

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 October 2017

Public Authority: Bolton Council
Address: Victoria Square
Bolton
BL1 1RU

Decision (including any steps ordered)

1. The complainant has requested information with regards to the departure of a Headteacher. The council provided a resignation letter but refused to provide any further information relying on section 40(2) of the FOIA – Third party personal Data.
2. The Commissioner's decision is that the council was correct to rely on section 40(2) of the FOIA to refuse to provide any further information within the scope of the request.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 9 December 2016 the complainant made the following request to the council:
"Request current status of Head teacher [name redacted] at [school name redacted]. Request to include contract status and if applicable reasons for termination of contract."
5. The council responded on the 11 January 2017 refusing the request under section 40(2) of the FOIA as it considered the information to be personal data.
6. The complainant requested an internal review on the same day as the response. The council provided its internal review response on the 8 February 2017 upholding its original response.

Scope of the case

7. The complainant contacted the Commissioner on the 2 February 2017 as he is not satisfied with the council refusing his request.
8. During the Commissioners investigations the council located a public statement held by its HR department which it considered could be released and provided this to the complainant. The released statement advised that the Headteacher had decided to retire.
9. It also maintained section 40(2) of the FOIA to any other information it holds falling within the scope of the request.
10. The complainant has told the Commissioner that he is not satisfied with only being provided with the published statement.
11. The Commissioner considers the scope of the case is to determine whether the council has correctly relied on section 40(2) of the FOIA to refuse to provide any further information.

Reasons for decision

Section 40(2) of the FOIA – Third party personal data

12. Section 40(2) of the FOIA states that:

“Any information to which a request for information relates is also exempt if-

a) It constitutes personal data which do not fall within subsection (1), and

b) Either the first of the second condition below is satisfied.”

13. Section 40(2) provides that third party personal data is exempt if its disclosure would contravene any of the Data Protection Principles set out in Schedule 1 of the Data Protection Act 1998 (the DPA).

Is the withheld information personal data?

14. Personal data is defined by the DPA as any information which relates to a living individual who can be identified from the data or from that data along with any other information in the possession or is likely to come into the possession of the data controller.

15. The information the complainant has requested relates to the status of a Headteacher's employment including any reasons for termination of their position.
16. The Commissioner is satisfied that this information would constitute the personal data of the Headteacher.

Would disclosure contravene any of the Data Protection Principles?

17. The Data Protection Principles are set out in Schedule 1 of the DPA. The first principle and the most relevant in this case states that personal data should only be disclosed in fair and lawful circumstances. The Commissioner's considerations below have focused on the issue of fairness. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the individual and the potential consequences of disclosure against the legitimate public interest in disclosing the information.

Reasonable expectations

18. The council has told the Commissioner that the Headteacher agreed a statement which was released explaining he has decided to retire, which has since been provided to the complainant. The council has confirmed to the Commissioner that it is not aware of any other information, relevant to the request, being in the public domain.
19. The council has explained to the Commissioner that any further information relevant to the request would be held in the then Headteacher's personnel HR records, with a clear expectation of the council maintaining its confidence.
20. The council has told the Commissioner that the requested information relates to the end of the Headteacher's employment. It is of the view that this relates to both his private and public life and that specific details regarding the decision of a former employee to leave their employment is not information the council routinely makes public.
21. Therefore the council is of the view that the individual would not expect this sort of information to be placed in to the public domain.
22. The council has taken in to consideration the seniority of the individual who was a Headteacher but in this case has determined that information forming part of his personnel file in relation to his departure carries a legitimate expectation of confidentiality.
23. The Commissioner is of the view that it is reasonable to expect that a public authority would disclose more information relating to senior employees than more junior ones. Senior employees should expect their

posts to carry a greater level of accountability, since they are likely to be responsible for policy decision and the expenditure of public funds.

24. The terms 'senior' and 'junior' are relative. It is not possible to set an absolute level across the public sector below which personal information will not be released; it is always necessary to consider the nature of the information and the responsibilities of the employees in question.
25. The Commissioner's considers that information held in a personnel file may relate to them as individuals and to their personal circumstances and so there is a greater expectation that a public authority would not disclose such information.
26. The Commissioner has placed paragraph's 27 to 34 into a confidential annex. This is because to even discuss some of the council's reasons for refusal could in itself reveal the personal data of the Headteacher. This confidential annex has only been provided to the council.

Consequences of disclosure

35. The council considers that there would be an unjustified adverse effect on the individual who would not expect information deriving from his personnel records to be placed in the public domain.
36. The council has told the Commissioner that this would cause unnecessary distress to the individual.
37. The Commissioner agrees that personal data being placed in the public domain against the expectations of an individual, to whom the information relates, would cause distress to them.

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

38. The complainant has stated to the Commissioner that the Headteacher was working in a state school as a public servant. The council are public sector workers using public money.
39. The complainant considers that the council's responses alludes to something more than just the resignation letter being held and considers the further information held, whether that being the council overseeing any resignation, or worse, should be released to justify public expenditure. He considers that this warrants public disclosure with a full explanation of the reason for the Headteacher's departure.
40. The council has told the Commissioner that it recognises that there is always some legitimate public interest in favour of disclosure with regards to any information held by public authorities. This can assist

members of the public in understanding decisions made by public authorities and perhaps even allow participation in decision making processes.

41. However, the council has explained that the decision to end employment was not the decision of the council, it was the decision of the then Headteacher, and therefore there is no relevant public interest concerning the accountability and transparency of the council in this matter.
42. The council has said to the Commissioner that it does see that there is a definite legitimate interest in favour of allowing employees to make their own decisions regarding the end of their employment, without unnecessary interference or disclosure.
43. The council has also stated to the Commissioner that it has taken into account *Corporate Officer of the House of Commons v Information Commissioner and others [2008] EWHC 1084 (admin)* in its determination of what is "necessary" for the purposes of identifying a legitimate interest. Making it clear that to qualify as being "necessary" there must be a pressing social need.
44. The council has told the Commissioner that it has not been able to identify any pressing social need for disclosure.
45. In addition, the council has explained to the Commissioner that the complainant made reference to disclosure in the case being in the public interest, but without elaborating. Then when subsequently requesting an internal review of the council's refusal, the complainant changed his reasoning by affirming that he would be prepared to sign a document to state that if the council disclosed the information, he would not pass it on.
46. On this, the council has said to the Commissioner that it considers that this shows the interest is a personal one and not a public one. Any limited disclosure to them could not be said to satisfy any public interest as the disclosed information would not actually be revealed to the public.
47. The council concluded its reasons to the Commissioner stating that disclosures of information under the FOIA are in effect to the world at large and not merely to the individual who has requested it. So the complainant's private interests are not in themselves the same as the public interest, and what may serve those private interests, does not necessarily serve a wider public interest.
48. The Commissioner is of the view that just because an individual has taken an interest in the information, which may be for their own

individual reasons, does not mean there would not be a wider public interest in the information sought.

49. The Commissioner also sees that there is going to be some legitimate interest around the circumstances as to why a Headteacher leaves their position, as this person would have had an impact on the lives of people in the school and possibly beyond.
50. However, this public interest needs to be balanced against the individual's rights and expectations of privacy. The fact that a personal statement was publically released stating he was retiring goes some way to satisfy the public interest as to why the Headteacher left his position.
51. With regards to whether any further information held by the council falling within the scope of the request should be released, the Commissioner has determined, after considering the factors of the case that the council is able to rely on section 40(2) of the FOIA to refuse to provide any further information.

Right of appeal

52. 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

53. 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.
54. 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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Water Lane
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