

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 September 2011

Public Authority: London Borough of Camden
Address: Camden Town Hall
Judd Street
London
WC1H 9JE

Decision

1. The complainant requested information from the London Borough of Camden about the decision to provide refreshments at meetings of the council's Joint Monitoring Board, and the later decision, that food and refreshments would no longer be provided. The council responded, providing information about most of his request, but refusing to disclose the names of the 'relatively junior' council employees who took the decision, under the exemption provided at section 40(2) of the Freedom of Information Act 2000 (the Act). This information was refused on the grounds that it is personal data and its disclosure would be a breach of the first data protection principle.
2. The Commissioner's decision is that the London Borough of Camden correctly withheld the names of council staff who took the decision. He does not require any steps to be taken.

Request and response

3. On 16 December 2010, the complainant wrote to the London Borough of Camden (the council) and requested information in the following terms:

"I wish to know the following:

1. *When was it decided to provide full refreshments at meetings of the Joint Monitoring Board?*
2. *Who decided in Camden Council that the provision of full refreshments would be provided at meetings of the Joint Monitoring Board?*

3. When was it decided to withdraw the provision of full refreshments at meetings of the Joint Monitoring Board?

4. Who decided in Camden Council that the provision of full refreshments would no longer be provided at meetings of the Joint Monitoring Board?

5. Was this a decision of the Executive, the Director of Housing or any other delegated official and in what capacity has the decision been made?"

4. The council responded on 4 February 2011. It answered questions 1,3 and 5 of the request, and explained that, in respect of questions 2 and 4, the decision was taken by the responsible council officer, but that the name of the officer was being withheld because it is personal data and disclosing it would breach the first data protection principle.
5. Following an internal review the council wrote to the complainant on 22 February 2011. It stated that the information was correctly withheld, and there was no justification for the complainant's assertion that releasing the information would be consistent with condition 6 in schedule to of the Data Protection Act 1998 (the DPA). (The complainant had argued that the disclosure was, in effect, necessary in the public interest, a provision which condition 6 at Schedule 2 to the DPA may permit in some circumstances).

Scope of the case

6. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He complained about the council's refusal to disclose the names of the council staff who had taken the decision about the refreshments, which refusal was "*purportedly under the Data Protection Act 1998*".
7. The Commissioner considers the complaint is about the refusal of those elements of the request which the council withheld, under section 40(2) of the Act, on the grounds that the information is personal data and disclosure would breach the first data protection principle.

Reasons for decision

8. The applicable elements of section 40 of the Act state:

Section 40(2) provides that –

"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."

Section 40(3) provides that –

"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-

1. any of the data protection principles, or

2. section 10 of that Act (right to prevent processing likely to cause damage or distress), [...]"

9. It is not disputed by the complainant that the names of the council staff who took the decisions, either to serve refreshments or to withdraw refreshments, will be the personal data of those council staff.
10. The complainant's argument is that disclosure will not breach the first data protection principle as it will be fair to disclose those names, because:
 - (i) public employees should have a lower degree of protection to their personal data than private individuals, due to the requirements for accountability of public authorities;
 - (ii) this makes any disclosure of public employees' personal data, when they take administrative decisions, inherently fair and lawful under the principles of transparency; and
 - (iii) it is wrong for 'important decisions' (the complainant's term) to be taken anonymously.
11. The Commissioner does not accept item i) in the complainant's argument. The DPA makes no distinction between individuals and their rights, by virtue of their employment or any other status. Consequently, the Commissioner cannot accept ground ii) of the complainant's points.
12. The Commissioner accepts the general principle behind ground iii) of the complainant's points, but he questions whether the provision (or otherwise) of refreshments at council meetings is a sufficiently important decision for this argument to carry any weight.

13. He put this to the complainant, who responded that:

"Regarding the cancellation of the refreshments for the Joint Monitoring Board, I consider that it is an important decision. Camden Council have set up the Monitoring Board under the Tenant Participation Scheme, which is government sponsored.

The purpose of the scheme is to promote wider tenant involvement in local authority running of public sector housing stock on behalf of their tenants.

The Council therefore invites tenants to give up their time without reward in order to participate in such schemes, and I consider that at the very least, the Council should ensure that there are adequate refreshments available for such meetings.

The meetings take place in the evenings, and during the winter months when it is also dark and there may be adverse weather conditions.

Very often, these meetings commence at 7.0'clock and end at around 9.30 and even 10.00 and it is unreasonable to expect members to attend without adequate refreshments. The matter is therefore not of a trifling nature but has importance for all committees attended by tenants of Camden Council on an official basis."

14. The complainant argues that the objectives of the Joint Monitoring Board (of which he is a member) will not be met if tenants do not participate in meetings and that, without adequate provision of refreshments, such participation cannot be assured.
15. The complainant indicated his desire to raise the matter directly with the Joint Monitoring Board and further stated that he intends to submit a complaint about the removal of refreshments via the council's own internal complaints procedure, pursuing this as far as the Local Government Ombudsman as an instance of maladministration, if necessary. He argues that he is unable to do any of this effectively if he cannot name the decision taker.
16. The council's response to the Commissioner's enquiries included the following comment:

"As a result of cost cutting measures right across the Council, a decision was taken to ensure the refreshments provided to the Joint Monitoring Group were consistent to refreshments being provided to other groups serviced by the Council. This was therefore not a decision taken in isolation, but one to reflect service level changes at the Council taking into account recent budgetary restraints. I do not therefore think that this particular aspect of [the decision taker's] role in bringing levels of refreshment into line with wider

council policy would be one that would be expected to be subject to public scrutiny.” (sic)

17. The Commissioner is satisfied, from the council's responses to his enquiries, that the decision was taken by a relatively junior member of staff and that, after due consideration of the complainant's submissions, it is his view that the decision is not sufficiently major in its impact that the decision-taker should be required personally and publicly to account for it.
18. Furthermore, the complainant is able to challenge the decision itself, through avenues which are open to him, and does not need to know the identity of the decision-taker in order to make his arguments as to the wisdom of the decision, summarised at paragraph 14, above. The Commissioner put this possibility to the complainant.
19. The complainant argues that not knowing the identity puts him at a disadvantage, that:

“It is artificial to make complaints about anonymous officials in the council and in my view for them to seek behind anonymity is absurd.” (sic)

and

“It may be that the Council on an internal complaint may be able to ascertain the names of the council officers concerned, as would the Ombudsman, but it seems disproportionate that these bodies should know the identities of the council officers and not the complainant.

It is in the overall interests of transparency and fairness that members of council run committees should know the names and identities of any council officer who takes an important decision concerning the running of such committees, including the provision of refreshments for the general well being of the members giving up their time voluntarily.”

20. The requested information is personal data. Consequently, disclosure can only be made if that disclosure would not contravene any of the data protection principles. The Commissioner considers that disclosure would breach the first data protection principle, which requires personal data to be processed 'fairly and lawfully'. Fairness, in this context, requires that the disclosure would be fair to the data subject, ie the person whose personal data is to be disclosed. Any examination of the question of fairness must also consider not only the legitimate expectations of the data subject as to whether their personal data should be disclosed, but any possible consequences of the disclosure for the data subject.
21. The Commissioner finds that the disclosure would be unfair, because it would put a relatively junior member of the council's staff in a position

where they were being called personally and publicly to account for a decision which had been taken, in compliance with a wider council policy for which they were not responsible. The council has explained that:

"A number of London Borough of Camden Officers have suffered a significant amount of criticism by way of internet sites, blogs etc. Some of this criticism is justified and could be held to be in the public interest. However there is also a significant proportion that is unjustified."

22. The Commissioner recognises that there are circumstances in which it is fair to disclose the identities of individuals. For example, if the individuals are at a senior level within an organisation and are responsible for setting policies or courses of action within that public authority, or where they are responsible for the expenditure of substantial public funds. In such cases they would have a reasonable expectation that they might be held personally accountable to the public for their decisions, and that expectation would mean that it would be fair to disclose their names.
23. This is not such a case. The decision-taker in this case has merely ensured that existing council policy is followed in the specific circumstances. There is no suggestion that they are themselves responsible for setting or implementing that policy. Furthermore, the policy relates to the provision of refreshments at council meetings. It is not so weighty or far-reaching, nor does it affect significant numbers of council taxpayers so that the policy, or its implementation, should require scrutiny in a public arena.
24. The complainant gives his own reasons for believing that the decision on the refreshments is flawed but, despite the complainant's objections, it is clear to the Commissioner that he would be able to challenge the decision itself without needing to name the decision-taker. The Commissioner is not persuaded by the complainant's argument, that not knowing the identity of the decision-taker would put him at a disadvantage so that the disclosure ought to be considered fair. The complainant's focus on the identity of the individuals in this case, rather than on challenging their actions, gives rise to justifiable caution on the part of the council, whose staff has previously experienced harassment of a personal nature from campaigners. While there is no suggestion that the complainant in this case would adopt such practices, the fact that the name would be released into the public domain would increase the risk that other parties might do so.
25. The council can examine the decision to withdraw the refreshments in context, if requested to do so, and can approach the decision-taker through its own internal means, should that be thought necessary. The Commissioner therefore finds that withholding the personal data in this

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case does not disadvantage the complainant, so disclosure of the name of the decision-taker would be unfair and therefore the withheld information was correctly refused.

Right of appeal

26. 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

27. 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.
28. 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

Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF