

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 October 2011

Public Authority: London Borough of Hackney
Address: Town Hall
Mare Street
London
E8 1EA

Decision (including any steps ordered)

1. The complainant has requested information relating to the payment of employees' educational course fees by London Borough of Hackney Council (the Council). The Council refused to disclose some of this information under the exemption provided by section 40(2) (personal information of third parties).
2. The Commissioner's decision is that the Council refused some of the requests correctly under section 40(2), but that in relation to other requests section 40(2) did not apply. In relation to those requests, the Council is now required to disclose the information.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Disclose the information falling within the scope of requests (iii), (vii) and (xii).
4. The public authority must take these steps within 35 calendar days of the date of this Decision Notice. Failure to comply 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.

Request and response

5. The dates of the requests made by the complainant and the wording of these was as follows:

- (i) (10/09/10) *Please tell me what percentage of applicants who left Hackney Homes had their fees recovered.*
- (ii) (10/09/10) *I need to know for each member of staff at what point of studying or after completing the course they ceased employment, how much was owed at the time and how much was recovered.*
- (iii) (10/09/10) *How many deductions were made from final salaries and the amounts deducted.*
- (iv) (10/09/10) *I also would like to know how the money was recovered from the staff you refer to.*
- (v) (10/09/10) *The names of the staff you refer to. I believe the identity of the individuals concerned is not private or sensitive data and should be available to the public.*
- (vi) (10/09/10) *Please include details pertaining to former staff [named individuals].*
- (vii) (24/10/10) *Please confirm how many employees entered into a repayment agreement with the borough and whether the agreements were reviewed.*
- (viii) (20/12/10) *I would also like to know the amount each applicant for funding under the scheme was awarded.*
- (ix) (20/12/10): *In addition, please tell me whether or not any checks were carried out to monitor whether applicants completed or passed their courses.*
- (x) (20/12/10): *When this was conducted in respect of my sponsorship.*
- (xi) (20/12/10): *Please confirm who is physically dealing with my request for information.*
- (xii) (20/12/10): *Whether who manages that person (who is dealing with my information request) would normally deal with FOI. If different, please confirm why.*
- (xiii) (20/12/10): *Please confirm whether or not [named individual] has had any involvement with my request.*
6. Hackney Council (the Council) responded on 24 December 2010 and 31 January 2011. Answers were provided to some of the requests and the exemptions provided by sections 40(1) (personal data of the requester) and 40(2) (personal data of third parties) were cited in response to other requests.

7. Following an internal review the Council wrote to the complainant on 13 January 2011. It reiterated at this stage that section 40(2) was cited in response to some of the requests.

Scope of the case

8. The complainant contacted the Commissioner to complain about the way his request for information had been handled. The requests that are within the scope of this case and the issue in relation to each of these are as follows:
9. Request (i): the complainant believed that the response to this request was inaccurate.
- Requests (ii), (vii) and (xii): the Council either did not address these requests fully, or failed to respond to them at all.
- Requests (iii), (v), (vi) and (viii): the complainant was dissatisfied with the citing of section 40(2).
10. Request (i) was resolved during the Commissioner's investigation. This request and the other requests in relation to which there are no outstanding issues are not covered further in this notice.

Reasons for decision

11. This analysis concerns requests (ii), (iii), (v), (vi), (vii), (viii) and (xii). Whilst the Council has supplied some information and answers to the complainant which are purportedly relevant to these requests, the view of the Commissioner is that none of these requests has been complied with fully. The Council has at various stages referred to the exemption provided by section 40(2) of the FOIA when corresponding with the complainant and with the Commissioner's office. The Commissioner has taken the approach of considering section 40(2) in relation to each of the requests covered in this analysis.
12. Section 40(2) of the FOIA states that information that is the personal data of individuals other than the requester is exempt if disclosure of this information would be in breach of any of the data protection principles. Consideration of this exemption is a two-stage process: first, the information in question must be the personal data of individuals other than the requester; and secondly, disclosure of this personal data must be in breach of at least one of the data protection principles.
13. The definition of personal data is given in section 1 of the Data Protection Act 1998 (DPA) as follows:

“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”.*

This means that information can be personal data either due to an individual being identifiable from this information, or because an individual would be identifiable from that information combined with other information.

14. The view of the Commissioner is that the information falling within the scope of the following requests would constitute the personal data of individuals aside from the complainant:

(ii), (v), (vi), (viii), (xii).

In relation to some of these requests, the complainant has requested information about named third parties meaning that it is clear that the information falling within the scope of those requests would clearly be the personal data of those named individuals.

15. In relation to other requests it is less clear from the wording of those requests alone that information falling within the scope of those requests would constitute the personal data of any individual. However, in relation to those requests the Commissioner accepts that this information could be combined with other information to enable identification of individuals. The other information in question would include the awareness of the inner workings of the public authority that the complainant has as a former employee of the public authority, and the information that was disclosed in response to some of the other requests.
16. As to whether disclosure of this personal data would be in breach of any of the data protection principles, the Commissioner has focussed here on the first data protection principle, which requires that personal data be processed fairly and lawfully. The focus of this analysis is on whether disclosure of this information would be in general fair to the individuals to which it relates. In forming a conclusion on this issue, the Commissioner has considered the consequences of disclosure upon these individuals, their reasonable expectations as to whether this information would be disclosed, and the legitimate interests of the public in this information.
17. The view of the Commissioner is that the consequences of disclosure upon the subjects of this information would not be great. If it could be

said that disclosure would result in detriment to the subjects of this information through, for example, disclosure resulting in significant distress to the subject, the Commissioner may have concluded that disclosure of this information would accordingly be unfair. However, the information in question here is not of a nature that in the Commissioner's view is of particular sensitivity. For this reason, the Commissioner does not believe that it could be said that disclosure would have a detrimental impact upon the subjects on the basis of distress that would result through disclosure. Neither is the Commissioner aware of any argument about more tangible consequences of disclosure upon the subjects, such as through financial loss. The Commissioner does not believe, therefore, that disclosure would be unfair to the subject on the basis of any consequence that would arise from it.

18. On the issue of the reasonable expectation of the subjects about disclosure, the view of the Commissioner is that, in relation to requests (ii), (v), (vi) and (viii), as this information relates to financial matters the subjects of this information would hold a reasonable expectation of privacy in relation to this information. An employee would commonly hold an expectation of privacy in relation to information held about them by their employer. The Commissioner's view is that this expectation would be heightened where this information is of a financial nature given the commonly held expectation of privacy relating to information of this nature.
19. In relation to request (xii), however, the view of the Commissioner is that the information requested here could not be said to be subject to a similar expectation of privacy. This information concerns an individual in their professional capacity and does not relate to financial matters. Given these factors, the Commissioner does not believe that it would be reasonable for the subject to hold an expectation of privacy in relation to this information.
20. Turning to the question of whether there is legitimate public interest in the disclosure of this information, the Commissioner would note at this point that, whilst the complainant may have a legitimate private interest in this information owing to her dealings with the Council, this will not necessarily translate into a legitimate public interest in the disclosure of this information. The view of the Commissioner is that there would be some public interest in the information falling within the scope of requests (ii), (v), (vi) and (viii) as this concerns expenditure by a public body. However, this interest would be limited due to the narrow focus of this information meaning that the sums in question are likely to be small.
21. In relation to request (xii), the Commissioner does not consider there to be any specific public interest in the disclosure of this information

beyond the general public interest in improving the transparency of the Council. This information does not relate to expenditure by the Council so is not subject to the same public interest as the information covered above.

22. In relation to requests (ii), (v), (vi) and (viii), the Commissioner has recognised that the consequences of disclosure upon the subjects of this information would not be great and that there is a legitimate public interest in the disclosure of this information. However, the Commissioner is also of the view that the subjects of this information would hold a legitimate expectation of privacy about this given the general expectation of confidentiality that an employee would hold in relation to information held about them by their employer, which is heightened in relation to financial information. The view of the Commissioner is that the public interest in disclosure does not outweigh this reasonable expectation of privacy and so he finds that disclosure would be unfair and in breach of the first data protection principle. The exemption provided by section 40(2) does, therefore, apply in relation to requests (ii), (v), (vi) and (viii).
23. In relation to request (xii), whilst the Commissioner does not believe there to be any public interest in favour of the disclosure of this specific information, he also does not believe that this information would be subject to any legitimate expectation of privacy on the part of the subject of this information. Given this, the conclusion of the Commissioner is that disclosure would not be unfair to the subject of this information.
24. In order for the first data protection principle to be met in relation to a disclosure made under the FOIA, disclosure of the information must also be necessary for the legitimate interests of the public. Whilst the Commissioner has found no public interest in the disclosure of this specific information, he does believe that disclosure would be in the legitimate interests of the public in that it would in general improve the openness and transparency of the public authority. Therefore in relation to request (xii) the conclusion of the Commissioner is that disclosure would not be in breach of the first data protection principle and so the exemption provided by section 40(2) is not engaged.
25. This leaves requests (iii) and (vii) in relation to which the view of the Commissioner is that this information does not constitute the personal data of any individual. This is on the basis that no individual would be identifiable from this information. As the information falling within the scope of these requests would not form the personal data of any individual, the exemption provided by section 40(2) is not engaged in relation to these requests.

Other matters

26. The complainant has raised the issue of what she believes to be inaccurate responses to requests. In response to this issue the Commissioner would note that the FOIA requires the disclosure of recorded information; if the content of recorded information falling within the scope of an information request is factually inaccurate it should nevertheless be disclosed. However, the Council should ensure that where answering information requests framed as questions, the response provided is an accurate reflection of the recorded information that is held.

Right of appeal

27. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

28. 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.
29. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Jon Manners
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