

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 August 2014

Public Authority: Conwy County Borough Council
Address: Bodlondeb
Conwy
North Wales
LL32 8DU

Decision (including any steps ordered)

1. The complainant requested an unredacted copy of an internal audit report ('the Report') relating to a particular school. Conwy County Borough Council ('the Council') had previously released a redacted copy of the report in question, but had withheld certain information under section 40(2). In response to the request, the Council maintained that the remaining withheld information contained within the Report was exempt under section 40(2). During the course of the Commissioner's investigation, the Council disclosed some additional information. The Commissioner's decision is that the Council has correctly applied section 40(2) to the remaining information. The Commissioner does not require any steps to be taken.

Request and response

2. On 18 February 2014 the complainant wrote to the Council and requested information in the following terms:

"Please can I have a copy of the audit report entitled "Ysgol Llandrillo yn Rhos Procurement" dated November 2013.

I am aware that you have previously released a copy of this with redactions under s40. I do not believe those redactions are valid and I am therefore requesting the report in its entirety".
3. The Council responded on 19 February 2014 and provided a redacted copy of the Report which it had released in response to a previous

(unrelated) information request. The Council stated that some personal information had been redacted under section 40 of the FOIA.

4. On 19 February 2014 the complainant wrote to the Council and requested an internal review on the grounds that the Council's refusal notice failed to adequately explain how section 40 applied, and he disputed that section 40 applied to the withheld information.
5. The Council provided the outcome of its internal review on 19 February 2014 and upheld its decision that section 40(2) applied to the information which had been redacted from the Report.

Scope of the case

6. The complainant contacted the Commissioner on 20 February 2014 to complain about the way his request for information had been handled.
7. During the course of the Commissioner's investigation, the Council disclosed some additional information contained within the Report.
8. The Commissioner considers this complaint to be whether the Council should disclose the remaining withheld information contained within the Report or whether it was correct in applying section 40(2) to the information.

Reasons for decision

Section 40(2) – the exemption for third party personal data

9. 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 FOIA would breach any of the data protection principles or section 10 of the Data Protection Act 1998 ('the DPA').
10. Due to the circumstances of this case and the content of the withheld information, the level of detail which the Commissioner can include in this notice about either the Council's submissions to support its position or the Commissioner's consideration of those arguments is limited. This is because inclusion of any detailed analysis is likely to reveal the content of the withheld information itself.
11. The Council has applied section 40(2) to parts of the Report. The Council argues that the information constitutes the personal data of the individuals who are referred to in the Report. The Council considers that disclosure of the third party personal data under the FOIA would

constitute unfair processing and would therefore breach the first data protection principle.

Is the requested information personal data?

12. In order to rely on the exemption provided by section 40, the information being requested must constitute personal data as defined by section 1 of the DPA. It defines personal information as data which relates to a living individual who can be identified:

- from that data,
- or from that data and other information which is in the possession of, or is likely to come into the possession of, the data controller.

13. The withheld information in this case comprises names and other identifying information relating to a number of individuals, some of whom are contractors operating as sole traders. The Commissioner accepts that a living individual can be identified from their name (and by subsequent references to other identifying information) and is satisfied that the withheld information in this case constitutes the personal data of the individuals referred to in the Report.

Would disclosure breach one of the data protection principles?

14. Having accepted that the information requested constitutes the personal data of a living individual other than the applicant, the Commissioner must next consider whether disclosure would breach one of the data protection principles. He considers the first data protection principle to be most relevant in this case. The first data protection principle has two components:

- personal data shall be processed fairly and lawfully; and
- personal data shall not be processed unless at least one of the conditions in DPA schedule 2 is met.

Would disclosure be fair?

15. In considering whether disclosure of the information requested would comply with the first data protection principle, the Commissioner has first considered whether disclosure would be fair. In assessing fairness, the Commissioner has considered the reasonable expectations of the individuals concerned, the nature of those expectations and the consequences of disclosure to the individual. He has then balanced against these the general principles of accountability and transparency as well as any legitimate interests which arise from the specific circumstances of the case.

Reasonable expectations

16. The Council stated that internal audit reports and investigations are about evaluation and improvement in the efficiency and effectiveness of the service/organisation. Reports are very likely to identify some shortcomings or areas for improvement, which could be exploited if widely known.
17. The Report in this case has a section on the purpose and scope of the review as follows:

“Conwy County Borough Council’s Internal Audit Service has performed a review of Ysgol Llandrillo yn Rhos’s procurement practices to provide a level of assurance to management that internal controls are operating effectively, potential risks are well managed, and corporate objectives are being achieved.

The review included:

- The procurement of construction work and compliance with Contract Standing Orders for Schools.
 - The adequacy of contractors insurances.
 - The inspection and approval of completed work”.
18. The Council argues that, given the topic of the Report, and the fact that it involved a number of allegations, all of the individuals referred to in it would not have any expectation that their personal details would be disclosed into the public domain in this way. Staff at the school would have formed a reasonable expectation that their personal data would be processed solely for the purpose of the audit and in addressing any resulting recommendations. In relation to the sole traders, the Council argues that they would have had a reasonable expectation that their personal data would have been processed in line with the purpose for which they provided it to the school, ie in relation to the tendering of any works, payment of invoices, etc.

Consequences of disclosure

19. The Commissioner’s published guidance explains that in assessing fairness, authorities should consider the likely consequences of disclosure in each particular case. Personal information should not be used in ways that have unjustified adverse effects on the individuals concerned. It is often the case that the detrimental consequences resulting from a disclosure would be obvious. It will also be important to consider the level of distress that a disclosure would be likely to have and this will depend on the nature of the information.

20. The Council argues that given the expectations of the individuals referred to above and the nature of the Report, disclosure would be likely to cause unnecessary and unwarranted harm to the individuals concerned.

Balancing the rights and freedoms of the data subjects with the legitimate interest in disclosure

21. There is always some public interest in the disclosure of any information held by public authorities under the FOIA. This is because the disclosure of information to the public assists in the general aims of promoting transparency, accountability and more active public participation. However, where personal data is concerned, it is important to consider all the circumstances to ensure that the disclosure would be fair in the circumstances of any particular case. In other words, individuals have a legitimate right to privacy and this must be balanced against the legitimate public interest.
22. Turning firstly to the issue of the extent to which the disclosure of the information in question would have been within the reasonable expectations of the individuals concerned. The Commissioner notes that, on the whole, the information relates to the professional lives of the individuals concerned. However, there will often be circumstances where due to the nature of the information and/or the consequences of it being released, the individual will have a strong expectation that information will not be disclosed. Information relating to an internal investigation or disciplinary matter will carry a strong expectation of privacy. The Commissioner is satisfied that the information being withheld in this case falls within this category.
23. The Council advised the Commissioner that audit reports and/or summaries of audit reports are not published as a matter of course. However audit reports are considered by the Council's Audit Committee and, to some extent, some information will be available via the minutes which are publicly available. However, this particular audit was conducted following a whistleblowing incident. This type of audit report is treated differently and they are not presented to the Audit Committee. In light of the Council's policy in terms of disclosure of audit reports, the Commissioner considers the individuals mentioned or involved in the report would have a strong expectation that their personal data would not be disclosed into the public domain. The Commissioner is satisfied that disclosure would be an invasion of privacy and would be likely to cause damage or distress to the individuals.
24. Notwithstanding a data subject's reasonable expectations or any damage or distress caused to them by disclosure, depending on the

circumstances of the case, it may still be fair to disclose requested information if there is a more compelling public interest in disclosure.

25. The complainant considers that there is a very strong public interest in disclosure of the full Report as it has a low "assurance rating" and talks about problem such as "restricted procurement practice", "lack of transparency", "lack of adequate insurance cover", and "potential health and safety consequences". The complainant considers that full scrutiny is not possible without disclosure of the full Report. He also considers that the personal data would relate to the professional or working lives of the people concerned which reduces any possible unfairness associated with disclosure. The complainant also raised other points concerning the person to whom he believed the personal data related, which he considered strengthened the case for disclosure.
26. In considering 'legitimate interests', the Commissioner's view is that such interests can include broad general principles of accountability and transparency for their own sakes as well as case specific interests. The Commissioner considers that there is a legitimate public interest in public authorities being transparent in the way they discharge their duties in order to promote accountability and public confidence.
27. The Commissioner notes that a redacted copy of the report has been disclosed and he considers that, to an extent, this disclosure has satisfied any public legitimate interest. He does, however, accept that disclosure of the remaining withheld information would increase accountability and transparency in terms of the identity of the individuals involved in the review and the allegations made.
28. However, in light of the nature of the information and the reasonable expectations of the individuals concerned, the Commissioner does not consider that any legitimate interests of the public in accessing the remaining information in the Report are sufficient to outweigh the individuals' right to privacy and any damage and distress that disclosure could cause to the individuals.
29. In conclusion, the Commissioner finds that disclosure would be unfair and would therefore contravene the first data protection principle. As the Commissioner has decided that the disclosure would be unfair, and therefore in breach of the first principle of the DPA, he has not gone on to consider whether there is a Schedule 2 condition for processing the information in question. The Commissioner therefore upholds the Council's application of section 40(2) to the information.

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: GRC@hmcts.gsi.gov.uk

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

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

Anne Jones
Assistant Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF