

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 3 October 2013

**Public Authority:** Sheffield City Council  
**Address:** Town Hall  
Pinstone Street  
Sheffield  
South Yorkshire  
S1 2HH

#### Decision (including any steps ordered)

---

1. The complainant has requested the specific ages of employees from Sheffield City Council ("the council"). The council refused to provide this information. It claimed that it was personal data and therefore exempt under section 40(2) of the Freedom of Information Act ("the FOIA").
2. The Commissioner's decision is that the council correctly identified that the requested information would be personal data, and was correct to rely upon section 40(2) of the FOIA. However, the Commissioner identified that the council's response was provided outside 20 working days from the complainant's request, and therefore was in breach of section 10(1) of the FOIA.
3. He requires no steps to be taken by the council.

#### Request and response

---

4. On 25 January 2012 the complainant requested the following information:

*"I would like to request the following information:*

1. *Role Profile Descriptions for:*

- *Care Manager Level 1*
- *Care Manager Level 2*
- *Care Manager Level 3*
- *Social Worker Level 1*
- *Social Worker Level 2*

*I believe these come under 'people care'.*

2. *The Job Evaluation scores sheet for each of the above 5 roles, also.*
3. *Workforce data for each of the above 5 roles, specifically the ages of every worker employed by Sheffield City Council in each role (in years, as given in day to day life e.g. I am 33 years old). (Please advise me exactly of the date such data is reported on in the response.)  
I would like this presented as, for example:  
Care Manager Level 1: 22, 22, 26, 33 44, 44, 45, 50, 51, 51, 52, etc."*
5. The council responded on 26 February 2013 and provided the requested information. However, instead of the specific ages of employees, the council provided the number of employees within the age categories of 25 and under, 26-35, 36-45, 46-55, and 56-65.
6. The complainant contested the use of age categories to provide the ages of employees, and requested an internal review on 8 March 2013.
7. The council completed its internal review on 25 March 2013, and upheld that it was correct not to provide the specific ages requested. It explained to the complainant that providing specific ages would create a risk that specific employees could be identified.

### **Scope of the case**

---

8. The complainant contacted the Commissioner on 22 April 2013 to complain about the council's refusal.
9. The Commissioner considers the scope of the case to be whether the council was correct to rely on section 40(2) of the FOIA to withhold the specific ages of employees, as requested in point 3 of the complainant's request.

### **Reasons for decision**

---

#### **Section 40(2) – Third party personal data**

10. 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."*

11. 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–*

*(i) any of the data protection principles"*

Is the withheld information personal data?

12. Personal data is defined by section 1 of the Data Protection Act 1998 ("the DPA") 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 data controller or any person in respect of the individual"*

13. In order for the exemption to apply the information being requested must constitute personal data as defined by section 1 of the DPA. In this instance, the Commissioner accepts that the specific age of an individual is personal data relating to them as defined by the DPA. This is because the specific age of an employee, in conjunction with information about their employer and job role, may lead to the specific individual being identified.

Would disclosure breach the data protection principles?

14. The data protection principles are set out in schedule 1 of the DPA. The first principle, and the most relevant in this case, states that personal data should only be disclosed in fair and lawful circumstances. The Commissioner's considerations below have focused on the issue of fairness. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the data subject and the potential consequences of the disclosure against the legitimate public interest in disclosing the information.

*Reasonable expectations of the data subject*

15. When considering whether a disclosure of personal information is fair, it is important to take account of whether the disclosure would be within the reasonable expectations of the data subject. However, their expectations do not necessarily determine the issue of whether the disclosure would be fair. Public authorities need to decide objectively

what would be a reasonable expectation in the circumstances. In this case, the council has explained that it has access to the date of birth and exact ages of employees in order to undertake its responsibilities as an employer. The council has explained that providing the exact ages of individuals would break the confidentiality expected of the council by its employees; who would not reasonably expect their exact age to be released into the public domain. The council have explained that it is for this reason that it has not taken the step of seeking consent from the individuals.

*Consequences of disclosure*

16. The council has explained that it is not possible for it to accurately determine the damage or distress that disclosure of the information might have on its employees. It has reiterated that the exact age of an individual is personal information, and that should it release this information it would expect a range of reactions from employees, spanning from indifference to dismay.

*Balancing the rights and freedoms of the data subject with the legitimate interests in disclosure*

17. The Commissioner understands that the complainant has requested the specific ages of employees in order to undertake "statistical analysis" on the data. No other information has been provided by the complainant as to the reasons for their request, nor of the public interest in it being complied with.
18. The council has informed the Commissioner that it recognises the inherent public interest in ensuring that information, where possible, is released into the public domain so as to ensure transparency and accountability on the part of the public authority. It is for this reason that the council attempted to provide the complainant with useful information by disclosing the ages of employees split into age categories.
19. The council has further advised the Commissioner that it undertook a public interest test as part of its decision not to provide the exact ages of employees, and referred to the Commissioner's guidance as part of this. The council considered that whilst it had a duty to ensure that information such as salary bands, expenses, and role responsibilities were made publically available, it did not consider that employees would reasonably expect their specific ages to be released into the public domain.

Conclusion

20. There is always some legitimate public interest in the disclosure of any information held by public authorities. This is because disclosure of

information helps to promote transparency and accountability amongst public authorities. This in turn may assist members of the public in understanding decisions taken by public authorities and perhaps even to participate more in decision-making processes. However, having considered the circumstances of this case, the Commissioner's view is that the right to privacy outweighs the legitimate public interest in providing the exact ages of employees.

21. The Commissioner has considered that releasing this information would not be within the expectations of the council's employees, who would not reasonably expect personal information such as age to be released into the public domain, particularly if there is a possibility of a specific individual being identified. Having reviewed the data that the council has so far released to the complainant, it seems likely that within some job roles there would be a reasonable possibility of a specific employee being identified. This is because of the small amount of employees that fall within some age ranges in each role. The Commissioner is particularly mindful that the individuals concerned are involved in social work, and that the highly public nature of their work might increase the likelihood of individuals being identified. Equally, there is a reasonable possibility that other employees might be able to use this information to identify specific individuals.
22. The Commissioner has further considered that whilst there is a strong public interest in employee details such as salary bands and specific duties being disclosed publically, there is less public interest in the specific ages of staff being disclosed. The Commissioner considers that such information is unlikely to be related to their role within the council, and as such holds limited public value.
23. In view of the above, the Commissioner finds providing the exact ages of employees would contravene the first data protection principal because it would be unfair. The council was therefore correct to refuse the request.

### **Section 10(1) – Time for compliance**

24. Section 10(1) of FOIA requires that an information request should be responded to within 20 working days of receipt. In this case the council's response was not provided until after 20 working days.
25. The Commissioner's decision is that the council therefore breached section 10(1) of the FOIA in relation to the complainant's request.

## 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](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://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 – Complaints Resolution**  
**Information Commissioner’s Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**