

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 December 2011

Public Authority: Kirklees Metropolitan Council
Address: Civic Centre 3
Market Street
Huddersfield
HD1 1WG

Decision (including any steps ordered)

1. The complainant requested information from Kirklees Metropolitan Council (the council). He asked for copies of the financial assessments of service users in the Kirklees area that made direct payments to attend day care services where the provider was also contracted to provide places through a block contract.
2. The Commissioner's decision is that the council has correctly applied section 40(2) of the FOIA.
3. The Commissioner requires no steps to be taken.

Background

4. The request that is the subject of this complaint arose from a previous request which read:

"How many service users in receipt of direct payments are using their direct payments to buy daycare services from a daycare service provider who is also contracted by Kirklees Council to provide the same daycare services for other service users (who are not receiving direct payments) on a block booking basis."

The response from the council was as follows:

"In response to your question, I have been advised that there are currently 10 service users who attend day care services using a direct payment where the provider is also contracted to provide places

through a block contract. These contracts have recently been extended and all the direct payment users will be offered the choice of either keeping their direct payment or transferring to a contracted place."

The complainant then asked:

"I would now like to make another FOI request on this matter. Can you please tell me how much extra, in total, these 10 service users have had to pay as a result of been (sic) excluded from the block contract and being made to pay for the service through direct payments."

The response from the council was that:

"None of the service users had to pay any extra and when they were offered the opportunity to return to the block contract only one person chose to do so, but the contribution remained the same."

Request and response

5. On 16 February 2011, the complainant wrote to the council and requested information in the following terms:

"Further to my FOI request number 1889 I would now like a copy of the financial assessments of the ten service users mentioned in your reply of the 18 December 2009. I do not want to know the identity of these service users so please make sure that all reference to their identity is removed..."

6. The council responded on 16 March 2011, confirming that the information was held but that it was exempt under section 40(2). The council explained that it would not be fair to the individuals involved to disclose the requested information as they had submitted their assessments on the understanding that they were confidential. The council maintained that disclosing this information would be a breach of the first data protection principle.
7. Following an internal review that the complainant had requested on 18 March 2011, the council wrote to the complainant on 27 May 2011. The review upheld the application of section 40(2).

Scope of the case

8. The complainant contacted the Commissioner on 14 June 2011 to complain about the way his request for information had been handled. He explained the background to his request and the reasons why he needed the information in order to make a financial comparison for personal reasons that are beyond the Commissioner's remit to consider.
9. The Commissioner considers the focus of this case lies with the applicability of section 40(2) to the requested information.

Reasons for decision

Section 40(2) – Personal information

10. Section 40(2) of the FOIA states that information is exempt from disclosure if it constitutes the personal data of a third party and its disclosure under the FOIA would breach any of the data protection principles.
11. The council argued in its initial response to the complainant that the financial information on the service users' statements was provided confidentially and, although the redaction of names had been considered, the small number of users involved meant that anonymity could not be achieved.
12. The council also argued that disclosure of the requested information would be unfair, distressing to the individuals involved, and therefore contravene the first data protection principle.
13. The complainant, however, argued that he had asked for the requested information to be anonymised and that he could not see any reason why the Data Protection Act 1998 would be breached.
14. In order to reach a view on the council's application of this exemption, the Commissioner firstly considered whether or not the requested information was in fact personal data.

Is the requested information personal data?

15. Personal data is defined at section 1(1) of the DPA as:
"personal data means data which relate to a living individual who can be identified-

(a) from those data,

(b) from those data and other information which is in the possession of, or 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."

16. When considering whether the information is personal data, the Commissioner had regard to his own published guidance, '*Determining what is personal data*'.¹
17. Taking into account his guidance on this matter, there are two questions that need to be considered when deciding whether disclosure of information into the public domain would constitute the disclosure of personal data:
 - (i) "Can a living individual be identified from the data, or, from the data and other information in the possession of, or likely to come into the possession of, the members of the public?"*
 - (ii) Does the data 'relate to' the identifiable living individual, whether in personal or family life, business or profession?"*
18. The Commissioner notes that the complainant informed the council that he wanted anonymised information and required no names. He also notes, however, that there is a fundamental disagreement between the complainant and the council as to whether the requested information is personal data. The council's argument is that the request has been asked in relation to very particular circumstances that only involve 10 service users. On 11 October 2011 the council stated that it had been content to provide the information, had it been possible to anonymise it. However, it was found that a very small number of people met the category specified by the complainant in an earlier request from which the request under consideration in this decision notice had stemmed. The council also realised that there were a very limited number of facilities that were being attended by the individuals involved which meant that the likelihood of identification became correspondingly higher. In contrast, the complainant stated that the council has 16000 service users on its books and he produced

¹ Found at:
http://www.ico.gov.uk/upload/documents/library/data_protection/detailed_specialist_guides/what_is_data_for_the_purposes_of_the_dpa.pdf

mathematical calculations to prove that the council's claim that these individuals could potentially be identified was not beyond reasonable doubt. Having reviewed the information, the Commissioner accepts that these individuals could be identified "*from the data and other information in the possession of, or likely to come into the possession of, the members of the public.*" On the balance of probabilities, which is the test by which the Commissioner measures these matters, a member of the public could identify individuals by cross-referencing the 'anonymised' data with information or knowledge already available to the public.

Would disclosure contravene the first data protection principle?

19. The council has stated that disclosure of the information would breach the first data protection principle. The first data protection principle requires that the processing of personal data be fair and lawful and, at least one of the conditions in schedule 2 is met, and in the case of sensitive personal data, at least one of the conditions in schedule 3 is met. In the case of personal data, both requirements (fair and lawful processing and a schedule 2 condition) 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 principle.

Would disclosure be fair?

20. In considering whether disclosure of the withheld information would be fair, the Commissioner has taken the following factors into account:
- The reasonable expectations of the data subjects.
 - The consequences of disclosure.
 - The legitimate interests of the public.

The reasonable expectations of the data subjects

21. A data subject's expectations are likely, in part, to be shaped by generally accepted principles of everyday interaction and social norms, for example privacy. It is accepted that every individual has the right to some degree of privacy and this right is enshrined in Article 8 of the European Convention on Human Rights.
22. The Commissioner considers that this right to privacy is of particular relevance to the requested information as it directly relates to the financial details of individuals who would not reasonably expect those details to be disclosed, except to the authorities for official purposes.

The complainant argued on 4 October 2011 in a letter to the Commissioner that the reason he needed the information was to uphold the human rights of another individual by accessing information that might help to support their case.

23. The fact that this information relates to the data subjects' private as opposed to public or professional lives has further significance. The Commissioner's awareness guidance on section 40 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 life². Although the guidance acknowledges that there are no hard and fast rules it states that:

"Information which is about the home or family life of an individual, his or her personal finances, or consists of personal references, is likely to deserve protection. By contrast, information which is about someone acting in an official or work capacity should normally be provided on request unless there is some risk to the individual concerned."

24. Based on the above, the Commissioner has concluded that the data subject would have a reasonable expectation that the information would not be disclosed.

The consequences of disclosure

25. The Commissioner has noted the council's comments in its internal review that disclosure would cause distress to the individuals involved.
26. The Commissioner accepts that disclosure of such information poses a very real possibility of causing distress to the individuals concerned. The information consists of calculations based on financial circumstances and benefits relating to care needs. Information relating to personal finances is undoubtedly confidential and the council considers it would cause unnecessary and unjustifiable distress if this information was released under the FOIA.

² Found at:
http://www.ico.gov.uk/~/media/documents/library/Freedom_of_Information/Detailed_specialist_guides/PERSONAL_INFORMATION.ashx

The legitimate public interest

27. Notwithstanding the data subjects' reasonable expectations or any damage or distress caused to them by disclosure, it may still be fair to disclose the requested information if it can be argued that there is a more compelling public interest in disclosure.
28. In considering 'legitimate interests', such interests can include broad general principles of accountability and transparency for their own sakes as well as case specific interests. In balancing these legitimate interests with the rights of the data subject, it is also important to consider a proportionate approach.
29. The Commissioner has concluded there is no legitimate interest in disclosure. The complainant wishes to prove financial discrimination by making his own financial comparisons. Whether such comparisons are ultimately useful cannot be considered here but the Commissioner does not accept that there is a sufficiently compelling public interest in disclosure which would override the unfairness to the individuals involved. The Commissioner considers that a more appropriate route would be via the council's complaints system or the Local Government Ombudsman.
30. Taking into account the above factors, the Commissioner has determined that the disclosure of the requested personal data that is held would not be fair. Having determined that it would not be fair to disclose the requested information, it is not necessary for the Commissioner to consider a Schedule 2 condition, as in the Commissioner's opinion, disclosure would breach the first data protection principle.

Right of appeal

31. 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

32. 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.
33. 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
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