

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 April 2015

Public Authority: Bristol City Council

Address: City Hall (formerly The Council House)
College Green
Bristol
BS1 5TR

Decision (including any steps ordered)

1. The complainant has requested correspondence between the Bristol City Council and a named individual regarding the erection of a signpost. The Commissioner's decision is that Bristol City Council has correctly applied the exemption for personal data at section 40(2) of the FOIA. He does not require any steps to be taken to ensure compliance with the legislation.

Request and response

2. On 5 September 2014, the complainant wrote to Bristol City Council ('the council') and requested information in the following terms:

"Please send me (under the Freedom of Information Act 2000) copies of all correspondence between yourself and [named individual] of Kingswood."
3. The council responded on 30 September 2014 and refused to provide the requested information citing the exemption for personal data at section 40(2) of the FOIA.
4. The complainant first expressed dissatisfaction with the response on 30 September 2014, and again on 7 October 2014, which the council responded to on 9 October 2014. The complainant then asked to see the correspondence again on 9 October and the council provided an internal

review response on 6 November 2014 in which it maintained its original position.

Scope of the case

5. The complainant contacted the Commissioner on 15 November 2015 to complain about the way his request for information had been handled.
6. The Commissioner has considered whether the council was correct to apply the exemption for personal data at section 40(2) of the FOIA to the requested information.

Reasons for decision

Section 40(2)

7. 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').
8. In order to rely on the exemption provided by section 40(2), the requested information must therefore constitute personal data as defined by the DPA. Section 1 of the DPA defines personal data as follows:

“personal data” means 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 intentions of the data controller or any other person in respect of the individual.”
9. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the data protection principles under the DPA. The Commissioner notes in this case that the council said that disclosure would breach the first data protection principle.

Is the withheld information personal data?

10. As explained above, the first consideration is whether the withheld information is personal data. The council said that the information is the personal data of the individual referred to in the request as it relate to his views on a suggested signpost. Having seen the information, the Commissioner is satisfied that it constitutes the personal data of the individual named in the request (the 'data subject').

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

11. The council considers that the disclosure of the information would contravene the first data protection principle. This states that:
- "Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –
- (a) at least one of the conditions in Schedule 2 is met, and
 - (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met".
12. In deciding whether disclosure of this information would be unfair, the Commissioner has taken into account the nature of the information, the reasonable expectations of the data subject, the consequences of disclosure on the data subject and balanced the rights and freedoms of the data subjects with the legitimate interests in disclosure.

Nature of the information and reasonable expectations

13. The council said that although the information is seemingly anodyne in nature, it considers that the reasonable expectation of the data subject when liaising with the council was not that his correspondence would be disclosed to the world at large. It said that it considered that the simplest way to deal with the matter would be to contact the data subject in order to seek his consent to disclosure and explained that it had emailed the data subject but did not get a response.
14. The complainant has said that no one sends emails or writes letters to public authorities without being prepared to have them discussed and released to any party with a clear interest.
15. In this case, the Commissioner is satisfied that the data subject would have a general expectation of privacy when providing his views to the council. He does not agree with the complainant that people corresponding with public authorities should have a general expectation that their correspondence will be discussed and released to any party with a clear interest.

Consequences of disclosure

16. In order to assess the impact of the consequence of disclosure on whether disclosure would be fair, it is necessary to consider whether disclosure of the information would cause unwarranted damage or distress to the data subjects.
17. In this case, the council has said that it is reasonable to infer from the complainant's correspondence that this is a matter that he feels very strongly about and is of the view that it is far from unlikely that he may attempt to use the correspondence in order to ridicule the data subject in some way. It also said that it is reasonable to infer from the complainant's correspondence that this is a matter that has some involvement with Arnos Vale cemetery trust and it would appear that the complainant, on behalf of Arnos Vale cemetery, feels that the data subject has encroached upon what he considers to be their property in terms of the memory of Rajah Rammohun Roy, in introducing Beech House to the equation. It said that it appreciates that this is somewhat speculative, but the strength of the complainant's feeling does seem to go beyond a mere desire to correct a factual error and leads the council to believe that there is a strong likelihood that disclosure of the correspondence will have a negative impact on the data subject.
19. The Commissioner considers that the consequence of disclosing the information would, at the least, be an infringement of the data subject's privacy which could cause distress. He draws attention to the fact that disclosure under the FOIA is akin to disclosure to the public at large rather than to the requester alone.

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

20. The Commissioner accepts that in considering 'legitimate interests', such interests can include broad general principles of accountability and transparency for its own sake along with specific interests.
21. The complainant has explained that a signpost was erected in a public street directing people to "Beech House the former home of Raja Rammohun Roy". The complainant informed the council that Rajah Rammohun Roy never had a home in Bristol and that the house he stayed in, as a guest for three weeks, was called Stapleton Grove (now Beech House converted into flats). After a lengthy period and much argument the signpost was taken down but the complainant wants to know how the council were persuaded to put up the signpost in the first place. He is aware of who requested the erection of the signpost and considers that the views and opinions of that person should be in the public domain and open to comment if the council is going to take

actions based on them. He has said that the data subject's views and opinions have directly affected him and has asked how the public interest can be properly served when the council actions are not open to consultation or scrutiny.

22. The Commissioner understands that the complainant was informed, on the same day as the request was responded to, that the sign would be taken down. The council said that transparency and accountability had already been provided, without the need to disclose the requested information, by virtue of the signpost having been removed upon complaint and investigation and the council having explained to the complainant both the reasons for the erection of the signpost and for its removal and accepting that it had made a mistake in putting the signpost up. It further explained that it would be disproportionate in terms of costs and entirely impracticable for the council to run a full public consultation prior to every action it takes.
23. The complainant has also said that he is only interested in arguments employed by the data subject to persuade the council that the sign should be installed as he is concerned that incorrect information about Raja Rammohun Roy could have been disseminated. He wants to ensure that any references to the life of Raja Rammohun Roy in Bristol are accurate and will not cause offence or disrepute.
24. The Commissioner notes that the withheld information does not contain arguments employed by the data subject to persuade the council that the sign should be installed but does contain the data subject's views on the actual signpost itself. Therefore he does not consider that disclosure of the withheld information would help ensure that any references to the life of Raja Rammohun Roy in Bristol are accurate.

Conclusion on fairness

25. The Commissioner considers that it is outside the reasonable expectations of the individual that his personal data would be disclosed and that disclosure would be an infringement of the data subject's privacy which could cause distress. He considers that the reasonable expectations of the data subject are not outweighed by any legitimate public interest in knowing the specifics of correspondence regarding the matter and therefore accepts that disclosure of the personal data in this case would be unfair. The Commissioner therefore considers that the exemption at section 40(2), by way of section 40(3)(a)(i), is engaged and that the council was correct to withhold the requested information.
26. As the Commissioner has decided that the disclosure of this information 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.

Right of appeal

27. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

28. 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.
29. 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
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF