

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 June 2017

Public Authority: Rhondda Cynon Taf County Borough Council

Address: The Pavilions
Cambrian Park
Clydach Vale
Tonypany
CF40 2XX

Decision (including any steps ordered)

1. The complainant requested various pieces of information relating to placements for children with special educational needs. Rhondda Cynon Taf County Borough Council ('the Council') provided the majority of information requested but withheld some information under section 40(2) of the FOIA. During the course of the Commissioner's investigation, the Council disclosed some additional information, but maintained that information relating to one of its officers was exempt under section 40(2). The Commissioner's decision is that the Council has correctly applied section 40(2) to the remaining withheld information. She does not require any steps to be taken.

Request and response

2. On 1 October 2016, the complainant wrote to the Council and requested information in the following terms:
 - "1. Provide the full costs (to the local authority) of a child being placed in the Foundation Phase (3 to 7 year olds) Communication Unit at Maesybryn Primary School, Llantwit Fardre ("Communication Unit") setting out core and other funding (if any)

- separately. If more than 1 such unit at the school please provide for each unit separately;
2. Confirm any additional needs funding over and above the amounts mentioned in question 1 above provided for the Communication Unit (again if more than one such unit at the school please provide details for each unit separately);
 3. Confirm how many pupils the core funding mentioned in question 1 was intended to provide for?;
 4. Confirm how many pupils the funding mentioned in question 2 was intended to provide for?;
 5. Confirm the amount of funding (core and other funding shown separately) allocated to the Communication Unit (setting out core and other funding (if any) separately) for the years 2014/2015, 2015/2016 and 2016/2017 (again if more than one such unit at the school please provide details for each unit separately);
 6. Confirm how many pupils the core funding mentioned in question 5 was intended to provide for in respect of each of the years mentioned?;
 7. Confirm the maximum number of pupils the Communication Unit is able to accommodate (again if more than one such unit at the school please provide details for each unit separately)?;
 8. Confirm how the core funding mentioned in question 1 and the special needs funding mentioned in question 2 is calculated and provide any documents to support such information?;
 9. Confirm who at the LA and how the LA ascertains whether a child is suitable for admission to the Communication Unit or another ASD unit in the LA area. Please provide any relevant guidance?;
 10. Confirm whether a LA SENCO can (in their sole discretion) ascertain whether a child is suitable for admission to the Communication Unit?
 11. Confirm, if the LA SENCO (who we believe is [name redacted]) can in her sole opinion ascertain that a child is suitable for admission to the Communication Unit please provide full details of such SENCO's professional qualifications, post graduate qualifications, professional or other training (setting out which training body it was provided with) which relate to children with ASD? Also provide relevant documentation setting out that such a decision can be made by the LA SENCO in their sole discretion?
 12. Also provide any documents setting out how decisions relation to how a child is placed at the Communication Unit or deemed suitable for a placement at the Communication Unit?;
 13. Confirm whether the Communication Unit is oversubscribed (again if more than one such unit at the school please provide details for each unit separately) i.e. more children attend the Communication Unit than the amount of children that the core funding is provided

- for. Such information should be provided for the years 2014/2015, 2015/2016 and this current academic year?:
14. Confirm the total number of children (full and part time) that are on (or intended to be on) the school register to attend the Communication Unit for the school term which started in September 2016 (again if more than one such unit at the school please provide details for each unit separately)?;
 15. Confirm what the procedure is for children to be moved out of the Communication Unit;
 16. Confirm when are children moved out of the Communication Unit i.e. is this every September? if not what reasons would there be for moving a child out of the Communication Unit?;
 17. Confirm details of each ASD and communication unit in the LA's area including name and address?"
3. The Council responded to the request on 27 October 2016 and provided the majority of the information requested. In relation to part 11 of the request the Council confirmed that decisions relating to placements are generally made by the appropriate Local Authority Specialist Placement panel or Special Educational Needs panel. The Council stated that it considered information relating to the qualifications/training of members of staff to be exempt under section 40(2) of the FOIA.
4. On 31 October 2016 the complainant requested an internal review of the Council's handling of the request of 1 October 2016. In addition he submitted a follow-up request for information relating to the Council's response to questions 13 and 14 in the following terms:
- "Also in relation to your response to questions 13 and 14 where it is referred to 1 pupil to be reintegrated to mainstream please confirm when this reintegration was decided and who made such decision. Also confirm whether discussions were held with parents and all professionals involved – i.e. class teacher, Learning Support Assistants, Educational Psychologist, Speech and Language Therapist, SEN Coordinator for ASD /Specialist teacher ASD Team – to review the relevant pupil's case and whether such reintegration has been approved by the SEN panel.
5. The Council provided the outcome of its internal review on 23 November 2016. It confirmed that it considered that information relating to its employees to be exempt under section 40(2) of the FOIA. The Council also stated that, in relation to the follow-up requests of 31 October 2016 (relating to questions 13 and 14 of the original request), it considered the information to be exempt under section 40(2).

Scope of the case

6. The complainant contacted the Commissioner on 2 January 2017 to complain about the way his request for information had been handled.
7. During the course of the Commissioner's investigation, the Council disclosed the information held relevant to the follow-up request of 31 October 2016.
8. In light of the above, the scope of the Commissioner's investigation is to determine whether the Council has correctly withheld information relevant to part 11 of the request of 1 October 2016 under section 40(2). The information which the Council has withheld comprises the qualifications relating to one of its Special Educational Needs Coordinators ('SENCO').

Reasons for decision

Section 40 – the exemption for personal data

9. 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').
10. The Council considers that the information requested constitutes the personal data of the individual concerned and that disclosure would breach the first data protection principle.

Is the requested information personal data?

11. In order to rely on the exemption provided by section 40, the information being requested must constitute personal data as defined by section 1 of the DPA. It defines personal information as data which relates to a living individual who can be identified:
 - from that data,
 - or from that data and other information which is in the possession of, or is likely to come into the possession of, the data controller.

12. In considering whether the information requested is “personal data”, the Commissioner has taken into account her own guidance on the issue¹. The two main elements of personal data are that the information must “relate to” a living person, and that person must be identifiable. 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 them in any way.
13. The withheld information in this case comprises the professional qualifications of a named member of staff. The Commissioner is satisfied that a living individual (ie the officer in question) can be identified from the information. The withheld information clearly comprises data which relates to the individual concerned as it represents biographical information about them. The Commissioner therefore accepts that the information in the context of this request is personal data as defined by the DPA.

Would disclosure breach one of the data protection principles?

14. Having accepted that the information requested constitutes the personal data of a living individual other than the applicant, the Commissioner must next consider whether disclosure would breach one of the data protection principles. She considers the first data protection principle to be most relevant in this case. The first data protection principle has two components:
 - personal data shall be processed fairly and lawfully; and
 - personal data shall not be processed unless at least one of the conditions in DPA schedule 2 is met.

Would disclosure be fair?

15. In considering whether disclosure of the information requested would comply with the first data protection principle, the Commissioner has initially considered whether disclosure would be fair. In assessing fairness, the Commissioner has considered the reasonable expectations of the individual concerned, the nature of those expectations and the

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http://ico.org.uk/for_organisations/guidance_index/~/_media/documents/library/Data_Protection/Detailed_specialist_guides/PERSONAL_DATA_FLOWCHART_V1_WITH_PREFACE001.ashx

consequences of disclosure to the individual. She has then balanced against these the general principles of accountability and transparency as well as any legitimate interests which arise from the specific circumstances of the case.

16. The Council contends that the individual would have a reasonable expectation that information about their professional qualifications would not be disclosed to the public at large in response to a freedom of information request. The information concerned was obtained as part of its recruitment process and as such, the Council considers that the individual would have formed the expectation that it would be kept private and used only for the purposes for which it was obtained. The Council considers that disclosure of the information would cause distress to the individual, particularly as the information is not already in the public domain.
17. The Council confirmed that the post occupied by the individual ie SENCO involves liaison with schools, parents and professional agencies and professional development of staff. However, although the SENCO is a management post within the Council's Access and Inclusion Service, the Council does not consider it to be a senior management role. The SENCO cannot make decisions regarding issues such as service changes nor expenditure of public funds without the approval of the Head of Learner support and the Head of Access and Inclusion. In addition, decisions regarding the placement of pupils and SEN support for pupils cannot be made by the SENCO as such decisions require discussion at various Access and Inclusion panels.
18. The Council confirmed to the Commissioner that the individual involved was consulted in relation to disclosure of their personal data and consent was refused. The individual acknowledged that they may be asked for such information at a SEN tribunal hearing, but considers that disclosure within a confidential tribunal hearing is very different to disclosure, essentially to the public at large, in response to a freedom of information request. The Council also advised the Commissioner that the individual concerned no longer works at the Council.
19. In assessing what information third parties should expect to have disclosed about them, the Commissioner considers a distinction should be drawn as to whether the information relates to the third party's public or private life. Where the information relates to the individual's private life (ie their home, family, social life or finances) it will deserve more protection than information about them acting in an official or work capacity (i.e. their public life).
20. The Commissioner considers that an individual's attainment of any academic or professional qualification or training has an impact on their

private lives. It refers to the qualifications and experience of an individual, is likely to appear on their curriculum vitae, and may have an effect on their future employment prospects and opportunities.

21. The Commissioner also considers that the seniority of the individual acting in a public or official capacity should be taken into account when personal data about that person is being considered for disclosure under the FOIA. This is because the more senior a member of staff is, the more likely it is that they will be responsible for making influential policy decisions and/or decisions relating to the expenditure of public funds. In previous decision notices the Commissioner has determined that occupants of senior public posts are more likely to be exposed to greater levels of scrutiny and accountability and there should therefore be a greater expectation that some personal data may need to be disclosed in order to meet that need.
22. The Commissioner notes that, in this case, the individual in question no longer works for the Council but during her employment she occupied a post which is not considered to be a senior position within the Council. The Commissioner has taken into account the fact that the individual in question occupied a position with a limited public facing role and they did not have responsibility for major policy decisions or expenditure of public money. The Commissioner is satisfied that the individual would have had a reasonable expectation that their personal data (ie their qualifications) would not be disclosed into the public domain.
23. Given the reasonable expectations of confidentiality described above, the Commissioner agrees that disclosure of the information requested into the public domain would give rise to an unfair and unwarranted intrusion on the individual's privacy in the circumstances of this case.
24. The Commissioner accepts that there is a legitimate public interest in disclosure of information which would promote accountability and transparency. However, in light of the reasonable expectations of the individual concerned, the Commissioner does not consider that any legitimate interests of the public in accessing the information are sufficient to outweigh her right to privacy.
25. In conclusion, the Commissioner finds that disclosure would be unfair and would therefore contravene the first data protection principle. As the Commissioner has decided that the disclosure 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. The Commissioner therefore upholds the Council's application of section 40(2) to the information.

Right of appeal

26. 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

27. 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.
28. 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

David Teague
Regional Manager
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