

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 September 2015

Public Authority: Queens Park Community Council
Address: Office 1
Beethoven Centre
Third Avenue
London
W10 4JL

Decision (including any steps ordered)

1. The complainant requested information relating to all communications between certain dates held by, or originated by, Queens Park Community Council (QPCC). He also requested details of complaints made against him.
2. The Commissioner's decision is that QPCC does not hold some of the requested information and is entitled to apply section 40(1) FOIA (personal information) to withhold the remainder.
3. However, he identified a series of procedural shortcomings on the part of the public authority relating to delay (sections 1 and 10) and failure to issue a valid refusal notice (section 17).
4. The Commissioner requires no steps to be taken as a result of this decision.

Background

5. The QPCC website¹ explains that:
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¹ <http://www.queensparkcommunitycouncil.gov.uk/council>

"QPCC is the first Community Council in London. We came into existence following the May elections in 2014 after local residents voted for the first London Community/Parish Council to be established".

Request and response

6. On 30 January 2015 the complainant made the following request for information under the FOIA:

"I should like to request the following information, Email or handwritten communication including minutes between the Community Council, councillors of the QPCC including the director and the Paddington Development Trust, Karen Buck MP, [redacted], [redacted] ,[redacted] relating to the Queens Park Community Council's budget, Vision, Elections, structure, funding, Financial requests, financial planning, policy, management structure and problems/issues with current councillors between the dates of 1 September 2013 and 30 January 2015 held by yourselves or originated by yourselves.

Further, please provide me with copies of the alleged complaints against me which you stated at the full council meeting and the subsequent explanatory email from [redacted] of A2 Dominion. I should prefer to receive these in electronic format at this email address, however, I am happy to receive them by post if that is more convenient.....

If the information requested contains sections of confidential information, please blank out or remove these sections, and mark clearly that they have been removed..... "

7. The complainant wrote to QPCC again on 1 March 2015 chasing for a response. The Council acknowledged receipt of that correspondence on 4 March 2015.
8. Further correspondence followed between the two parties, with QPCC responding on 15 April 2015:

"Thank you for your FOI request. I have reviewed the email account belonging to the Director of Queen's Park Community Council, as well as any hard correspondence that the Council has, and can advise you that the search did not provide any results within the parameters of your request".

9. Following the Commissioner's intervention, QPCC also wrote to the complainant on 30 April 2015 saying that it had asked the previous Director to send QPCC any information she may hold on her personal account for its records. QPCC told the complainant:

"I can then perform your FOI request on that information".
10. On 13 May 2015, in correspondence with the complainant, QPCC explained that it was still not in a position to do so.
11. QPCC advised the Commissioner in a telephone call on 21 May 2015, that it did not propose to carry out an internal review of its handling of this request.
12. In light of the above, the Commissioner accepted the case without requiring QPCC to carry out an internal review of its handling of the request.

Scope of the case

13. Following earlier correspondence, the complainant provided the Commissioner with the relevant documentation on 13 May 2015 to complain about the way his request for information had been handled.
14. He told the Commissioner he had received "several unsatisfactory responses" from QPCC. For example he told the Commissioner:

"The initial response stating that there was no information within the parameters that I requested did not take into account the private email address of the previous director which they used for official QPCC business".
15. He also said:

"I believe that all official QPCC communication, on whichever email or other address should be disclosable and available".
16. With respect to that part of the request relating to complaints, the requester told the Commissioner:

"I have not had a response from the QPCC regarding complaints made against [me] in which I asked to be given a copy of these complaints. I was reprimanded in full public view for complaints made against me, which to this day, I still have not seen!".

17. Having read the relevant correspondence and asked QPCC to clarify its response, the Commissioner considers that sections 1 and 40(1) of FOIA apply in this case.
18. The analysis below considers QPCC's handling of the request for information and its application of the section 40(1) exemption.

Reasons for decision

Section 40 personal information

19. The Commissioner acknowledges that, in the context of requests for information relating to complaints, in some cases the requested information may include the personal data of several data subjects.
20. His guidance '*Personal data of both the requester and others (section 40 FOIA and regulations 5(3) and 13 EIR)*'² explains how to deal with requests for information involving multiple data subjects, including the requester.
21. That guidance states:

"In cases where the requested information comprises the personal data of more than one individual, all the individuals are to be regarded as data subjects for the purposes of section 40 and regulations 5(3) and 13. Where one of these individuals is the requester, it will be necessary to consider the extent to which the information is the personal data of the requester and so falls within section 40(1) or regulation 5(3). It is also necessary to consider whether the personal data of all the data subjects is inextricably linked or whether it can be clearly differentiated..."

In circumstances where the personal data of the applicant is very closely linked to the personal data of other data subjects, there is no requirement to assess the relative extent and/or significance of the different sets of personal data in order to establish the 'dominant' data subject. This is because there is no basis for regarding the individual whose data is more extensive or significant than the others as being the only data subject".

² <https://ico.org.uk/media/for-organisations/documents/1209/personal-data-of-both-the-requester-and-others-foi-eir.pdf>

22. Section 40(1) of FOIA states that:

"Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject".

23. Under section 40(1) of FOIA information that is requested that constitutes the applicant's 'personal data' is exempt information. This exemption is absolute: no consideration of the data protection principles is necessary when considering this subsection and it requires no public interest test to be conducted. In addition, in relation to such information public authorities are not obliged to comply with the obligation to confirm or deny whether they hold the requested information, by virtue of section 40(5)(a).

Is the requested information personal data?

24. The definition of personal data is set out in section 1(1) of the Data Protection Act 1998 (DPA). This provides that, for information to be personal data, it must relate to an individual and that individual must be identifiable from that information.

25. Information will relate to a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them, has them as its main focus or impacts on them in any way.

26. Having considered the withheld information that QPCC provided to him during the course of his investigation, the Commissioner is satisfied that, given the nature of the information and the context in which it was created, the withheld information constitutes information that falls within the definition of 'personal data'.

27. He is satisfied that it relates to a living individual who may be identified from that data and that it constitutes their personal information.

28. It is clear to the Commissioner that the withheld information contains information relating to the complainant, including references to his name. The complainant is clearly identifiable from those references and the information relates to him.

29. Furthermore, as one might expect, the information also includes the personal data of other individuals, including those who made the complaints. In that respect, the Commissioner is satisfied that the information at issue relates to living individuals other than the requester who may be identified from that data and that it constitutes their personal information.

30. Where, as in this case, requested information constitutes the personal data of more than one individual, then all individuals are data subjects for the purposes of section 40. In situations like this, where a request is made by one of the data subjects the Commissioner's approach is to consider the information under the section 40(1) exemption.
31. In light of the above, and in the circumstances of this case, the Commissioner is satisfied that the information is the complainant's own personal data. He therefore finds that section 40(1) is engaged. This exemption is absolute: no consideration of the data protection principles is necessary when considering this subsection and it requires no public interest test to be conducted.
32. The Commissioner therefore concludes that QPCC was entitled to withhold the information under section 40(1) FOIA.

Section 1 general right of access to information

33. The Commissioner has next considered QPCC's handling of the remaining aspects of the request for information - emails and handwritten communications on various categories, including information which the complainant considers may be held on a private, non-work, email account. Information held in a non-work personal email account may be subject to FOIA if it relates to the official business of a public authority.
34. Section 1 of FOIA states that:

"Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him."
35. In scenarios such as this one, where there is some dispute between the public authority and the complainant about the amount of information that may be held, the Commissioner, following the lead of a number of Information Rights Tribunal decisions, applies the civil standard of the balance of probabilities. In other words, he must decide whether, on the balance of probabilities, a public authority held at the time of the request any information falling within the scope of the request.

36. In this case, the Commissioner has sought to determine whether, on the balance of probabilities, QPCC holds the remaining requested information.
37. In deciding where the balance of probabilities lies, the Commissioner will consider the searches carried out by the public authority, in terms of the extent of the searches, the quality of the searches, their thoroughness and results the searches yielded. He will also consider any other information or explanation offered by the public authority which is relevant to his determination.
38. In progressing his investigation, the Commissioner asked QPCC to respond to him, including with respect to:
 - the searches it carried out for information falling within the scope of the request and the search terms used;
 - whether any recorded information relevant to the scope of the complainant's request had ever been held but had been deleted/destroyed; and
 - whether the Council has a business purpose for which the requested information should be held; and
 - QPCC's formal records management policy.
39. In its substantive response, QPCC provided the Commissioner with details of the searches it had carried out – both for electronic correspondence and hard copy information. It confirmed that the searches *"yielded no results"*.
40. QPCC also stated that:

"No record has been deleted to my knowledge and I have not deleted anything".
41. QPCC confirmed that it had contacted the previous Director about this matter. It demonstrated the steps it had taken in order to contact the previous Director. For example it provided the Commissioner with evidence of emails it had exchanged with her in which it explained that if she had information on her personal account, QPCC needed it for its records.
42. The Commissioner has considered the nature of the searches that have been conducted and the steps QPCC has taken in order to comply with this request. He has also considered QPCC's reasons for saying that no relevant information is held.

43. In this case, he recognises that the requested information raises issues in relation to records management practice.
44. However, while appreciating the complainant's frustration in this respect and his reasons for maintaining that relevant information must be held, having considered QPCC's response – and on the basis of the evidence provided to him - the Commissioner is satisfied that on the balance of probabilities QPCC does not hold the requested information.

Procedural Matters

45. A public authority is required by virtue of section 17(1) FOIA to issue a refusal notice promptly and in any event no later than 20 working days; section 17(1)(b) requires it to specify the exemption it is relying upon to withhold information requested by an applicant.
46. Section 17(7) also states that a refusal notice issued by a public authority must contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure and contain particulars of the right to appeal to the Commissioner.
47. The Commissioner's decision is that QPCC failed to comply with the requirement of section 10(1) in failing to provide confirmation or denial within 20 working days of receipt and breached section 17 by failing to issue a refusal notice that provided the details required by that section within the statutory time limit.

Other matters

48. Although they do not form part of this decision notice the Commissioner wishes to highlight the following matters of concern:

Records management

49. The Commissioner expects that situations where information requested under FOIA includes relevant information held on private email accounts will be rare. However, he recommends that, as a matter of good practice, public authorities establish procedures for dealing with such situations.
50. In this case, QPCC told the Commissioner:

"The Council does not have a formal policy on this issue as it is only a year old and this was not something that was considered by my

predecessor when she arranged the Council's policy documents. However, this is something that the Council will review at their next Policy and Resources meeting".

51. The Commissioner welcomes this approach and expects that, in future, the authority's records management practice will conform to the recommendations of the Lord Chancellor's Code of Practice under section 46 of FOIA.

Correct access regime

52. Section 7 of the Data Protection Act (DPA) gives an individual the right to request copies of personal data held about them – this is referred to as a right of subject access. As some of the information being sought was in fact the complainant's personal data that part of the request should have been dealt with as a subject access request rather than under the FOIA.
53. The Commissioner recognises that various exemptions from the right of subject access apply in certain circumstances or to certain types of personal data.

Right of appeal

54. 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

55. 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.
56. 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

Gerrard Tracey
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