

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 October 2011

Public Authority: Northern Ireland Water Ltd
Address: Westland House
Old Westland Road
Belfast
BT14 6TE

Decision (including any steps ordered)

1. The complainant requested the name of an individual within Northern Ireland Water ("NI Water") who had sent certain emails in connection with a previous request the complainant had made. NI Water withheld that information under section 40 of the FOIA (personal information of third parties).
2. The Information Commissioner's decision is that NI Water correctly applied the above exemption to the withheld information.
3. The Information Commissioner requires no steps to be taken.

Request and response

4. The complainant initially wrote to NI Water and requested;
 - *A copy of an agreement circa 1949 or 1956 made between the Authority for responsibility for water supply for Limavady and [the complainant] regarding free water in perpetuity.*
5. NI Water is the body responsible for providing water and sewerage services throughout Northern Ireland. However, before 1973, water and sewerage services outside Belfast were the responsibility of local councils. In Limavady this would have been Limavady Rural District Council.

6. NI Water responded on 10 June 2010, saying that it did not hold the requested information. It said it had searched extensively for this agreement but could not locate it. It suggested that it had perhaps been destroyed around 1972, when the Limavady Council offices were bombed and many records were lost.
7. By way of advice and assistance, it provided a series of emails that were generated in the process of responding to the initial request. These contained anecdotal evidence regarding the existence of such an agreement. However it redacted information under section 40 of the FOIA so as not to disclose the personal details of some junior members of NI Water staff and other third parties.
8. On 19 July 2010 the complainant made a further request to NI Water for the name of the sender of those emails.
9. NI Water responded to that request on 23 August 2010. It stated that, after review, it had decided not to provide that information and the name of the sender would remain redacted.

Scope of the case

10. On 29 October 2010 the complainant contacted the Commissioner to complain about the way its request of 19 July 2010 had been handled.
11. The Commissioner has therefore investigated NI Water's use of the personal information exemption under section 40 of the FOIA as a basis for not disclosing the name of the sender of the emails.
12. He has not considered NI Water's assertion that the information originally requested (the copy agreement) is not held, as the complainant did not raise any issue regarding this.

Reasons for decision

13. Section 40(2) of the FOIA provides an exemption for information which is the personal data of an individual other than the applicant, and where one of the conditions at sections 40(3) or 40(4) is satisfied.
14. One of the conditions, listed in section 40(3)(a)(i), is where disclosure of the information to any member of the public would contravene any of the principles of the Data Protection Act 1998 (the DPA). NI Water's

argument for redacting the names of individuals from the emails disclosed is that these are personal data, disclosure of which would be unfair and would therefore contravene the first data protection principle.

15. Section 1 of the DPA defines personal data as data which relates to a living individual who can be identified:
- from those data, or
 - from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller.

As the withheld information consists of the names of living individuals, this is clearly personal data as it is information from which those individuals can be identified.

Would disclosure breach the first data protection principle?

16. The first data protection principle states, amongst other things, that "personal data shall be processed fairly".

Would disclosure of the information be fair?

17. The Commissioner's guidance on section 40 suggests a number of issues that should be considered when assessing whether disclosure of information would be fair, namely:
- the individuals' reasonable expectations of what would happen to their personal data;
 - the seniority of any staff;
 - whether the individuals specifically refused to consent to the disclosure of their personal data;
 - whether disclosure would cause any unnecessary or unjustified distress or damage to the individuals;
 - the legitimate interests in the public knowing the requested information weighed against the effects of disclosure on the individuals.
18. The guidance also suggests that when assessing fairness, it is also relevant to consider whether the information relates to the public or private lives of the individuals. Information about the private life of an individual is likely to deserve more protection than information about someone acting in an official or work capacity.

19. Furthermore, notwithstanding a data subject's reasonable expectations or any damage or distress caused to them by disclosure of their personal information, the Commissioner believes that it may still be fair to disclose that information if it can be argued that there is a compelling public interest in doing so. Therefore, when assessing fairness under the first data protection principle, the Commissioner will balance the rights and freedoms of the data subjects with the legitimate interests in disclosure of the withheld information.

Reasonable expectations of the data subject

20. A data subject's general expectations are likely, in part, to be influenced by generally accepted principles of interaction and social norms as well as by legal rights, such as the right to respect for private life as enshrined in Article 8 of the ECHR. However, transparency and openness in relation to disclosure of public information is also an inherent part of today's society and culture. Therefore, an individual's expectation of privacy will be influenced by that culture of openness and transparency.
21. The Information Tribunal in the Norman Baker¹ case commented on the distinction between a data subject's private and public life, observing that:
- "...where data subjects carry out public functions, hold elective office or spend public funds they must have the expectation that their public actions will be subject to greater scrutiny than would be the case in respect of their private lives..."* (para 78) and further that *"... the interests of data subjects....are not necessarily the first and paramount consideration where the personal data being processed relate to their public lives"* (para 79).
22. Where the requested information relates to the public/professional life of the data subject it is more likely that disclosure of the information will be fair. When considering a data subject's reasonable expectations with regard to personal information relating to their public life, it is necessary to take into account the nature and content of the information and the seniority of their role, if it is a public-facing role.
23. The withheld information consists of the name of a member of staff within NI Water, who used to work for the Limavady Regional Water

¹The Corporate Officer of the House of Commons v IC (additional party Norman Baker) (EA/2006/0015 and 0016)

Board. NI Water has confirmed that this staff member's role is a junior role. The withheld information relates to anecdotal comments in emails sent by the staff member regarding the possible existence of an agreement between the complainant and Limavady Regional Water Board.

24. The Commissioner notes that the staff member is junior within NI Water and as such would not expect his/her personal information to be disclosed in the same way as a more senior, public-facing official might expect. The Commissioner accepts that the staff member would have had a reasonable expectation that his/her personal details would be kept private.
25. The Commissioner notes that the staff member does not consent to NI Water disclosing his/her personal information. Where such consent has been refused, the Commissioner will take this into account. He considers these views to be reflective of their expectations. However, refusal of consent is not absolutely determinative in the Commissioner's decision as to whether or not that information should be disclosed and the Commissioner will take into account further factors such as potential damage or distress to the data subject and any legitimate interests which may be served by disclosure of the withheld information.

Distress or damage to the data subject

26. The Commissioner's guidance on section 40 states that public authorities should take into account the potential harm or distress that may be caused by the disclosure. It emphasises that the focus should be on harm and distress to an individual in a personal capacity due to the release of private information, rather than the risk of public embarrassment or criticism which may arise from the release of information about an individual's public life.
27. NI Water has informed the Commissioner that it has considered the above guidance and believes that it would be distressing to the individual concerned in a personal capacity to disclose his/her personal details as this would inevitably subject him/her to the pressure of a cross-examination from the complainant regarding the potential existence of an agreement and his/her memories of it from over 40 years ago. But whilst the Commissioner agrees that disclosure of the withheld information could cause some distress to the member of staff, he accepts that this must be balanced against any legitimate interest there may be in disclosure of that information to the public.

Legitimate interests

28. The Commissioner considers that, in order to determine if disclosure of the withheld information is necessary to meet the legitimate interest of the public he must balance this with the impact of disclosure.
29. The withheld information in this case consists of the name of a junior staff member within NI Water, who formerly worked for the Limavady Regional Water Board. The complainant is seeking disclosure of the information in order to try to obtain further evidence of the existence of an agreement for free water in perpetuity.
30. Whilst the Commissioner accepts that this is an issue which is of very real and significant importance to the complainant, he cannot see that disclosure of the relevant individual's personal details would serve any wider legitimate public interest which would outweigh the unwarranted intrusion into the private life of the individual concerned. He has regard to the statement of NI Water that there is nothing other than the account provided in the emails the complainant has been given which would substantiate the complainant's claim that such an agreement exists. However, even if such further substantiating evidence could be provided by the individual, the disclosure of his/her name under the Act would be of no benefit to the wider general public, only to the complainant.
31. Having considered all the circumstances of the case and having ascertained that disclosure of the withheld information is likely to have a distressing effect on the individual concerned, which would not be outweighed by any legitimate public interest, the Commissioner considers that it would be unfair to disclose the withheld information.

Right of appeal

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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

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.

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

Faye Spencer
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF