

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 January 2014

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 grass cutting activities in Northumberland.
2. The Commissioner's decision is that Northumberland County Council (NCC) has provided all the information it holds.
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 3 January 2013, the complainant wrote to Northumberland County Council (NCC) and requested information in the following terms:
 1. *All NCC timesheets for those persons engaged in grass cutting activities, covering the period 1st March 2012 to 30th November 2012 for the areas of Mickley, Morpeth County Hall grounds, the town of Morpeth and Darras Hall.*
 2. *Details of all complaints to NCC regarding grass cutting within Northumberland, for the period 1st March 2012 to 30th November 2012.*
5. NCC responded on 25 January 2013. With regard to request number 1 it provided ground maintenance timesheets for the Mickley area (with

activity highlighted where a complaint or service request had been received) and provided details of grass cutting routes. Names of staff involved in the grass cutting activities – as well as employee identification numbers where included - were redacted from the timesheets. The Council stated that it did not hold any other records. In respect of request number 2 the council advised that it had received one corporate complaint about grass cutting until the end of August 2012 but due to a system update no further information was available

6. Following an internal review, NCC wrote to the complainant on 15 April 2013. It upheld its original position in respect of the request for timesheets but revised its position in relation to complaints. The council advised the complainant that it would be possible to extract the information manually but that this would take approximately 60 hours and therefore refused to provide the information citing the exemption at section 12(1) – cost of compliance exceeds appropriate limit.

Scope of the case

7. The complainant contacted the Commissioner on 19 February 2013 to complain about the way his request for information had been handled. He specifically asserted that NCC had not provided Hand Arm Vibration (HAV) timesheets which he knew existed. He also asserted that individual timesheets were completed stating that a Council employee had confirmed this verbally. With regard to the request for complaints, the complainant did not accept that these could not be extracted without significant cost. The complainant alleged to the Commissioner that the council was seeking to prevent him accessing the information requested as he alleged the information would provide evidence of poor management and cover up of complaints.
8. The Commissioner considered the scope of the investigation to be whether NCC held any further information requested at point 1 and whether it was correct to apply the costs exception to the information requested at point 2. However, during the course of the Commissioner's investigation NCC dropped its reliance on section 12 of the FOIA in relation to request 2 and disclosed the information it holds, but did not disclose the names of any complainant in accordance with the exemption at section 40(2) of the FOIA (personal information). Also during the course of the investigation NCC provided the complainant with the HAV timesheets in response to point 1 of the request. In line with its previous disclosure of timesheets to the complainant names were redacted in accordance with section 40(2) of the FOIA. The complainant does not accept that all of the information has been provided to him.

9. In this notice the Commissioner will therefore consider whether NCC has disclosed all of the information it holds of relevance to the requests and whether it was correct to apply section 40(2) to the withheld information.

Reasons for decision

10. Section 1(1) of FOIA states that

"Any person making a request for information to a public authority is entitled –

- (a) To be informed in writing by the public authority whether it holds information of the description specified in the request, and*
- (b) If that is the case, to have that information communicated to him."*

11. In scenarios where there is some dispute between the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
12. In other words, in order to determine such complaints the Commissioner must decide whether, on the balance of probabilities, a public authority holds any information which falls within the scope of the request, or was held at the time of the request.
13. In order to assist with this determination the Commissioner asked NCC a range of questions relating to searches, how information is held and the deletion/destruction of documents.
14. NCC advised that it had conducted electronic and manual searches at the time of the request and verbal checks were also made with staff in the local depots. Electronic searches were made of the central system as this is where the information would have been held.

Request 1

15. With regard to the timesheets NCC advised the Commissioner that at the time of the dates detailed in the request, Mickley and Darras Hall were covered by the West of Northumberland area and that there were no timesheets other than those already provided. NCC went on to explain that with regard to the dates detailed in the request there was some local variation in how information was gathered. In the case of County Hall and Morpeth, the information was recorded on a white

board on a daily basis. This situation has now been altered and there has been wider use of timesheets since the start of 2013. NCC advised that a number of district Councils were merged in 2009 and some administrative practices still differ from area to area. There is no council-wide policy for recording hours worked on grass cutting and it is managed by the different administrative teams. Accordingly NCC has explained that there are varying degrees of information held in relation to the different areas NCC is now responsible for. It has confirmed that as a result of its searches it has now provided all of the information it holds regarding timesheets about grass cutting.

16. NCC acknowledged the existence of the HAV timesheets but in its submission to the Commissioner asserted that these simply record hand time on specific pieces of equipment with no reference to location. Despite NCC's submission, the Commissioner considered that as they are timesheets relating to those engaged in grass cutting activities, they fall within the scope of the request and asked if NCC was prepared to release them. It agreed to this course of action and these have since been provided to the complainant with the personal details redacted. However, the complainant still does not accept that NCC has provided everything relevant to this part of his request.
17. The Commissioner notes that NCC has explained the regional differences in how relevant timesheet information is recorded and that it has provided the complainant with the information it holds relating to those areas which used and have retained timesheets in the period specified in the request. Additionally, during the course of the Commissioner's investigation it has provided the 'HAV' timesheets it holds to the complainant. On the balance of probabilities, the Commissioner is satisfied that NCC has now disclosed all of the relevant information it holds pursuant to this aspect of his request.

Request 2

18. When dropping its reliance on section 12 of the Act during the Commissioner's investigation, NCC made the distinction and explained the difference between service requests and complaints. Essentially, a service request would stem from a communication where the Council would be asked to remedy a situation – eg. cut the grass if it had been missed. A complaint on the other hand would require the Council to look into the reason behind the occurrence of an issue, reply to the complainant and remedy it if appropriate. This is a Council wide process and is not restricted to grass cutting. In providing this clarification to the Commissioner, he was satisfied that, as the request for information related only to complaints, service requests were not relevant to this request and need not be included. It was NCC's initial reliance on the inclusion of service requests that meant the costs limit would be

exceeded but, once service requests were removed, NCC identified that there were 66 complaints within the timeframe specified in the request. NCC agreed to manually search these in order to ascertain whether or not they related to grass cutting. Having done so, NCC confirmed to the Commissioner that there had been only one complaint within the specified timeframe and it has, during the course of the investigation, provided the details to the complainant.

19. The Commissioner finds that NCC has now provided the complainant with the information set out in this part of his request.
20. However, the Commissioner also notes that the council provided some information to the complainant after more than 20 working days following receipt of the request. It therefore breached section 10(1) of the FOIA

Section 40 – Personal information

21. Section 40(2) of 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.

Is the withheld information personal data?

22. Personal data is defined by the Data Protection Act 1998 (DPA) as any information relating to a living and identifiable individual. Information will relate to a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them, has them as its main focus or impacts on them in any way.
23. The withheld information is the names and employee identification numbers of council employees contained within the timesheets requested, and the name of an individual who has complained to the council. The Commissioner is satisfied that an individual's name and employee identification number is personal data as defined in the DPA.

Would disclosure breach the Data Protection Principles?

24. 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, in terms of applying the exemption at section 40(2), have focused on this issue of fairness.
25. In considering fairness, the Commissioner has taken into account the nature of the information, the reasonable expectations of the data

subject, the potential consequences of disclosure and has balanced the rights and freedoms of the data subject with the legitimate public interest in disclosing the information.

26. In terms of the Council employees, the Commissioner notes that the information under consideration relates to those employees in a professional capacity but that all of the council employees in question hold junior positions within NCC.
27. The Commissioner accepts that, although the work undertaken by the individuals employed by the Council is undertaken in the local community, the employees do not hold a public facing role within the council and are in junior positions which do not carry a significant level of accountability. Furthermore, the Commissioner is of the view that the information disclosed in the timesheets provides sufficient accountability in terms of grass cutting activity during the periods covered. The Commissioner notes that disclosure of the names and identification numbers of these staff in the context of the requested timesheets would be likely to reveal further information relating to their performance and work patterns, and would represent an undue level of scrutiny on the work of junior staff accordingly the Commissioner believes the individual employees would have a strong expectation that this information would not be disclosed.
28. The Commissioner notes that the complainant is concerned that the Council should be accountable for its use of public money. However, the Commissioner does not accept that such accountability would be informed or enhanced by the disclosure of the names or identification numbers of any junior employee. Furthermore, he notes that the complainant has the name and contact details of the manager responsible for the relevant staff should he wish to query the provision of grass cutting services.
29. In terms of point 2 of the request and the identity of the person who submitted a complaint to the Council, the information relates to them in a private capacity and the Commissioner accepts that the complaint would have been made with an inherent expectation that it was made in confidence. Therefore he is satisfied that this individual has a clear and strong expectation that, in making their complaint, their details would not be disclosed and consequently put in the public domain.
30. The Commissioner has also taken into account the consequences of disclosure upon the data subjects, and having found that all of the data subjects would hold a strong expectation of privacy in relation to this information it follows from this that disclosure would be likely to result in distress to the individuals.

31. On the issue of whether there is any legitimate public interest in this disclosure the Commissioner is of the view that there is no public interest in the provision of the full names of junior members of council staff or of a complainant to the Council which overrides the factors outlined above.

32. In summary, the Commissioner cannot see any legitimate public interest in favour of disclosure of the names of the employees, their employee numbers or the name of the individual who complained to the Council in this case. Having also found that disclosure would be against the reasonable expectations of the data subjects and that disclosure would be likely to result in a degree of distress to the data subjects, the Commissioner's conclusion is that the disclosure would be unfair and in breach of the first data protection principle. The exemption provided at section 40(2) is therefore engaged and the Council is not required to disclose this information.

Right of appeal

33. 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: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

34. 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.
35. 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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