

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 August 2012

Public Authority: London Borough of Barnet
Address: North London Business Park
Oakleigh Road South
London
N11 1NP

Decision (including any steps ordered)

1. The complainant has requested a copy of the ISOS Evaluation Strategy and Process for the London Borough of Barnet's Development and Regulatory Services. The London Borough of Barnet provided a copy of the requested document redacting the names of junior staff and non-council employees citing the personal data exemption at section 40(2) of the FOIA. The Commissioner's decision is that the London Borough of Barnet has corrected withheld the requested personal data.

Request and response

2. On 6 February 2012 the complainant made the following request for information under the FOIA:

"Please provide a copy of the ISOS Evaluation Strategy & Process for DRS".
3. The London Borough of Barnet ('the council') responded on 14 March 2012 and provided a redacted version of the 'Development and Regulatory Services ISOS Evaluation Strategy and Process' document. It cited the personal data exemption at section 40(2) for withholding all names appearing in the document stating that the individuals are junior members of staff and others are employees of other companies who have not consented to their information being disclosed under FOIA. It further stated that these individuals have a reasonable expectation of privacy and do not expect to be subject to public scrutiny especially with regard to a project which is in its procurement stage. The council also

cited the exemption at section 41 for information provided in confidence for withholding Appendix 1.

4. The council provided an internal review on 30 March 2012 in which it revised its position and disclosed the names of the council's senior officers. The redactions in relation to junior officers and non-council employees were maintained as was withholding appendix 1 under the exemption at section 41.

Scope of the case

5. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
6. Following the Commissioner's letter of investigation to the council, it reconsidered the request and decided that, in light of the passage of time, Appendix 1 could be released. This information was provided to the complainant on 10 July 2012. Therefore the Commissioner has not considered the exemption at section 41 as this information is now in the public domain.
7. The Commissioner is aware that since the council's internal review response, it has provided the complainant with a further copy of the requested information disclosing the name of an Assistant Director which was previously withheld. Therefore, that individual's personal data is outside the scope of this decision notice as it is now in the public domain.

Reasons for decision

8. 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 Act would breach any of the data protection principles or section 10 of the Data Protection Act 1998 ('the DPA').
9. In order to rely on the exemption provided by section 40(2), the requested information must therefore constitute personal data as defined by the DPA. Section 1 of the DPA defines personal data 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,

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."

10. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the data protection principles under the DPA. The Commissioner notes in this case that the council argued that disclosure of third party personal data would breach the first data protection principle.

11. The first data protection principle states that:

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

(a) at least one of the conditions in schedule 2 is met, and

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

12. As explained above, the first consideration is whether the withheld information is personal data. The Commissioner believes that individuals' names are clearly personal data as such information relates directly to identifiable individuals.

13. As the Commissioner is satisfied that the withheld information is personal data, he now needs to consider whether disclosure would breach the first data protection principle, as the council has claimed, i.e. would disclosure be unfair and/or unlawful.

14. In deciding whether disclosure of this information would be unfair, the Commissioner has taken into account the nature of the information, the reasonable expectations of the data subjects, the consequences of disclosure on those data subjects and balanced the rights and freedoms of the data subjects with the legitimate interests in disclosure.

Nature of the information and reasonable expectations

15. In his guidance 'Access to information about public authorities' employees'¹, the Commissioner states that a factor to take into account when considering whether to release information identifying an employee is whether the information is about the employee's professional or personal life. The threshold for releasing professional information will generally be lower than that for releasing truly personal sensitive information, for example that found in an employee's occupational health record.
16. In this case, the information requested relates to individual's roles within the evaluation of the Development and Regulatory Services procurement. The Commissioner considers that this information relates solely to the individuals' public function, not to their private life.
17. In his guidance 'When should names be disclosed?'², the Commissioner comments that it is good practice to have a policy on routinely disclosing names at certain levels, in certain roles or in certain circumstances. The guidance explains that this does not mean that the names of more junior staff should always be withheld as often it will not be unfair to release their names where the context is not be sensitive or controversial.
18. The council has stated that it is committed to its obligations under FOIA and its employees are aware that if their information is relevant to a request it may be subject to disclosure. It has drawn the Commissioner's attention to its Redaction Policy which provides guidance on instances where names of employees would be disclosed in relation to information requests. The policy states that names, contact details and job titles or other information which could identify junior officers should be redacted and identifies junior officers as those below Assistant Director level. However, it also stated that there may be circumstances where it is appropriate to release the details of more junior officers and similarly where the names of senior officers should be redacted.

1

http://www.ico.gov.uk/for_organisations/guidance_index/~//media/documents/library/Data_Protection/Detailed_specialist_guides/PUBLIC_AUTHORITY_STAFF_INFO_V2.ashx

2

http://www.ico.gov.uk/for_organisations/guidance_index/~//media/documents/library/Freedom_of_Information/Practical_application/WHENSHOULDNAMESBEDISCLOSED.ashx

19. The council have explained that the information requested relates to the on-going outsourcing of council services which is a sensitive issue as the outsourcing is strongly opposed by a few members of the public. The council have argued that although the information relates to the professional lives of the individuals concerned, the officer's roles are not public facing or senior enough to warrant personal scrutiny. In particular, the council believes that the individuals' roles in relation to the ISOS evaluation project does not require a significant level of personal judgement and individual responsibility. It stated that the names are not relevant to the information and do not alter the meaning of, or add any value to the information requested. The council also explained that the information is not in the public domain as the individuals are not in public facing roles.
20. Although the information relates solely to the data subjects professional lives, the Commissioner considers that the individuals in this case would not have reasonably expected that their involvement in the ISOS evaluation project would be disclosed. This is due to the sensitive nature of the outsourcing, the fact that they do not have individual responsibility for the project and, although they would be aware that their details could be disclosed in response to a request under the FOIA, the council's redaction policy makes it clear that such details would not routinely be provided. The Commissioner acknowledges that the individuals concerned may be at a fairly senior level but, in relation to this project, they are not responsible for policy decisions affecting the public or the expenditure of public funds and as a result they expect a lesser degree of scrutiny and have a greater expectation of privacy.

Consent

21. The council did not seek the consent of the individual council officers affected as the names were redacted in line with its redaction policy. However, it did seek the consent of the non-council employees named in the requested information.
22. The issue of consent is dealt with in the Commissioner's specialist guidance 'Consent'³. The guidance states that the Commissioner will take the data subject's comments into account insofar as they represent an expression of the views of the data subject at the time of the request had they given any thought to the issue at that time and these views will help to inform the analysis of fairness. This is because the data subject may have provided additional and valuable information about

³ <http://icoportal/foikb/PolicyLines/FOIPolicyConsent1.htm>

the impact of the disclosure on them including any circumstances unique to the data subject.

23. An individual's objection to the disclosure of information does not necessarily mean that it cannot be released. It is important to consider whether it is reasonable for the data subject to object to the disclosure.
24. The council did not provide the Commissioner with details of the non-council employees' refusal to consent. Therefore, he cannot consider whether such objections were reasonable. In these instances, the Commissioner's view, as per the above mentioned guidance 'Access to information about public authorities' employees', is that the objection, in the form of not specifically providing consent, does not necessarily mean that the information cannot be released.

Consequences of disclosure

25. In order to assess the impact of the consequence of disclosure on whether release of the requested information would be fair, it is necessary to consider whether disclosure of the information would cause unwarranted damage or distress to the employee.
26. The council has stated that it has observed and has evidence to show that information provided under the FOIA has been used to identify employees in order to make offensive remarks which are sometimes of a personal nature. It asserted that some employees have also been harassed, bullied and sometimes threatened on line and provided evidence to support instances where employees whose information was released under the FOIA were later subjected to personal ridicule on blogs. It explained that some people have been targeted directly via their emails while others have felt they have been stalked on the internet (their names googled and their information matched with their Facebook, LinkedIn and Twitter profiles and in some cases information obtained from their previous places of employment) and blogged about.
27. In addition the council has received complaints from employees as they are concerned that their involvement with FOIA requests makes them feel that they are being personally attacked and intimidated and would lead to an intrusion into their personal lives.
28. The council also explained that it developed its redaction policy because of a growing trend of incidents where members of staff were being harassed by requestors who use their blogs to make derogatory remarks about the personal and professional lives of council employees. The council is of the view that non-senior employees should not be subject to such personal scrutiny and therefore developed a policy to reduce future occurrences.

29. Furthermore, the council stated that as an employer it has a duty of care to protect its employees and has legitimate cause to believe that it will be difficult to maintain a safe working environment if it routinely discloses personal details of its employees especially when the names do not add to the information being requested. It considers that there is a clear public interest in the council maintaining the confidence of its staff by showing a willingness to take necessary action to safeguard their welfare and to avoid compromising their wellbeing.
30. The council is particularly concerned that if the names of these individuals are released in relation to an on-going outsourcing process it will put them at a higher risk of abuse and harassment as they could be targeted which would cause personal damage or distress. The council believes this likelihood to be high because the outsourcing process is being strongly objected to by some residents.
31. Taking the above into account, the Commissioner's view is that disclosure of the withheld information would cause distress to the individuals concerned.

Legitimate interests in disclosure

32. The Commissioner accepts that in considering 'legitimate interests', such interests can include broad general principles of accountability and transparency for its own sake along with specific interests which in this case is the legitimate interest in knowing individual's roles within the evaluation of the Development and Regulatory Services procurement. The Commissioner accepts that employees of public authorities should be open to scrutiny and accountability because their jobs are funded by the public purse.
33. The Commissioner is therefore satisfied that there is a legitimate public interest in disclosure in this case particularly due to the opposition of outsourcing of council functions.
34. The council has explained that the outcome of the evaluation undertaken by the individuals was reviewed by the Challenge Board (Review Panel) which is made up of 3 Directors and an Assistant Director whose names were disclosed in the internal review response. It further explained that the Assistant Director responsible for the project considered whether the importance of the decisions made by the evaluating officers was sufficiently significant to justify an exception to the council's redaction policy but did not think there was justification to make such an exception.
35. The Commissioner's aforementioned guidance 'When should names be disclosed?', states that public authorities should consider whether the

names add to the value of the information, or whether the interests would be fully met by providing information with the names redacted.

36. In this case, the Commissioner considers that disclosure of the names of senior officers involved in the evaluation of the Development and Regulatory Services procurement together with the role played by the Challenge Board, does not make the disclosure of the remaining names necessary.

Conclusion

37. The Commissioner concludes that the council have correctly applied the exemption at section 40(2) to the redacted information because disclosure would be unfair. He considers that the data subjects would not have a reasonable expectation that their personal data would be disclosed, that disclosure could cause unwarranted distress to those data subjects and that the legitimate interest in disclosure does not outweigh the rights and freedoms of the data subjects.

Right of appeal

38. 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

39. 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.
40. 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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