

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 April 2015

Public Authority: Derbyshire County Council
Address: County Hall
Matlock
Derbyshire
DE4 3AG

Decision (including any steps ordered)

1. The complainant has requested information from Derbyshire County Council (the council) regarding the purchase of a specific property. The council refused to provide some of the requested information relying on section 38 of the FOIA as disclosure would prejudice the health and safety of individuals. It also relied on section 41 as it considered that the information was confidential.
2. In his role as dual regulator of both the FOIA and the Data Protection Act 1998 (the DPA), the Commissioner has a duty to protect personal data where necessary. He finds that the information in this case is personal data, and that the council should have applied section 40(2). His decision therefore is that although the council was correct to withhold the information, the reason for doing so is section 40(2) rather than section 38 or section 41. The Commissioner does not require the council to take any steps.

Request and response

3. On 21 October 2014 the complainant requested information of the following description from the council:

"Freedom of Information request ref: [specified property]"

Please provide the following information with respect to the above property:

- 1. Please state the reason for the purchase of the above listed property.*
 - 2. When did the Council first become interested in the above listed property?*
 - 3. Please state in detail which statutory powers the council exercised to spend public money on this property.*
 - 4. Contact details of your auditors."*
4. On 2 December 2014 the council responded. It provided some information within the scope of the request but refused to provide the remainder, specifically questions 1 and 2. It cited the exemption at section 38 (health and safety) as the reason for doing so.
 5. The complainant requested an internal review on 5 December 2014. The council sent the outcome of this on 17 December 2014. It found that the section 38 exemption was engaged and a revisited public interest test found that the public interest was in withholding the information. It also concluded that section 41 was engaged, and as an absolute exemption, no public interest was required.

Scope of the case

6. The complainant contacted the Commissioner on 15 January 2015 to complain about the way his request for information had been handled. He was concerned that the council was misusing the exemptions cited to withhold the requested information.
7. The Commissioner considers the scope of this case to be to determine whether the council was correct to withhold the information requested at parts 1 and 2 of the request.

Reasons for decision

8. The council has specified that section 38 and section 41 apply to the requested information as it considers that disclosing the information would be likely to endanger the health and/or safety of specific individuals, and that the information was confidential. However, in his dual regulatory role as regulator of both the FOIA and the DPA, the Commissioner has used his discretion to apply section 40(2) to the information on behalf of the council. Due to the nature of the information, the Commissioner has found it necessary to use a confidential annex to provide his rationale for the application of the

exemptions in this case. This is because disclosure of many of the arguments for this case would in effect disclose the requested information.

9. 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."

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 information 'personal data'?

10. In order for the exemption to apply the information being requested must constitute personal data as defined by section 1 of the DPA. Section 1 states that:

"personal data" means data which relate to a living individual who can be identified –

(a) From those data, or

(b) From those data and any other information which is in the possession of, or is likely to come into the possession of the data controller."

11. The Commissioner has considered the information and is satisfied that it is personal data. His rationale is detailed in the confidential annex to this decision notice.

Would disclosure breach the data protection principles?

12. 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

processed fairly and lawfully, and in accordance with the conditions set out in schedule 2 of the DPA.

13. The Commissioner focuses on the fairness aspect of the first principle. In doing so, he finds it useful to balance the reasonable expectations of the individual(s) and the potential consequences of the disclosure against any legitimate public interest in disclosing the information.

Reasonable expectations of the data subject

14. When considering whether a disclosure of personal data is fair, it is important to take account of whether the disclosure would be within the reasonable expectations of the individual(s). 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.
15. Due to the nature of the information, the Commissioner is satisfied that it would be outside the reasonable expectations of the individual(s) concerned for the information to be disclosed. More detail of the Commissioner's reasoning is in the confidential annex.

Consequences of disclosure

16. Due to the council's initial application of section 38 to the requested information, it is clear to the Commissioner that the council considered that there was a real negative consequence of disclosing the information, relating to the physical or mental health of any individual(s) or the safety of any individual(s). The Commissioner has discussed this in more detail in the confidential annex.

Balancing any legitimate public interest in disclosing the information with the rights of the individuals

17. The Commissioner notes that the requested information relates to the way in which the council has spent public money, and therefore he acknowledges that there is a general public interest in the transparency of such information. In addition to this, 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.
18. However, in this case, the Commissioner has no trouble in concluding that although there is a general public interest in the disclosure of the

information, this is outweighed by the individual(s) right to privacy in the circumstances of the case.

19. The Commissioner therefore finds that the council was correct to withhold the information, although he considers that section 40(2) was the correct exemption to rely on. He has therefore not gone on to consider the council's application of section 38 or section 41.

Right of appeal

20. 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

21. 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.
22. 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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