

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 May 2017

Public Authority: Derby City Council
Address: The Council House
Corporation Street
Derby
DE1 2FS

Decision (including any steps ordered)

1. The complainant has requested information relating to the use of a door entry card by a specific individual. The Commissioner's decision is that Derby City Council has correctly applied the exemption at section 40(2) of the FOIA. She does not require the public authority to take any steps to ensure compliance with the legislation.

Request and response

2. On 27 July 2016, the complainant wrote to Derby City Council ('the council') and requested information in the following terms:

"I understand [name redacted] (Labour party agent) who is not an employee of Derby City Council was wrongly issued with a photo pass card about 3 years ago by Councillor [name redacted] and was only removed June 2016 after being highlighted by the Grant Thornton report.

This pass entitled him to unrestricted access throughout the Council House.

Can you provide the following :

How many times was this pass used.
Dates and times the pass was used.
Actual doors accessed.

I understand this information is permanently logged on the electronic door access system and should easily be available.”

3. The council responded on 22 September 2016 and refused to provide the requested information citing the exemption for personal data at section 40(2) of the FOIA.
4. On 26 October 2016 the complainant requested an internal review. He said that he would like to question the interpretation of public interest on the basis that the Labour Party agents movements where the subject of concern under the Grant Thornton report.
5. The council provided an internal review on 23 November 2016 in which it maintained its original position.

Scope of the case

6. The complainant contacted the Commissioner on 12 December 2016 to complain about the way his request for information had been handled.
7. The Commissioner has considered application of the exemption for personal data at section 40(2) of the FOIA to the requested information.

Reasons for decision

Section 40(2)

8. 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').
9. 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.”

10. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, she must establish whether disclosure of that data would breach any of the data protection principles under the DPA.

Is the withheld information personal data?

11. As explained above, the first consideration is whether the withheld information is personal data. The information requested is the use of a door pass by a specific individual and would identify the personal movements of that individual. The Commissioner is satisfied that this is the personal data of that individual.

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

12. In its response to the Commissioner’s enquiries, the council said that disclosure of the information would contravene the first data protection principle.
13. The first data protection principle 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.”
14. 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 subjects, the consequences of disclosure on those data subjects and balanced the rights and freedoms of the data subjects with the legitimate interests in disclosure.

Nature of the information and reasonable expectations

15. The information in this case relates to the dates and times that particular doors in the council’s building were accessed by a specific individual.
16. The council said that what would happen to the individual’s personal data would not have been communicated to him.

17. Given that the individual in question is not employed by the council and the information would identify his whereabouts, the Commissioner considers that it would be reasonable for that individual to expect that information recorded as part of the door entry system relating specifically to him would not be disclosed to the public at large.

Consequences of disclosure

18. 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.
19. The council explained to the Commissioner that it contacted the named individual and sought his consent to disclose the information requested but that was refused. The individual said that the release of specific information about his movements would cause him considerable stress as it would be an intrusion on his privacy and he would feel that he was under surveillance. The individual also said that the release of his personal data would put him in the public domain and most likely lead to him being contacted by the media. He said that the result of both these would seriously impact on his private life causing him serious stress and could have consequences for his employment.
20. A refusal to consent is not determinative in the decision as to whether an individual's personal data will be disclosed. Rather the Commissioner will take the individuals comments into account insofar as they represent an expression of views of the individual at the time of the request had the individual given any thought to the issue at the time. These views help form the analysis of fairness.
21. Taking the above into account, the Commissioner's view is that disclosure of the withheld information would result in the loss of privacy and could cause harm or distress to the named individual including exposure to media contact.

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

22. 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 which in this case is the legitimate interest in the governance safeguards of access to a building in control of the council.

23. The complainant asserted that the release of the requested information is in the public interest as it was a clear subject within the Public Interest Report¹.
24. The Commissioner asked the council to also comment on the complainant's assertion that the individual was 'wrongly issued with a photo pass card' and to provide any further background information on this matter, such as whether it is usual practice for political agents to attend council meetings, how often this has occurred, and their role in meetings.
25. The council explained that while it is not normal practice to issue an id/door entry card to non-council employees, there have been instances where cards have been issued to specific contractors or others doing work for the council. It said that meetings that are recognised in its constitution, i.e. Full Council and Cabinet, are open to the public. It explained that it is not usual practice for political agents to attend other council meetings and said that prior to the Public Interest Report, the named individual had attended "Leadership" meetings when requested by the leader of the council.
26. The council said that because the report referenced the fact that a local political agent had access to cabinet meetings and highlighted the governance implications of allowing this, it can be said that a sufficient degree of transparency has already been afforded, and to go beyond this and disclose specific details of the personal movements of an individual would be going beyond the transparency expectancy imposed the by FOIA. The Commissioner considers that this goes some way towards meeting the legitimate public interest in this case.

Conclusion on the analysis of fairness

27. Taking all of the above into account, the Commissioner concludes that it would be unfair to the named individual to release the requested information. Disclosure would not have been within the individual's' reasonable expectations, and the loss of privacy could cause unwarranted harm or distress including media exposure. She acknowledges that there is a legitimate interest in the governance safeguards of access to a building in control of the council, but does not consider that this outweighs the individual's rights to privacy, and

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http://www.derby.gov.uk/media/derbycitycouncil/contentassets/documents/reports/DerbyCityCouncil_Grant_Thornton_PIR_June_2016.pdf paragraph 117

deems the inclusion of the matter in the above referenced report as going some way to satisfying the legitimate interest in this case. She considers that the individual's rights and freedoms are not outweighed by the legitimate public interest in disclosure, and accepts that disclosure of the personal data in this case could cause damage and distress and would be unfair and unnecessary in the circumstances. The Commissioner has therefore decided that the council was entitled to withhold the information under section 40(2), by way of section 40(3)(a)(i).

28. 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, she has not gone on to consider whether there is a Schedule 2 condition for processing the information in question.

Right of appeal

29. 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

30. 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.
31. 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

Deborah Clark
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