

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 July 2015

Public Authority: Herefordshire Council
Address: Brockington
35 Hafod Road
Hereford
Herefordshire
HR1 1SH

Decision (including any steps ordered)

1. The complainant has made a request to Herefordshire Council ("the council") for information about a council officer's qualifications, training and experience. The council subsequently withheld information under the exemption provided by section 40(2), which was contested by the complainant.
2. The Commissioner's decision is that the information has been correctly withheld under section 40(2).
3. The Commissioner does not require any steps to be taken.

Request and response

4. On 9 December 2014 the complainant wrote to the council and requested the following:
"Please provide full details of the qualifications of [redacted name], Environmental Health Officer / Environmental Protection Officer at Herefordshire Council. Please also provide details of any training and experience relevant to his role."
5. The council responded to the request on 5 January 2015. It disclosed general information about the required qualifications and experience of council officers in the specified role, but withheld information about the named individual under section 40(2).

6. The complainant requested an internal review on 5 January 2015.
7. The council provided the outcome of its internal review on 2 February 2015. It maintained that its response was correct.

Scope of the case

8. The complainant initially contested the council's position to the Commissioner on 5 January 2015. Following the council's provision of an internal review, the complainant asked the Commissioner to decide whether the exemption had been correctly applied.
9. The Commissioner therefore considers the scope of this case is the determination of whether the council has correctly engaged the exemption provided by section 40(2).

Reasons for decision

Section 40(2) – the personal data of third parties

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 has considered the nature of withheld information, and has identified that it would clearly relate to the individual named in the request. As such, the information would represent personal data.

Would disclosure breach the data protection principals?

14. The data protection principles are set out in schedule 1 of the DPA. The Commissioner considers that the first data protection principle is most relevant in this case. The first principle states that personal data should only be disclosed in fair and lawful circumstances, the conditions of which are set out in schedule 2 of the DPA.
15. The Commissioner’s considerations below have focused on the issues of fairness in relation to the first principle. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the data subject and any potential consequences of the disclosure against the legitimate public interest in disclosing the information.

Reasonable expectations of the data subject

16. When considering whether the disclosure of personal data 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.
17. In this case the council has advised that it has not directly sought consent for disclosure from the individual, who it perceives would hold a clear expectation of their personal data remaining confidential. In particular, the council has referred the Commissioner to the junior role of the individual, and has suggested that they would not reasonably expect to be subject to the higher level of transparency that might be applied to senior staff. The council has further confirmed that it considers information about the individual’s qualifications and other biographical history would relate to their private life, and as such is confidentially held by the council’s Human Resources department for the purposes of recruitment and ongoing employment. In support of this the

council has referred the Commissioner to decision notices FS50558628 and FS50394165, in which the Commissioner has previously concluded that personal data held for human resources management relates to an individual's private rather than public life.

18. In contesting the council's response to the Commissioner, the complainant has explained that the underlying reason for the request is that the individual has provided evidence at a planning committee as an "expert witness", and that the resultant decision of that committee was to the detriment of the complainant. As such the complainant has indicated that they wish to know whether the individual was qualified to provide evidence, as this may assist them in deciding whether to seek a judicial review. However, the council's position is that the individual was not acting in the capacity of an "expert witness", but instead providing information in their role as a council officer.

The consequences of disclosure

19. The council has not referred to any specific consequences of disclosure, but considers that the intrusion into the individual's private life to be a sufficient basis for the exemption to be engaged.

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

20. In the circumstances of this case, the council has outlined that the legitimate interest in disclosure has already been met through disclosing information about the general qualification and experience requirements of council officers in the role held by the named individual. As such, the disclosure of the individual's personal data would be an unnecessary, and against their rights and freedoms as a data subject.

The Commissioner's conclusion

21. 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.
22. Whilst the Commissioner accepts that there is legitimate interest in ensuring that council officers are sufficiently qualified to undertake their role, it is clear that the council has already disclosed information about the general qualifications and experience required for council officers at this junior level. As the Commissioner identified in a similar scenario considered under decision notice FS50558628, this is a proportionate

manner in which to provide public assurance that council officers are sufficiently qualified and experienced, without the necessity of disclosing personal data that is held with an expectation of confidence.

23. It is also clear to the Commissioner that council officers involved in planning committee matters are acting on behalf of the council, rather than as private individuals. As such, it is reasonable for the Commissioner to conclude that any appeal against the decision of the planning committee would not be against the named individual, but undertaken against the public authority through the formal channels available for this. This factor therefore adds little legitimate interest to outweigh to the individual's rights and freedoms as a data subject.
24. Having considered these factors, the Commissioner has concluded that the disclosure of the individual's personal data would not be fair, and that the council's application of section 40(2) was correct.

Right of appeal

25. 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

26. 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.
27. 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
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