecy within it.
 - That the Commissioner must consider that the training embarked upon by individuals in the public sector should be for the benefit of the tax payer.
 - That he is also worried that the effect of secrecy may mean that some delegates are wrongly put forward by other previous delegates leading to an unjustified expense of public funds.

- That the Council routinely provides the names of less Senior members of staff than Chief Officers in other circumstances.
 - That a large number of other public authorities provide information about their delegates that attended the Common Purpose courses with no adverse effect.
12. On 5 October 2009 the Commissioner agreed the scope of the case to be as follows:
- Whether the names of those individuals who attended the Common Purpose courses have been correctly withheld by virtue of section 40(2), or whether this information should be disclosed to the public.
13. During the course of the Commissioner's investigation the following matters were resolved informally and therefore these are not addressed in this Notice:
- The Council provided one name of individual [A].

Chronology

14. On 31 July 2009 the Commissioner wrote to the public authority. He asked for copies of the withheld information and any other arguments it had for applying the exemptions in this case.
15. On 27 August 2009 the public authority replied to the Commissioner. It explained that the invoices themselves did not totally reflect who had attended the courses and provided an explanation why. It provided the withheld information and its arguments about why it had withheld this information. It explained that it had identified a Chief Officer – individual [A] whom it was not aware had attended the course and was prepared to disclose this information to the complainant. It provided this information by email on 14 September 2009.
16. On 17 September 2009 the Commissioner wrote to the complainant. He explained that his preliminary view was that the application of the exemptions was reasonable in this case and asked whether the complainant wanted the case to proceed.
17. On 26 September 2009 the complainant provided a detailed response. He explained that he did not accept the Commissioner's preliminary verdict in this matter and wanted the case to continue.
18. On 5 October 2009 the Commissioner responded to the complainant's comments and explained that he would consider all the evidence of this case again.
19. On 6 October 2009 the Commissioner talked to the complainant on the telephone. He exchanged correspondence a number of times between 6 October 2009 and 14 October 2009. As a result of this correspondence the complainant proved to the Commissioner that other public authorities have released

information in similar circumstances and further arguments about why he believed the information was incorrectly withheld.

20. On 6 October 2009 the Commissioner talked to the public authority on the telephone. He asked for it to provide more information about the seniority of the individuals, whether they had communicated their expectations and their management responsibilities. He also asked it to ensure that it had found all the relevant individuals and to provide any further arguments that it thought relevant.
21. On 26 October 2009 the complainant contacted the Commissioner and explained that he was concerned about the information received about individual [A] and also about whether other individuals may have been funded by external organisations too. The Commissioner explained that he would consider whether all the information has been found on the balance of probabilities in this case.
22. On 2 November 2009 the Commissioner received the information that he had requested from the public authority. Also, on 2 November 2009 he requested a copy of the email that invited the delegates to outline their expectations and received a copy of it on the same day.

Analysis

Substantive Procedural Matters

What recorded information is held that is relevant to the request in this case?

23. In this case there have been a number of difficulties experienced by the public authority in identifying all the information that is relevant to this request.
24. In particular it was the case that the invoices did not correspond with the delegates that had attended. In one case an invoice had been submitted for a delegate who did not attend and the public authority had to ask for its money back. In another an individual had accompanied youngsters to go on a course at the organisation and had received no training. In addition the invoices only reflected those delegates whom the public authority had paid for. They would not identify those that attended for free or those whose attendance had been funded by another organisation.
25. Therefore the Commissioner has asked the public authority to be certain of the individuals that had attended the courses. The public authority checked its records and consulted widely and determined that there were three individuals that had attended Common Purpose courses who were not mentioned in the invoices. In addition the two people mentioned above who did not attend a course were identified as being not relevant to the request.
26. In investigating cases involving a disagreement as to whether or not information is in fact held by a public authority, the Commissioner has been guided by the approach adopted by the Information Tribunal (the 'Tribunal') in the case of *Linda*

Bromley & Others and Information Commissioner v Environment Agency (EA/2006/0072). In this case the Tribunal indicated that the test for establishing whether information was held by a public authority was not one of certainty, but rather the balance of probabilities. The Commissioner will apply that standard of proof to this case.

27. He has also been assisted by the Tribunal's approach in *The Information Commissioner v Environmental Agency* (EA/2006/0072), where it explained that the application of the 'balance of probabilities' test to determine whether information is held requires a consideration of a number of factors including the quality of the public authority's final analysis of the request, scope of the search it made on the basis of that analysis and the rigour and efficiency with which the search was then conducted. It will also require considering, where appropriate, any other reasons offered by the public authority to explain why the information is not held.
28. The Commissioner is satisfied that the search was of sufficient rigour and efficiency after he had gone back to the public authority, but that it was not adequate at the time of the internal review. In failing to identify information that fell within the scope of the request at the time of the internal review, the public authority breached sections 1(1)(a) and 10(1) of the Act.
29. The result of the searches has identified 8 individuals. They will be referenced as individuals [A] to [H] for the remainder of this Notice. As explained above individual [A]'s name has already been released and will not be considered further. A confidential annex that will be provided to only the public authority will contain a key that provides the name of the individual against the letter the Commissioner has used. This step is necessary to maintain the integrity of the withheld information.

Exemption

30. The public authority's main arguments centred on the application of the first data protection principle. It believes that disclosure of the personal data in question would be unfair and would not satisfy one of the conditions for processing listed in Schedule 2 of DPA. The Commissioner is considering the application of the exemptions at the date of the request - 9 April 2009.
31. In analysing the application of section 40(2), the Commissioner therefore considered a) whether the information in question was personal data and b) whether disclosure of the personal data under the Act would contravene the first data protection principle.

Is the information personal data?

32. Personal data is defined in section 1 of DPA 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,*

and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual.'

33. The Commissioner is satisfied that the names of the remaining seven individuals who attended the course are their personal data. This is because, in context, they can be identified by both the data controller and the public by their name.

Would disclosure contravene the first data protection principle?

34. The first data protection principle has two main components. They are as follows:

- the requirement to process all personal data fairly and lawfully; and
- the requirement to satisfy at least one DPA Schedule 2 condition for processing of all personal data.

35. Both requirements must be satisfied to ensure compliance with the first data protection principle. If even one requirement cannot be satisfied, processing will not be in accordance with the first data protection principle.

36. It is important to note that any disclosure under this Act is disclosure to the public at large and not just to the complainant. If the public authority is prepared to disclose the requested information to the complainant under the Act it should be prepared to disclose the same information to any other person who asks for it. The Tribunal in the case of *Guardian & Brooke v The Information Commissioner & the BBC* (EA/2006/0011 and EA/2006/0013) (following *Hogan and Oxford City Council v The Information Commissioner* (EA/2005/0026 and EA/2005/0030)) confirmed that, "Disclosure under FOIA is effectively an unlimited disclosure to the public as a whole, without conditions" (paragraph 52): http://www.informationtribunal.gov.uk/Documents/decisions/guardiannews_HBrooke_v_infocomm.pdf.

37. The Commissioner is satisfied that each individual's name should be considered on its own merits in this case. He is not satisfied by the public authority's argument that the provision of some names would have any adverse effect on any of the other individuals and believes that there is no reason to tie them together in this way. In respect to the comments that it would be possible to identify other individuals from knowledge elsewhere with partial disclosure, he cannot see why partial disclosure would have this effect.

38. The Commissioner has split up the individuals into groups relating to their comments when they were asked for their consent. Consent itself is not a crucial component when considering the exemption. However, it is significant when one considers what the expectations of individuals were and whether these expectations are reasonable.

Individuals [B] and [C]

39. Individuals [B] and [C] explained to the Commissioner that they had nothing to hide in this case and were prepared to provide their consent for the information to be disclosed under the Act. In these circumstances the Commissioner does not think that the disclosure would be unfair or unlawful and he believes that it would satisfy condition 6 of the DPA. This is because there is a necessary legitimate interest in the public knowing this information and no interference at all to the data subject. This information has therefore been incorrectly withheld and section 40(2) cannot be engaged. In failing to provide this information to the complainant by the time of its internal review the Commissioner finds breaches of section 1(1)(b) and 10(1).

Individuals [D] and [E]

40. Individuals [D] and [E] explained to the Commissioner that they would rather the information was not disclosed, but that they did not feel particularly strongly and would respect the Commissioner's decision about this matter.

Would disclosure be fair and lawful?

41. In considering whether disclosure of this information would be unfair and therefore contravene the requirements of the first data protection principle, the Commissioner has taken the following factors into account:
- The individual's reasonable expectation of what would happen to their personal data;
 - The fact that the individuals were public sector employees and that the information relates to providing training about their professional role and how this influences their expectations;
 - The seniority of those individuals and the accompanying expectations of the public about individuals in that role.
 - Whether the information in the public domain reduces the expectation of privacy in this case;
 - Whether disclosure would cause any unnecessary or unjustified harm or distress to the individual; and
 - Legitimate interests of the public in knowing the withheld information and understanding the internal workings of the public authority. In particular the legitimate interests of the public in ensuring that the training embarked upon by individuals in the public sector should be for the benefit of the tax payer.
42. The public authority stated that disclosure of the withheld information would be unfair to the data subject. It does not think that the data subject would have had a

reasonable expectation of the withheld information being released to the public in this case. Instead there was an expectation of confidentiality and privacy. The Commissioner has not been convinced that the individuals hold the expectations that were argued by the public authority. He notes that they were not mentioned when those individuals were asked to comment and therefore does not feel that in relation to these individuals that this factor is convincing. However, his finding on this point does not preclude other individuals from having reasonable expectations about this matter.

43. The Commissioner has also considered whether there would be an accompanying expectation that this sort of information would be made available. The Commissioner appreciates that a public sector employee when going on training courses may have some expectation that the funds invested in their training were accounted for to the TAX payers. He is supported by his guidance on the application of section 40 that suggests that when considering what information third parties should expect to have disclosed about them, a distinction should be drawn as to whether the information relates to the third party's public or private lives. Although the guidance acknowledges that there are no hard and fast rules it states that:

'Information about an individual's private life will deserve more protection that information about them acting in an official or work capacity. You should also consider the seniority of their position, and whether they have a public facing role. The more senior a person is, the less likely that disclosing information about their public duties will be unwarranted or unfair. Information about a senior official's public life should generally be disclosed unless it would put them at risk, or unless it also reveals details of the private lives of other people.'

44. On the basis of this guidance the Commissioner considers that public sector employees should expect some information about their roles and the decisions they take to be disclosed under the Act. This approach is supported by the Information Tribunal decision (*House of Commons v Information Commissioner and Norman Baker MP* EA2006/0015 and 0016). This decision involved a request for information about the details of the travel allowances claimed by MPs. In its decision the Tribunal noted that:

'where data subjects carry out public functions, hold elective office or spend public funds they must have the expectation that their public actions will be subject to greater scrutiny than would be the case in respect of their private lives' (at paragraph 78).

45. The complainant has argued that given the above and that the individuals are within the public sector the tax payer should be informed of those individual's names because the public authority ought to be accountable for any training event it embarks upon in a way that enables the public to consider whether it has been for the benefit of the tax payer. This is because the Council is only entitled to use public funds to enhance its public service. He also pointed to the Common Purpose's data protection policy which is signed by the delegates that states that the information about their attendance can be publicised by it as part of its

promotional materials and on its alumni directory. The Commissioner has telephoned the organisation and can confirm that the alumni directory operates like a conventional university. This allows individuals who are participating on courses or those who have previously to contact one another. The Commissioner believes that this process is different to disclosing the information directly to the public. He feels that disclosure would provide further information that is not presently in the public domain. The Commissioner does not accept that attendees of all training programmes irrespective of seniority should be disclosed; however he does believe that when considering expectations it is important to understand the obligations that have been undertaken in respect to publicity in this case and that it is important that training is transparent where possible.

46. The Commissioner's guidance also states that it is important to draw a distinction between the information which senior staff should expect to have disclosed about them compared to what information junior staff should expect to have disclosed about them. This is because the more senior a member of staff is the more likely it is that they will be responsible for making influential policy decisions and/or decisions related to the expenditure of significant amounts of public funds.
47. The public authority's view is that its policy is to define 'Senior Staff' as being Chief Officers, Directors or Assistant Directors. It stated that it understood that these members of staff have increased responsibilities and therefore should expect additional accountability. However, it did not apply this policy inflexibly and would consider each case on its own merits. In this case having considered the circumstances it had decided that it would be incorrect to diverge from its policy. It explained that the members of staff at the public authority understood this policy and that their expectations were conditioned by it. The Commissioner notes that this argument is not particularly powerful in this case where the individuals have had a chance to comment and have not mentioned it. He does not feel that it could be said that these individuals have the expectations that have been argued above.
48. The complainant argues strongly that the public authority has defined seniority at too high a level and that the term 'Senior Staff' should rightly apply to those who have leadership of individuals. He explained that as Common Purpose only provides training about leadership, generally by invitation, then all the individuals that have attended the courses must be senior enough to be classified as Senior Staff and that this factor favours full disclosure. He also explained that the public authority does release information about more junior staff within their public role routinely.
49. The Commissioner's approach when assessing seniority is to consider each individual's position on its merits. To make a determination about seniority he has considered the job title of the individual, their position on the pay scale, their line management responsibilities and assessed their responsibilities. The Commissioner will not comment on the exact role that the individuals have to protect the integrity of the information. In relation to individual [D], the Commissioner has considered their role and believes that the role that was held at the date of the request is a fairly senior role. In relation to individual [E], the Commissioner has considered their role and notes that the role that was held was

a fairly senior role too. This factor therefore favours that their reasonable expectations would be that this information may be disclosed and that they would expect this sort of information to be released.

50. The Commissioner has considered the effect the information in the public domain would have on the expectations of the individuals. The Commissioner notes that the public authority has released the number of individuals who attended the courses and the amount of money that it has spent. The further information that has been requested would solely identify those individuals that had received the training. The Commissioner understands that the probable expectations of the individuals in this case may be that sufficient information has been released and that releasing further information may be intrusive.
51. The Commissioner has considered whether the release of the information would cause unnecessary or unjustified harm or distress to each of the individuals concerned. Having considered the nature of the information the Commissioner is satisfied that the release of it could potentially cause unnecessary and unjustified damage and distress to the individual in this case. However he notes that in this case the individuals are relatively sanguine about the prospects of the information being released and he is satisfied that they have been informed of the possible consequences. This factor therefore has little weight when considering whether disclosing the information would be unfair in relation to these individuals. This does not mean that unnecessary and unjustified harm could not be caused to other individuals by the release of this information.
52. In finally considering the legitimate interests of the public, the Commissioner notes that the public authority has released a considerable amount of information already and this satisfies the legitimate interests of the public to some extent. The complainant argues that the nature of the courses and the fact they operate under the Chatham House rules so are not recorded means that additional accountability is necessary in this instance. In addition he argues that the fact that the organisation is a charitable organisation and that the public have real concerns about its nature means that it is important to understand which individuals within the public authority were delegates of Common Purpose. The Commissioner considers that this factor in this case favours that disclosing the information would be fair in this instance.
53. In considering how the factors balance, the Commissioner has come to the conclusion that the disclosure of the requested information would not be unfair to the data subject. The central reasons for this conclusion are that the legitimate expectations of the individual do not strongly suggest that the release of the information would be unfair, the seniority of those individuals, the legitimate interests of the public and the fact that the data protection policy of the organisation would enable the same information to be released to the public. As the release of the information would not be unfair, he must go on to consider the remaining elements of the first data protection principle.
54. The Commissioner has considered the relevant information and the public authority's arguments about whether the release of this information would be unlawful. The public authority explained that it had a duty of care to its employees

and that it would not be able to lawfully disclose this information because of that duty of care. The Commissioner has considered these arguments and particularly the comments by the data subjects themselves in this case. He is not convinced that the release of this information would be a breach of the duty of care. He is also required to consider Article 8 of the Human Rights Act in this case. This provides an individual with a right to respect for 'private and family life'. This is defined relatively widely but in this case the Commissioner is content that the data subjects' Article 8 rights are not interfered with in relation to this information about their public role where no genuine expectation had been engendered that the information would not be disclosed. He therefore finds that the disclosure of this information would not be unlawful.

55. As is outlined above, for third party personal data to be disclosed under the Act, disclosure not only has to be fair and lawful but also has to meet one of the conditions for processing in schedule 2 of the DPA. In this case the Commissioner considers that the most relevant condition is Condition 6. This states that:

“the processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.”

56. In deciding whether condition 6 would be met in this case the Commissioner has considered the decision of the Information Tribunal in *House of Commons v Information Commissioner & Leapman, Brooke, Thomas* [EA/2007/0060]. In that case the Tribunal established the following three part test that must be satisfied before the sixth condition will be met:

- there must be legitimate interests in disclosing the information,
- the disclosure must be necessary for a legitimate interest of the public,
- even where disclosure is necessary it nevertheless must not cause unwarranted interference or prejudice to the rights, freedoms and legitimate interests of the data subject.

57. The public authority provided detailed arguments about condition 6(1). It explained that it understood that there were legitimate interests in disclosing the information. However, it stated that it did not feel that the disclosure was necessary in this case and even if it were the national campaigns against Common Purpose may mean that the officers would receive unwarranted attention and comment and that this would prejudice their rights, freedoms and legitimate interests. In addition those rights, freedoms and legitimate interests may be interfered with by public vilification for no good reason and that it believed that they may be at risk from pejorative and in its view, groundless, criticism.

58. The complainant has also provided detailed arguments about why disclosure would satisfy condition 6(1). A summary of those arguments is found in paragraph 11 of this Decision Notice

59. The Commissioner will therefore go on to consider each of the three tests above in turn.

Legitimate interests

60. The public authority acknowledged that the public may have legitimate interests in disclosure of the information. It explained that the complainant as a member of the public has the prima facie right to request the information under the Act. Also it explained that the public was entitled to have concerns about organisations, whether their costs are justifiable and to assess the possibly secret nature of Common Purpose given that its activities are held under the Chatham House rules. It accepted that there was a legitimate interest in DPA terms.
61. The complainant has explained in great detail the legitimate interests the public have in knowing this information. The Commissioner is satisfied that this test is satisfied and that the legitimate interests of the requester, and of the public in general, are served by disclosure.
62. The Commissioner is satisfied that the following legitimate interests of the public may require disclosure in this instance:
- The majority of the individuals whom have been on the course have been funded by considerable amounts of public funds and it is important for the tax payer to understand how these funds have been spent.
 - For those individuals there is also a legitimate public interest in understanding whom the public authority has chosen to represent it within these courses.
 - For those who have not been funded by the public authority, there is a legitimate interest in the public knowing how many individuals have received training from Common Purpose.
 - There is genuine public concern about Common Purpose, about how many individuals have been involved on their courses and how attending these courses may affect government decision making. There is a legitimate public interest in understanding who these individuals are.

Necessity

63. The Commissioner's view is that when considering necessity disclosure must be necessary to meet some of the legitimate interests above. There must not be a less intrusive means of meeting that end. He has therefore taken into account existing mechanisms and whether they satisfy these interests.
64. The Commissioner notes that the public authority has released the amount of money that it has paid to Common Purpose. In addition it has with the Commissioner's assistance identified how many individuals on its staff have attended the courses. This goes some way to account for the expenditure on the course.

65. However, the information disclosed provides no indication of the individuals' position in the public authority apart from the fact that they are below Assistant Director Level in the Council. The Commissioner believes that the disclosure of the names would provide additional accountability and is necessary to address the legitimate interests that are in bullet points above.
66. The Commissioner has considered whether those interests could be satisfied through the less intrusive way of providing the roles that the individuals are in. In this case he is satisfied that the individuals are likely to be identifiable from their roles in any event and therefore this would be no less intrusive.

Unwarranted Interference

67. The Commissioner must then go on to consider the collective weight of the necessary legitimate interests and whether disclosure would cause an unwarranted interference or prejudice to the rights, freedoms and legitimate interests of the data subject.
68. The Commissioner finds that there are necessary legitimate interests identified above and that they carry some weight on the facts of this case.
69. The Commissioner notes that the individuals have had the chance to comment about their rights and legitimate interests and it is clear that their opinions were not particularly strong either way.
70. The Commissioner notes that the information concerns only the working lives of those parties and the Commissioner does not consider that disclosure would interfere with either their personal lives or that of their families. He therefore does not consider that disclosure would have an excessive or disproportionate adverse effect on the legitimate interests of Individuals [D] and [E].

Conclusion

71. In view of all of the above, the Commissioner does not consider that disclosure would cause an unwarranted intrusion. Condition 6 of Schedule 2 of the DPA is met in light of the above finding on intrusion and the legitimate public interests identified and the finding that disclosure can be regarded as necessary to meet those interests. In this case it would not be unfair to release the names of Individuals [D] and [E]. Disclosure would therefore not contravene the data protection principles and section 40(2), read in accordance with section 40(3)(a)(i), is not engaged.
72. In failing to provide this information to the complainant by the time of its internal review the Commissioner finds a breaches of section 1(1)(b) and 10(1).

Individuals [F], [G] and [H]

73. Individuals [F], [G] and [H] explained to the Commissioner that they strongly did not want their personal information to be disclosed as a result of this request.

Would disclosure be fair and lawful?

74. The Commissioner has considered the same factors as stated in paragraph 41.
75. The public authority stated that disclosure of the withheld information would be unfair to the data subject. It does not think that the data subject would have had a reasonable expectation of the withheld information being released to the public in this case. Instead there was an expectation of confidentiality and privacy. The Commissioner has in this case been convinced that the individuals do indeed have the expectations that were argued by the public authority. In relation to the policy conditioning expectations in paragraph 47, the Commissioner gives this issue more weight in this case as the individuals have clearly stated that they believed that their information would not be disclosed in accordance with that policy. The Commissioner has also considered the arguments of the complainant in paragraph 48.
76. As indicated in paragraph 49 the Commissioner must consider the seniority of individuals on their own merits. To make a determination about seniority he has considered the job title of the individual, their position on the pay scale, their line management responsibilities and assessed their responsibilities. The Commissioner will not comment on the exact role that the individuals have to protect the integrity of the information. However, he understands that at least two of these individuals held roles with line management responsibilities at the date of the request and each individual's position was below Assistant Director Level but above in terms of seniority the bottom 50% of individuals who work for the public authority. He therefore believes that individuals [F], [G] and [H] all held fairly senior roles. This factor is significant when one is considering whether the expectations are reasonable. It is also important to consider that the information concerns the expenditure of public funds as noted in paragraph 45 above.
77. The Commissioner has considered the effect of the information in the public domain would have on the expectations of the individuals. The Commissioner notes that the public authority has released the number of individuals who attended the courses and the amount of money that it has spent. The further information that has been requested would solely identify those individuals that had received the training. The Commissioner understands that the probable expectations of the individuals in this case may be that sufficient information has been released and that releasing further information may be intrusive. He is content from the submissions that he has received that this is so.
78. It is necessary that the Commissioner must be convinced that the individuals possess these expectations and that those expectations are reasonable. When considering the reasonableness of the expectations he has considered how they were conditioned, the data subject's understanding at the time and whether a reasonable individual could hold these expectations given their seniority within the organisation. He accepts that these individuals are not senior enough for there to be a definite expectation that this information would be disclosed. He believes in the circumstances that the individuals' expectations are reasonable. These reasonable expectations are very important when considering fairness in this case.

79. The Commissioner has considered whether the release of the information would cause unnecessary or unjustified harm or distress to each of the individuals concerned. Having considered the nature of the information the Commissioner is satisfied that the release of it could potentially cause unnecessary and unjustified damage and distress to the individual in this case. He also notes that the individuals have indicated to the Commissioner that the release of their names was likely to cause harm and distress to them. The Commissioner is concerned that there is a possibility in this case that the Article 8 rights of these individuals may be compromised through disclosure. He does believe that the concerns expressed are not unreasonable in respect to these individuals and must therefore be considered. He is unable to include the exact information that has convinced him of this conclusion (as it is personal data) but can say that he finds it persuasive. This is another factor that the Commissioner must take into account and leads to the conclusion that the disclosure of this information about these three individuals would be unfair. He does appreciate that this paragraph differs from paragraph 51 above but he emphasises that he determines each part of the request on its individual facts.
80. In finally considering the legitimate interests of the public, the Commissioner notes that the public authority has released a considerable amount of information already and this satisfies the legitimate interests of the public to some extent. The complainant argues that the nature of the courses and the fact that they operate under the Chatham House rules and so are not recorded means that additional accountability is necessary in this instance. In addition he argues that the fact that the organisation is a charitable organisation and that the public have real concerns about its nature means that it is important to understand which individuals in within the public authority were delegates to Common Purpose. The Commissioner considers that this factor does continue to favour disclosure but does not see this factor as favouring further disclosure to the extent that it would outweigh the individuals' privacy interest in this case.
81. In considering how the factors balance, the Commissioner has come to the conclusion that the disclosure of the requested information would be unfair to the data subjects. The central reason for this conclusion is that the legitimate expectations of the individuals are that the information would not be provided and the overriding of these expectations cannot be justified in this case. As the release of the information would be unfair, the first data protection principle would be contravened and the information therefore engages the section 40(2) exemption.
82. As the Commissioner has found that disclosure would be unfair and therefore in breach of the first data protection principle there is no need to consider whether the release would also be unlawful, or if the processing of the personal data would meet one of the conditions of Schedule 2 of the DPA. However, the Commissioner believes that condition 6 of Schedule 2 of the DPA would not have been satisfied in this case. This is because the collective weight of the necessary legitimate interests in disclosure does not prevent there being an unwarranted interference or prejudice to the rights, freedoms and legitimate interests of the data subjects in this case.

83. The Commissioner therefore upholds the public authority's application of section 40(2) [by virtue of section 40(3)(a)(i)] in relation to the names of Individuals [F], [G] and [H].

Procedural Requirements

84. Section 10(1) requires that a response that accords with section 1(1)(a) is provided to all requests for information within twenty working days. In this case the public authority took more than twenty working days to process the request for information. This meant that it breached section 10(1).
85. Section 10(1) also requires that a response that accords with section 1(1)(b) is provided to all requests for information within twenty working days. In this case the public authority took more than twenty working days to process the request for information. This meant that it breached section 10(1).
86. In failing to issue a refusal notice within twenty working days for the all of the names that it held, the Commissioner also finds a breach of section 17(1) of the Act.

The Decision

87. 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:
- *It correctly withheld the names of individuals [F], [G] and [H] as the section 40(2) [by virtue of section 40(3)(a)(i)] exemption applied.*
88. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
- *In failing to identify information that fell within the scope of the request at the time of the internal review, the public authority breached sections 1(1)(a) and 10(1) of the Act.*
 - *It incorrectly withheld the names of individuals [B], [C], [D] and [E] under section 40(2). It therefore breached sections 1(1)(b) and section 10(1) in not providing this information within twenty working days.*
 - *In failing to provide a response within twenty working days, the public authority breach section 10(1) twice and section 17(1) once.*

Steps Required

89. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:

- *Disclose the names of individuals [B], [C], [D] and [E].*

90. Those individuals are identified on a confidential annex that will only be provided to the public authority.

91. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

92. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Right of Appeal

93. 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@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

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.

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 17th day of December 2009

Signed

**David Smith
Deputy Commissioner**

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

Legal Annex

The Freedom of Information Act 2000

Section 1 - General right of access to information held by public authorities

(1) 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.

(2) Subsection (1) has effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.

(3) Where a public authority—

(a) reasonably requires further information in order to identify and locate the information requested, and

(b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.

...

Section 10 - Time for compliance with request

(1) 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.

(2) Where the authority has given a fees notice to the applicant and the fee is paid in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.

(3) If, and to the extent that—

(a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or

(b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.

...

Section 17(1) – Refusal of request

(1) 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.

(2) 'Where—

- (a) in relation to any request for information, a public authority is, as respects any information, relying on a claim—
 - (i) that any provision of part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or
 - (ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and
- (b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,

the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached.'

(3) 'A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming -

- (a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or
- (b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.'

Section 40 – Personal information

- (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 [1998 c. 29.] 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 [1998 c. 29.] 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 [1998 c. 29.] 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) the 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 [1998 c. 29.] 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 [1998 c. 29.] 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 [1998 c. 29.] 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 [1998 c. 29.] 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.

Data Protection Act 1998

Section 1 - Basic interpretative provisions

(1) In this Act, unless the context otherwise requires—

- “data” means information which—
 - (a) is being processed by means of equipment operating automatically in response to instructions given for that purpose,
 - (b) is recorded with the intention that it should be processed by means of such equipment,
 - (c) is recorded as part of a relevant filing system or with the intention that it should form part of a relevant filing system, or
 - (d) does not fall within paragraph (a), (b) or (c) but forms part of an accessible record as defined by section 68;
- “data controller” means, subject to subsection (4), a person who (either alone or jointly or in common with other persons) determines the purposes for which and the manner in which any personal data are, or are to be, processed;
- “data processor”, in relation to personal data, means any person (other than an employee of the data controller) who processes the data on behalf of the data controller;
- “data subject” means an individual who is the subject of personal data;
- “personal data” means 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,and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual;
- “processing”, in relation to information or data, means obtaining, recording or holding the information or data or carrying out any operation or set of operations on the information or data, including—
 - (a) organisation, adaptation or alteration of the information or data,
 - (b) retrieval, consultation or use of the information or data,

(c) disclosure of the information or data by transmission, dissemination or otherwise making available, or

(d) alignment, combination, blocking, erasure or destruction of the information or data;

- “relevant filing system” means any set of information relating to individuals to the extent that, although the information is not processed by means of equipment operating automatically in response to instructions given for that purpose, the set is structured, either by reference to individuals or by reference to criteria relating to individuals, in such a way that specific information relating to a particular individual is readily accessible.

(2) In this Act, unless the context otherwise requires—

(a) “obtaining” or “recording”, in relation to personal data, includes obtaining or recording the information to be contained in the data, and

(b) “using” or “disclosing”, in relation to personal data, includes using or disclosing the information contained in the data.

(3) In determining for the purposes of this Act whether any information is recorded with the intention—

(a) that it should be processed by means of equipment operating automatically in response to instructions given for that purpose, or

(b) that it should form part of a relevant filing system,

it is immaterial that it is intended to be so processed or to form part of such a system only after being transferred to a country or territory outside the European Economic Area.

(4) Where personal data are processed only for purposes for which they are required by or under any enactment to be processed, the person on whom the obligation to process the data is imposed by or under that enactment is for the purposes of this Act the data controller.