

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 August 2014

Public Authority: Oxford County Council
Address: County Hall
New Road
Oxford OX1 1ND

Decision (including any steps ordered)

1. The complainant requested information relating to corporate complaints received by the Children Education and Families Directorate at Oxfordshire County Council (the Council).
2. The Council provided some information within the scope of the request, but refused to provide the remainder citing section 40(2) of FOIA (personal information).
3. The Commissioner's decision is that the Council was correct to apply section 40(2) to the withheld information and that the information would be meaningless if identifying details were redacted from it.
4. He requires no steps to be taken as a result of this decision.

Request and response

5. On 17 September 2013, the complainant wrote to the Council and requested information in the following terms:

"Corporate Complaints Children, Education and Families directorate

This request is about the amount of corporate complaints and replies excluding freedom of information complaints.

Please specify the number of complaints per month you have dealt

with since 1st January.

Please release the last thirty replies”.

6. The Council responded on 29 October 2013. It provided details of the number of complaints received, broken down by month. It also provided some information within the scope of that part of the request relating to the last 30 replies.
7. Of the information that was provided, the Council told the complainant that it had redacted any personal data that might identify an individual person.
8. However, in the case of a number of the requested responses, the Council told the complainant:

“We are unable to provide you with 9 of the replies as these had to be redacted in their entirety due to the amount of personal data they contained which made the responses nonsensical”.
9. In other words, with respect both to the requested information that was withheld in its entirety and with respect to the redactions applied to the disclosed responses, the Council cited section 40(2) (personal information) of FOIA as its basis for withholding the information.
10. With respect to the responses withheld in their entirety, in the interests of transparency the Council provided the complainant with information about the subjects of those complaints.
11. The complainant requested an internal review on 10 December 2013. The Council sent him the outcome of its internal review on 9 January 2014.
12. It provided him with further information within the scope of his request and confirmed its application of section 40(2) in respect of the remaining withheld information.

Scope of the case

13. The complainant contacted the Commissioner on 29 March 2014 to complain about the way his request for information had been handled. He disputed the explanation given by the Council for not disclosing the information at issue. He told the Commissioner:

"The review reply of did not make sense (attached) because they were happy to send me 22 copies of complaints with the necessary appropriate redaction's but were reluctant to on the other 8. It is obvious to me why when you take a look at the actual descriptions of the complaints , however this is not a valid reason to deny me the information even in redacted form which I was to happy to receive" [sic].

14. With reference to the responses withheld by the Council in their entirety he disputed that those complaints:

"would have been rendered unreadable after applying redactions".

15. He told the Commissioner:

"I believe that when you ask to see these un-redacted it will become obvious that all or most of these could have been released".

16. During the course of his investigation, the Commissioner asked the Council to reconsider its handling of the request. As a result, the Council disclosed some further information to the complainant.
17. In its substantive response to the Commissioner, the Council provided details of the information it had disclosed in redacted form, together with details of three complaint responses withheld in their entirety.
18. In light of the above, the Commissioner considers the scope of his investigation to be the Council's application of section 40(2) to the three complaint responses withheld in their entirety.
19. He has also considered whether redacting identifying details from the withheld information would render it meaningless.

Reasons for decision

Section 40 (personal information)

20. Section 40(2) of the FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where the disclosure of that personal data would be in breach of any of the data protection principles.
21. This exemption is intended to ensure that greater public openness does not compromise personal privacy.

Is the requested information personal data?

22. The first step for the Commissioner to determine is whether the requested information constitutes personal data, as defined by the Data Protection Act 1998 (DPA). If it is not personal data, then section 40 cannot apply.
23. 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.
24. 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 on them in any way.
25. In this case, the Council's position is that the withheld information is the personal data of the individuals who made the complaints and, to a limited extent, the personal data of other third parties who are referred to in the withheld information.
26. The Commissioner acknowledges that the requested information in this case relates to the replies to the complaints rather than the actual complaints themselves. However, he accepts that, in addressing the complaint, the response will necessarily refer to the complaint itself.
27. Having viewed the withheld information, the Commissioner is satisfied that the withheld information is personal data as defined by section 1 of the DPA. He has reached this conclusion on the basis that the data requested in this case relates to living individuals who may be identified from that data and that it constitutes their personal data.

Would disclosure breach one of the Data Protection principles?

28. 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.
29. The Council considers that disclosure of the third party personal data under the FOIA would not be fair or lawful and would therefore breach the first data protection principle.

30. The Commissioner agrees that the first data protection principle is most relevant in this case.

The first principle

31. The first data protection principle states:

"Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless

(a) at least one of the conditions in Schedule 2 is met, and

(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met."

32. In the case of a FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be fair, lawful and meet one of the DPA Schedule 2 conditions (and Schedule 3 conditions if relevant). If disclosure would fail to satisfy any one of these criteria, then the information is exempt from disclosure.

Would disclosure be fair?

33. In considering whether disclosure of personal information is fair the Commissioner takes into account the following factors:

- the individual's reasonable expectations of what would happen to their information;
- the consequences of disclosure (if it would cause any unnecessary or unjustified damage or distress to the individual concerned); and
- the balance between the rights and freedoms of the data subject and the legitimate interests of the public.

Reasonable expectations

34. In the Commissioner's view, a key issue to consider in assessing fairness is whether the data subject has a reasonable expectation that their information will not be disclosed.
35. In that respect, the Council told the complainant that individuals who had complained to the Council:

".. had a reasonable expectation that their personal data would not be shared with others".

36. The Commissioner acknowledges that there will be circumstances where for example, due to the nature of the information and/or the consequences of it being disclosed, an individual will have a strong expectation that the information will not be disclosed. In that respect he considers that release of an individual's personal data in relation to a complaint would represent an invasion of privacy not only by confirming that the individual had submitted a complaint to the Council, but also in respect of the way the Council responded.
37. Based on the content of the withheld information, and the representations submitted by the Council, the Commissioner considers there would be a reasonable expectation on the part of the individuals concerned that the information at issue would be treated in confidence and that it would not be disclosed to the public at large.

Consequences of disclosure

38. When considering the consequences of disclosure in this case, the Commissioner has taken into account the nature of the withheld information. He has also considered the fact that disclosure under FOIA is to the world at large and not just to the complainant.
39. In this case, albeit not specifying the actual harm it envisaged, the Council told the complainant:

"The information not disclosed is all personal information which if disclosed could harm the individuals concerned".

40. In light of the nature of the information and the reasonable expectations of the individuals concerned, as noted above, the Commissioner is satisfied that release of the withheld information in this case would not only be an intrusion of privacy but could potentially cause unnecessary and unjustified distress to the recipients of the responses.

The legitimate public interest

41. Notwithstanding a data subject's reasonable expectations or any damage or distress caused to them by disclosure, depending on the circumstances of the case it may still be fair to disclose requested information if there is a more compelling public interest in disclosure.
42. The public interest is not necessarily the same as what interests the public. Similarly, the interest in disclosure must be a public interest, not the private interest of the individual requester. The requester's interests are only relevant in so far as they reflect a wider public interest.

43. In this case the Commissioner notes that the Council explained that it addressed the public interest, in so far as it considered appropriate, by disclosing the subject matter of the withheld complaint responses.
44. In considering 'legitimate interests', the Commissioner's view is that such interests can include broad general principles of accountability and transparency for their own sakes as well as case specific interests.
45. The Commissioner considers that there is always some legitimate public interest in the disclosure of any information held by public authorities. This is because disclosure of information helps to promote transparency and accountability amongst public authorities. This in turn may assist members of the public in understanding decisions taken by public authorities.
46. Having considered the circumstances of this case and having had the benefit of reviewing the withheld information itself, the Commissioner's decision is that the right to privacy outweighs the legitimate public interest in disclosure. It is clear to the Commissioner that the disclosure of the withheld personal data would be outside the expectations of the individuals to whom it pertains. The Commissioner considers that the complainants - the recipients of the responses at issue - would not expect to have the existence of their complaints confirmed to the world at large, nor have their contact information and biographical information publically released.
47. In view of the above, the Commissioner finds that disclosing the withheld information would contravene the first data protection principle because it would be unfair, and that the Council's application of section 40(2) was correct.
48. As the Commissioner has decided that the disclosure of this information would be unfair, and therefore in breach of the first principle of the DPA, he has not gone on to consider whether there is a Schedule 2 condition for processing the information in question.

Could identifying details be redacted from the withheld information?

49. The Council considers that, in light of the content of the withheld responses that are the subject of the Commissioner's investigation:

"once the personal data in these was redacted the responses were meaningless".

50. The Commissioner, having reviewed the withheld information, agrees with the Council on this point. He is satisfied that, owing to the responses being specific to the complaint, redaction would render them meaningless.

Right of appeal

51. 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

52. 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.
53. 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
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF