

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 January 2014

Public Authority: Wirral Borough Council
Address: Municipal Building
Cleveland Street
Birkenhead
Merseyside
CH41 6BU

Decision (including any steps ordered)

1. The complainant has requested from Wirral Borough Council (the council) the names and wards of the councillors who did and did not attend specific courses. The council refused to supply any of the information relying on section 40(2) of the FOIA. During the Commissioner's investigation the council provided the names and wards of some of the councillor's after they gave their consent for the council to do so. The council maintained the exemption for the remaining councillors.
2. The Commissioner's decision is that the council has correctly relied on section 40(2) of the FOIA to withhold the remaining information. The Commissioner also finds that the council has breached regulation 10(1) of the FOIA in not providing the councillor's information, who gave it consent to do so, within the required 20 working days from receipt of the request.
3. As the council has correctly relied on section 40(2) of the FOIA and provided the consented information to the complainant, the Commissioner does not require any steps from the council.

Request and response

4. On 28 March 2013, the complainant wrote to the council and requested information in the following terms:

"Please refer to the following link to a document on the Wirral.gov.uk webpage.

<http://democracy.wirral.gov.uk/documents...>

This refers to a Council Excellence Overview and Scrutiny Committee held on 26th March 2013. Please scroll down to Appendix 2 of the document titled "Elected Member Development". This highlights elected member attendance for various training sessions and gives a breakdown as follows:

Appendix Two

Attendance at Elected Member Training Sessions July 2012 – March 2013

Number of Elected Members

8 (12%)

33 (50%)

18 (27%)

7 (10%)

Number of Sessions Attended

12 – 16

6 – 11

1 – 5

0

Please identify by name and ward the anonymous councillors indicated in each of the four separate parts.

There is a strong public interest in being made fully aware e.g. which 8 councillors (12%) attended 12 to 16 sessions, and by the same token, which 7 councillors (10%) failed to attend ANY of the 16 training sessions.

Being in a position to track the behaviour of elected public servants is an important lynchpin to the democratic process. It is vital that members of the public, whether politically engaged or not, can receive this kind of guidance to inform their future voting intentions."

5. The complainant contacted the council again on the 30 March 2013 to clarify his request as follows:

"Upon reading the link again, I noticed that there have in fact been a total of 25 training workshops / sessions, broken down as follows:

"In total 19 Training Workshops have been delivered with an average attendance of 12 Members per session. In addition six "Improvement & Transformation" Sessions have been delivered with an average attendance of 38 Members per session.""

And:

"Upon reading the link again, I noticed that there have in fact been a total of 25 training workshops / sessions, broken down as follows:

"In total 19 Training Workshops have been delivered with an average attendance of 12 Members per session. In addition six "Improvement & Transformation" Sessions have been delivered with an average attendance of 38 Members per session." Please amend the initial email I sent, which quoted the total as "16 training sessions", to read "25 training sessions""

6. The council responded on 23 April 2013. It refused to provide the requested information relying on section 40(2) of the FOIA as it considered it to be third party personal data.
7. Following an internal review the council wrote to the complainant on 9 May 2013 and it maintained its decision not to provide the requested information.

Scope of the case

8. The complainant contacted the Commissioner to complain about the way the council handled his request, namely its application of section 40(2) of the FOIA.
9. During the Commissioner's investigation he asked the council if it had sought consent from the councillor's if their information, with regards to the request, could be released under the FOIA. Following this, the council advised 38 out of the 66 councillors gave their consent to their personal information being released for this request and it was subsequently provided by the council on the 4 December 2013.
10. The Commissioner considers that the scope of the case is to determine whether the council has correctly relied on section 40(2) of the FOIA not to provide the remaining councillor's requested information.

Reasons for decision

11. Section 40 (2) of 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.”

12. Section 40(2) of the 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 withheld information personal data?

13. Personal data is defined by the DPA as any information which relates to a living individual who can be identified from that 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.
14. The Commissioner is satisfied that the withheld information falls within the definition of personal data as set out in the DPA because it 'relates to' identifiable living individuals.

Would Disclosure contravene any of the Data Protection Principles?

15. 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 information.

Reasonable expectations

16. The withheld information relates to the individual councillors who did and/ or did not attend training courses. The council has explained that these courses are for the councillors' own personal development needs which are not compulsory, and the attendance varied depending on what members had specified in their own personal development plan.
17. The council having released the information about the councillors who gave their consent to do so maintain that it would be unfair to release the information of the councillors who either did not respond to giving their consent, or who specifically did not want their information to be released.
18. The council advise that these training sessions are concerned with the councillor's own personal development plans and they are not conducting council business when attending them. As the training is individually designed the council state that the councillor's would have a

reasonable expectation that details of their individual training would not be disclosed into the public domain.

19. The council provided a copy of the Personal Development Plan form that is given to councillors. It advises that it will be treated in confidence.
20. The Commissioner is of the opinion that individuals would generally have a reasonable expectation that information which relates to their personal terms of employment, such as human resources information, would not be disclosed to the wider public.
21. The Commissioner also considers that the requested information relates to the councillors professional life, as these training sessions are there to help them identify any training that may be useful in their role as a councillor. While an expectation of privacy would still remain, it would be to a lesser degree than perhaps people who carry out non-public functions.

Consequences of disclosure

22. The council are of the opinion that councillor's need to have confidence in the training process and that they would be reluctant to identify their training needs if their attendance information was given out to the public.
23. The council state that they would have particular concerns as to the consequences upon individual councillors who did not attend training sessions, as they may not have attended for various reasons including illness. Also attendance at courses varied depending on what members identified in their own personal development plan. The council state stress could be caused to the individuals if identified, as it is not a requirement to attend any or all of the courses.
24. The Commissioner agrees with the position of the council set out in paragraphs 22 and 23. He is of the opinion that the councillors would have a reasonable expectation that details of their individual training needs would not be disclosed under the FOIA.

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

25. The complainant provided his arguments in favour of upholding the public's legitimate reasons for disclosure. He agreed that the councillor's are covered by statutory protection within the law but argues in this case it is different as the people involved are public servants who have been elected by the public through a democratic process, such as a local election.

26. The complainant is of the opinion that the public would expect these elected officers to be open and transparent and be seen to carry out their public duty with due diligence and with a sense of fair play and should they fall below the standards expected, the public will either vote for them again or not the next time.
27. The complainant states that he believes openness and transparency in this important area, training of councillor's, is vital to the efficient running of an democratic organisation and that the free and open reporting of elected member's performance is an important factor when making the decision on who to vote for.
28. The Commissioner acknowledges the complainants arguments regarding the FOIA leaning towards openness and transparency. However the fact that these courses are not compulsory to attend and are there for councillor's individual training needs, does carry stronger weight to maintaining the exception in this case.
29. Had these courses been compulsory for councillor's to attend then the Commissioner considers that the interests in disclosure for the public knowing who were or were not attending these courses may have been stronger.
30. Also as the council has released statistics of the attendance of these courses, he considers that this goes some way to satisfy the public interest in this case.
31. As councillor's are not required to attend these courses and they are there for individual training needs, the Commissioner considers that disclosure of the requested information in this case would be unfair and unnecessary in the circumstances and the public interest does not outweigh the individual's expectations on how their personal data would be processed in this case. Therefore the Commissioner is satisfied that the council has correctly relied on section 40(2) of the FOIA in this case.

Section 10(1) of the FOIA

32. Section 10(1) of the FOIA states that, "*...a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.*"
33. In this case the council initially refused to provide all of the requested information relying on section 40(2) of the FOIA. This was refused within the 20 working days.
34. On the 4 December 2013, the council provided the information of the councillor's who gave consent for their personal information to be released.

35. As the request was made on the 28 March 2013, and refined on the 30 March 2013. The information that was provided by the council on the 4 December 2013 was provided outside the required 20 working days. Therefore the Commissioner finds that the council breached section 10(1) of the FOIA in not providing the consented information within the required 20 working days.

Right of appeal

36. 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: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

37. 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.
38. 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
Group Manager – Complaints Resolution
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