

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 March 2014

Public Authority: London Borough of Redbridge
Address: Redbridge Town Hall
124-142 High Road
Ilford, Essex
IG1 1DD

Decision (including any steps ordered)

1. The complainant requested information relating to an employment dispute involving the public authority. The public authority withheld the information on the basis of the exemption at section 40(2) FOIA.
2. The Commissioner's decision is that the public authority is entitled to withhold the information withheld on the basis of section 40(2).
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 6 August 2013 during the course of correspondence between the complainant and a Councillor in relation to Redbridge Homes Limited (RHL), a former provider of social housing on behalf of the public authority, the complainant asked the following questions:
'Was a substantial amount paid to [Named Person]?' (Part 1)
Was it paid in order to avoid Industrial Tribunal? (Part 2)
Did lawyers from the Council authorise any payment to her or to her lawyers? (Part 3)
Did [Named Person] have her own lawyers? (Part 4)

At the time that the annual payment for legal services was negotiated was it known that [Named Person] or anyone else from RHL would be seeking to negotiate a departure from RHL? (Part 5)

If, as the second paragraph of your letter says, the company has lawyers why do they need to be paying for the Council's lawyers? (Part 6)

.....I would be grateful if you could answer these questions.'

5. The public authority informed the complainant on the same day that it would be handling his requests under the terms of the FOIA.
6. The public authority subsequently issued a substantive response to the complainant.¹
7. In response to Parts 1, 2 and 4 of the request, the public authority claimed that information held within the scope of those requests was exempt from disclosure on the basis of 'section 40' FOIA.
8. In response to Part 3 of the request, the public authority stated: '*I am not aware that any lawyer of Redbridge Council is permitted to authorise any such payments.*'
9. In response to Part 5 of the request, the public stated: '*.....I am not aware that any current Redbridge Homes officer holds any information of this nature.*'
10. In response to Part 6 of the request, the public authority stated: '*A response to this question has already been provided by the Council's Borough Solicitor and Secretary in his email to you of July 29th at 3:25pm at paragraph (ii). I consider therefore that your question has already been answered and the position explained to you in a suitably clear manner.*'
11. The complainant requested an internal review on 6 September 2013.
12. The public authority wrote to the complainant on 2 October 2013. It addressed various comments and queries by the complainant in his previous email and also upheld the original decision to apply 'section 40' to information held within the scope of Parts 1, 2 and 4 of the request.

¹ It is not clear to the Commissioner when this response was issued.

Scope of the case

13. The complainant contacted the Commissioner on 21 October 2013 to complain about the way his request for information had been handled.

14. The complainant advised the Commissioner as follows:

'It was claimed earlier this year that [Named Person] had been given £100,000 in return for not pursuing an Industrial Tribunal action regarding her dismissal. The matter was reported in the Woodford Guardian.....I have four concerns:

Was a substantial payment made to [Named Person]?

Does the payment of a sum of money amount to personal information attracting an automatic exemption under the Freedom of Information Act 2000?

Was there a conflict of interest between Redbridge Council and Redbridge Housing Corporation?

Can an officer of the Council [Named Person] refuse to provide information about what happened before he held office?'

15. The Commissioner wrote to the complainant on 7 January 2014 and explained that he considered the scope of his investigation restricted to Parts 1, 2 and 4 of his request.

16. On 15 January 2014 the complainant wrote back and confirmed that he was happy for the investigation to proceed on the basis explained in the Commissioner's letter of 7 January.

17. The scope of the Commissioner's investigation therefore was to determine whether the public authority was entitled to withhold information within the scope of Parts 1, 2 and 4 of the request of 6 August 2013 on the basis of section 40(2) FOIA.²

18. However, during the course of the investigation, the Commissioner informed the complainant that it did not consider Parts 1 and 2 of the request valid requests for information under the FOIA. Therefore, the complainant subsequently re-submitted that part of his request to the

² The requested information clearly relates to a third party, and does not relate to the complainant. Therefore, sub section (2) of section 40 is the applicable exemption.

public authority in a differently worded form. The reasons for the Commissioner's position regarding Parts 1 and 2 of the request are explained below.

Reasons for decision

Parts 1 and 2 of the request

19. The Commissioner considers that Part 1 of the request seeks an opinion rather than *recorded information*. Whether or not a substantial amount was paid to [Named Person] is a matter of opinion. If the Commissioner were to find against the public authority, the public authority would be unable to comply with a remedial step to provide recorded information matching the request. The Commissioner therefore finds that Part 1 of the request is not a valid request for information under the FOIA. Because Part 2 of the request follows from Part 1 (ie it is basically a request as to whether *a substantial payment was made to [Named Person] in order to avoid industrial action*), the Commissioner also finds that it is not a valid request for information under the FOIA.
20. Even if the Commissioner is wrong on this point, he considers that the information would in any event be exempt from disclosure for the same reasons below that he has found the information within the scope of Part 4 of the request exempt on the basis of section 40(2).

Section 40(2) – Part 4 of the request

21. Information is exempt from disclosure on the basis of section 40(2) if it constitutes third party personal data (i.e. the personal data of anyone other than the individual making the request) and either the first or second condition in section 40(3) is satisfied.
22. Personal data is defined in section 1 of the Data Protection Act 1998 (DPA) as follows:

'.....data which relate to a living individual who can be identified from those data or from those data and other information which is in the possession of, or likely to come into possession of, the data controller; and includes any expression of opinion about the individual and indication of the intentions of the data controller or any person in respect of the individual.'

Is the information within scope of Part 4 personal data?

23. The withheld information and more generally the information requested by the complainant is about a disciplinary investigation relating to the

former Chief Executive of RHL. The Commissioner recently issued a decision notice following a different request on the same subject matter in which he upheld the application of section 40(2).³

24. The Commissioner is satisfied that in the context of the request, the withheld information is the personal data of [Named Person]. This is because the request relates to a disciplinary investigation/employment dispute about [Named Person]. The fact that she may, or may not have been represented by her own lawyers is also biographically significant.

Would the disclosure of the information contravene any of the data protection principles?

25. As mentioned, for section 40(2) to apply, either the first or second condition in section 40(3) must be satisfied. The first condition in section 40(3) states that disclosure of personal data would contravene any of the data protection principles or section 10 of the DPA.

26. The first data protection principle states:

'Personal data shall be processed fairly and lawfully and, in particular shall not be processed unless –

At least one of the conditions in schedule 2 [DPA] is met....'

27. In deciding whether disclosure of personal data would be unfair, and thus breach the first data protection principle, the Commissioner takes into account a range of factors including:

- The reasonable expectations of the individual in terms of what would happen to their personal data,
- The consequences of disclosing the information, ie what damage or distress would the individual suffer if the information was disclosed?

28. Furthermore, notwithstanding the data subject's 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 an overriding legitimate interest in disclosure to the public.

29. The Commissioner considers that information relating to an internal investigation or disciplinary hearing will carry a strong expectation of privacy.

³ http://ico.org.uk/~media/documents/decisionnotices/2014/fs_50506524.ashx

30. The Commissioner has also taken into consideration that, in the context of the request in this case, the matter under investigation – which was to have been subject of an Employment Tribunal – was settled without the need for a public hearing. In the Commissioner's view, the fact that the information requested was not made public at that time is likely to contribute to the [Named Person]'s expectations that the information would not be made public in the future.
31. With regards the consequences of disclosure, the Commissioner has also given particular weight to the fact that the employment dispute was settled without a public hearing. He therefore considers that disclosing the information requested (in the context of a request regarding the employment dispute) would be likely to cause distress to [Named Person].
32. The Commissioner accepts that for reasons of transparency, there is a legitimate interest in the public knowing whether or not [Named Person] had her own legal representation during the course of the disciplinary hearing/employment dispute. However, in the circumstances, he considers that the potential damage and distress which could be caused to [Named Person] outweighs the legitimate interests in disclosure.
33. The Commissioner is satisfied that in the circumstances of this case, disclosing the information within the scope of Part 4 would be unfair and consequently in breach of the first data protection principle.
34. The Commissioner therefore finds that the public authority is entitled to withhold the information on the basis of the exemption at section 40(2).

Right of appeal

35. 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

36. 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.
37. 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
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