

Freedom of Information Act 2000 (FOIA)

Decision Notice

Date: 17 June 2013

Public Authority: Northumberland County Council
Address: County Hall
Morpeth
Northumberland
NE61 2EF

Decision (including any steps ordered)

1. The complainant has requested information relating to a complaint he made to Northumberland County Council. The Council refused the request under section 40(2) of the FOIA. The Commissioner's decision is that the Council was entitled to rely on section 40(2) in relation to third party personal information. The Commissioner also finds that the Council should have cited section 40(5) in relation to any information held which is or would be the complainant's personal information. The Commissioner does not require the Council to take any further steps to ensure compliance with the legislation.

Request and response

2. In July 2012 the complainant submitted a complaint to the Council about the conduct of a particular councillor. On 7 August 2012 the Council advised the complainant that it had sought the views of the councillor, as well as the Monitoring Officer, and concluded that the complaint was "*too trivial to justify the cost or inconvenience of further action*".
3. On 10 August 2012, the complainant requested the following information from the Council:
 - "i) A copy of the response from [named councillor];*
 - ii) The position of the Monitoring Officer (employee/elected member);*
 - iii) The position of the Independent Person (employee/elected member);*
 - and*
 - iv) A copy of the Assessment Criteria adopted by Northumberland County Council".*

4. On 10 September 2012 the Council provided the complainant with the information requested at parts ii)-iv) of his request. The Council advised the complainant that it was refusing part i) of the request under section 41(1) of the FOIA.
5. In its letter of 10 September 2012 the Council offered to allow the complainant to have sight of the information relevant to part i) of the request. However the complainant advised that if the response contained "*personal or potentially defamatory statements towards myself or my friends/family*" then he would wish to seek legal advice. Consequently the Council withdrew its offer and reverted to its refusal to disclose the information under section 41(1) of the FOIA.
6. The complainant requested an internal review of the Council's refusal on 27 September 2012.
7. On 23 October 2012 the Council advised the complainant that it had now completed the internal review. The Council stated that it had revised its position and withdrew reliance on section 41(1). The Council advised that it now sought to rely on the exemption at section 40(2) of the FOIA to refuse the information at part i) of the request.

Scope of the case

8. On 4 December 2012 the complainant contacted the Commissioner to complain about the way his request for information had been handled.
9. The complainant was of the view that the Council had wrongly withheld the information requested at part i) of the request. The complainant advised the Commissioner that his complaint about the councillor related to alleged wrongdoing by a publicly elected official. The complainant argued that the councillor's response to the Council should therefore only comprise information relating to this matter. The complainant further argued that any other information contained in the response would be "improper and unprofessional" and should therefore be disclosed.
10. The Commissioner notes that the information requested at parts ii)-iv) of the request has been provided to the complainant. Therefore his decision in this case relates only to the withheld information, ie that which falls under part i) of the request.
11. On considering the correspondence the Commissioner concluded that the complainant's request should have been considered under the Data Protection Act 1998 (the DPA) as well as under the FOIA. This is

because the complainant requested information about a complaint he had made to the Council. The Commissioner considered it likely that some of the requested information, if held, would be the complainant's personal information. The Council would have been entitled to refuse to confirm or deny whether it held this information under section 40(5) of the FOIA, but in any event it should have considered the request under the DPA.

12. In light of the above the Commissioner also conducted an assessment under section 42 of the DPA. The section 42 assessment does not form part of this decision notice, because it is a separate legal process from a section 50 complaint.
13. On completion of the section 42 assessment the Commissioner proceeded to investigate the FOIA element of the complaint: namely, information held by the Council which was relevant to the request but which was not the complainant's personal information.

Reasons for decision

Section 40(5)

14. Section 40(5)(a) of the FOIA provides that public authorities are not obliged to comply with the duty to confirm or deny in relation to information which is (or if it were held, would be) personal data of the applicant.
15. The DPA defines personal data 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 intention of the data controller or any other person in respect of the individual."*
16. The Commissioner notes that the complainant had requested information provided in response to a complaint he had made to the Council. The Commissioner is satisfied that the complainant is, or would be, the subject of some of the requested information. This is because the requested information, if held, would identify the complainant and be linked to him in terms of the nature of the complaint he made.

17. The Commissioner therefore considers that the Council ought to have applied section 40(5) in this case, and the Council was not required to comply with the duty to confirm or deny as set out at section 1(1)(a) of the FOIA.

Section 40(2)

18. Section 40(2) of the FOIA states that a public authority is not obliged to disclose information that is the personal data of an individual other than the applicant if to do so would:
 - constitute a disclosure of personal data, and
 - this disclosure would breach any of the data protection principles or section 10 of the Data Protection Act 1998 (the DPA).
19. The Council argued that the requested information which would not fall under section 40(1) would fall under section 40(2) as the personal data of the individual who was the subject of the complaint to the Council.
20. The Council argued that disclosure of the requested information would breach the first data protection principle because it would be unfair to the third party, ie the councillor who was the subject of the complaint.
21. In support of this conclusion the Council argued that the councillor would have a reasonable expectation that information relating to a complaint made about them would not be disclosed into the public domain. The Council explained that it had sought consent from the councillor to disclose the requested information, but that consent had been refused.
22. The Council further argued that the assessment of complaints against elected members should be conducted in confidence. Previously, complaints had been dealt with under the Local Government Act 2000, which provided an explicit assurance of confidentiality. The Council believed that this expectation legitimately extended to the operation of its current complaints procedure.
23. The Council also argued that councillors had a reasonable expectation of privacy because of the possibility that disclosure of personal information could damage their reputations. The Council was concerned that disclosure of information relating to the complaint could cause harm or distress to the councillor in a personal capacity.
24. The complainant was of the view that, as elected representatives, councillors could not reasonably expect that information relating to their public duties should be withheld from the public domain. The complainant argued that there was a significant public interest in the public being informed as to how complaints were dealt with.

25. The Commissioner agrees that councillors should generally expect that information relating to their official responsibilities should be disclosed into the public domain. There is a strong public interest in elected representatives being accountable for their actions and decisions.
26. In this case the complaint was assessed by the Council's Monitoring Officer, who decided not to take any further action. The Commissioner is of the view that individuals who are the subject of complaints are generally entitled to expect a certain degree of confidentiality in the way complaints are handled. For example, where a complaint is found not to be upheld it is less likely to be fair to disclose information relating to that complaint. The Commissioner has seen no evidence to suggest that there is an overriding public interest which demands that the information be disclosed into the public domain.
27. In light of the above the Commissioner finds that disclosure of the requested information would be unfair to the councillor, and would thus breach the first data protection principle. Therefore the exemption at section 40(2) is engaged and the information has been correctly withheld.

Procedural requirements

28. Section 17(1) of the FOIA states that:

"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".*

29. The time for complying with section 1(1) is twenty working days from the day after the request is received. In this case the Council failed to cite the exemption at section 40(5) in relation to requested information that would be the complainant's personal information. The Commissioner therefore finds that the Council failed to comply with the requirements of section 17(1) of the FOIA in relation to this matter.

Right of appeal

30. 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

31. 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.
32. 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

Alexander Ganotis
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