

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 August 2013

Public Authority: Colchester Borough Council
Address: Rowan House
33 Sheepen Road
Colchester
CO3 3WG

Decision (including any steps ordered)

1. The complainant requested information about an individual loan application. Colchester Borough Council (the Council) refused the request on the grounds that it was the personal data of the homeowner and that disclosure would be unfair to that individual.
2. The Commissioner's decision is that the Council was correct to refuse the request as the exemption provided by section 40(2) of the FOIA was engaged. The Council is not, therefore, required to disclose this information.

Request and response

3. On 5 March 2013 the complainant wrote to Colchester Borough Council and requested information in the following terms:

"Would you kindly provide the following information for a contract that was tendered under the provision of a home improvement loan provided in accordance with the financial assistance policy operated by Colchester Borough Council.

*Project details
Your reference [reference redacted]*

Information Request

1. *Name of the contractor who was notified to you for submitting*

the lowest tender.

2. Did the project go ahead”.

4. The Council responded on the same day - 5 March 2013. It refused to provide the requested information, citing the section 40 exemption (personal information) as its basis for doing so. It provided a further response on 7 March 2013, in which it explained the procedure to be followed if the complainant was dissatisfied with the response.
5. The complainant requested an internal review on 20 March 2013. The Council provided the outcome of its internal review on 18 April 2013. It upheld its original position, telling the complainant:

“Publication through Freedom of Information legislation is deemed to be publication to the world at large. ... Bearing this in mind the Council considers it inappropriate to publish details of individual loan applications in this manner”.

Scope of the case

6. The complainant contacted the Commissioner on 26 April 2013 to complain about the way his request for information had been handled.
7. The Commissioner considers the scope of his investigation to be the Council's application of section 40(2) to the withheld information.

Reasons for decision

Section 40 personal information

8. Section 40(2) of FOIA 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 requested information personal data?

9. The definition of personal data is set out in section 1 of the 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.
10. In this case, the requested information relates to an individual application for a home improvement loan.
11. The Council told the complainant:

"The Council's view is that information and correspondence related to applications made by individual homeowners or their agents is personal information which is exempt from release under the Freedom of Information Act"

and

"As your request relates to a single loan application it is clear that all the data requested relates to one person and therefore there is no part of it which can be released which does not relate to that identifiable individual".

12. The issue for the Commissioner to decide in this case is whether the specific information which is the subject of this request - the name of a contractor and whether the project went ahead - can lead to the identification of an individual either by itself or in combination with other information which the public may be able to access.
13. The Commissioner has considered the Council's submissions and the terms in which the request was framed. In his view, while no individual would be identifiable from this information were it viewed in isolation, in the context of the complainant's information request - which includes the reference number unique to the application - he is satisfied that the requested information relates to, and can lead to the identification of, an individual. The information in question does, therefore, constitute the personal data of an individual aside from the requester.

Would disclosure breach one of the Data Protection principles?

14. The data protection principles are set out in schedule 1 of the DPA. The first principle - and the one the Commissioner considers most relevant in this case - states that personal data must be processed fairly and lawfully.

Would disclosure be fair?

15. In determining whether a disclosure is fair under the first principle of the DPA for the purposes of section 40 of the FOIA, the Commissioner considers it appropriate to balance the consequences of any disclosure and the reasonable expectations of the data subject with general principles of accountability and transparency, as well as any legitimate interests which arise in the specific circumstances of the case.

Reasonable expectations of the data subject

16. In the Commissioner's view, when considering compliance with the first data protection principle it is necessary to consider what the reasonable expectations of a person would be in relation to how their information would be used and to whom it may be disclosed.

17. By way of background, and with reference to the wording of the request, the Council explained:

"Disabled Facilities Grants and loans are awarded to those whose condition means that they are unable to remain living in their existing home without the provision of additional facilities or adaptations to accommodate their needs".

18. The Council told the Commissioner:

"It is our view that this information was entrusted to us by the individual applicant and it would not be within their expectation that the details would be published in response to a Freedom of Information request".

Consequences of disclosure on the data subject

19. In examining the consequences of disclosure, the Commissioner will consider whether disclosure would cause any unnecessary damage or distress to the data subject. The Council provided the Commissioner with submissions as to the possible consequences of disclosure in this case. It told the Commissioner that it took into consideration the fact that:

"applicants for grants and loans of this sort are by nature vulnerable".

20. In the Commissioner's view, disclosure in this case could result in distress to the data subject.

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

21. Despite the reasonable expectations of individuals and the fact that damage or distress may result from disclosure, it may still be fair to disclose the requested information if it can be argued that there is a more compelling public interest in its disclosure.
22. In considering 'legitimate interests', such interests can include broad general principles of accountability and transparency for their own sakes as well as case specific interests. In balancing these legitimate interests with the rights of the data subject, in the Commissioner's view it is also important to consider a proportionate approach.
23. With respect to the question of whether there is legitimate public interest in the disclosure of this information, the complainant has stated that his interest in this information stems from a desire to know whether his own tender information was properly submitted.

24. The Commissioner acknowledges that the interest of the complainant in this information is legitimate. However, this private interest does not necessarily translate into a legitimate public interest.
25. The Council acknowledged that there is a legitimate public interest in expenditure, including on grants and loans. However, it told the Commissioner that that public interest is met:

"by the routine release of financial data not containing personal information".

Conclusion

26. The Commissioner has found that the data subject would hold a reasonable expectation of privacy in relation to this information on the basis that it relates to an application for a loan.
27. Having considered all the circumstances of the case, the Commissioner does not consider that the reasonable expectation of confidentiality held by the individual concerned is outweighed by any legitimate public interest in disclosure.
28. It follows that the Commissioner has concluded that it would be unfair to disclose the withheld information and to do so would contravene the first principle of the DPA. As disclosure would not be fair, the Commissioner has not gone on to consider whether disclosure is lawful.
29. As section 40 is an absolute exemption there is no need to consider the public interest in disclosure separately.
30. He requires no steps to be taken.

Right of appeal

31. 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

32. 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.
33. 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

Jon Manners
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