



Freedom of Information Act 2000 (Section 50)

Decision Notice

Dated 12 July 2006

Public Authority: Leicester City Council

Address: New Walk Centre
Welford Place
Leicester LE1 6ZG
East Midlands

Summary Decision and Action Required

The Commissioner's decision in this matter is that Leicester City Council ("the public authority") has not dealt with the complainant's request in accordance with Part I of the Act in that it has failed to comply with its obligations under section 17. However, the Commissioner is satisfied that the information sought has been correctly refused under section 40 of the Act.

There is no action that the Commissioner requires the public authority to now take in respect of these matters.

1. Freedom of Information Act 2000 (the 'Act') – Application for a Decision and the Duty of the Commissioner

1.1 The Information Commissioner (the 'Commissioner') has received an application for a decision whether, in any specified respect, the complainant's request for information made to the public authority has been dealt with in accordance with the requirements of Part I of the Freedom of Information Act 2000 (the 'Act').

1.2 Where a complainant has made an application for a decision, unless:

- a complainant has failed to exhaust a local complaints procedure, or
- the application is frivolous or vexatious, or
- the application has been subject to undue delay, or
- the application has been withdrawn or abandoned,

the Commissioner is under a duty to make a decision.



- 1.3 The Commissioner shall either notify the complainant that he has not made a decision (and his grounds for not doing so) or shall serve a notice of his decision on both the complainant and the public authority.

2. The Complaint

- 2.1 The complainant has advised that on 29 January 2005 the following information was requested from the public authority in accordance with section 1 of the Act.
- 2.2 "All contact details relating to a particular market stall trader and a copy of the standard contract for stall holders at Beaumont Leys Market."
- 2.3 The public authority replied to this request on 21 February 2005. They told the complainant that personal data was covered by an absolute exemption under section 40 of the Act and that they were also using their discretionary powers under the Data Protection Act 1998 to withhold the information. They offered to send the complainant a copy of the standard contract on receipt of confirmation that he still wanted it. Although the public authority drew attention to the existence of the Commissioner's Office, no details were provided by the authority of their internal review or complaints procedures.
- 2.4 The complainant, in a letter dated 1 March 2005, complained about the public authority's decision and the manner in which it had been taken. He asked for the matter to be reviewed. He also confirmed that he would like to be sent a copy of the standard contract. The public authority replied on 22 March 2005 and confirmed the earlier decision. The public authority said that the disclosure of third party data was exempt under the Act if such disclosure would breach the data protection principles or constitute a breach of confidence. They said also that they were under no obligation to exercise their discretionary power under the Data Protection Act and could only exercise that discretion to release if justification to do so could be shown. There was no reference to the matter of the standard contract although the complainant subsequently informed the Commissioner that he had been provided with a copy.
- 2.5 The complainant contacted the Commissioner on 28 March 2005.

3. Relevant Statutory Obligations under the Act

Section 1(1) provides that –

"Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him."



Section 17 (1) of the Act provides that:

“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which-

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.”

Section 17(7)(a) of the Act provides that:

“A notice under subsection (1), (3) or (5) must-

- (a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure,..

Sections 40 (2) and (3) provide that-

(2) Any information to which a request for information relates is also exempt information if-

- (a) it constitutes personal data which do not fall within subsection(1), and (b) either the first or the second condition below is satisfied.

(3) The first condition is-

- (a) in a case where the information falls within any of the paragraphs (a) to (d) of the definition of “data” in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under the Act would contravene-

- (i) any of the data protection principles, or

- (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and

- (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998(which relate to manual data held by public authorities) were disregarded.



4. Review of the case

The Investigation

- 4.1 The Commissioner examined the information sought by the complainant and looked at the manner in which the request had been handled.

The Handling

- 4.2 Section 17(7) of the Act (see above) requires a public authority, when issuing a Refusal Notice, to include within that Notice either details of its procedures for dealing with complaints about the way in which requests under the Act have been handled, or to say that it does not have any such procedures. The Commissioner has examined the letter sent out by the public authority on 21 February 2005. That letter fails to contain any such information. The Commissioner has therefore concluded that the public authority is in breach of this section of the Act.

- 4.3 Section 17(1) of the Act (see above) requires a public authority, when issuing a Refusal Notice to the effect that the information requested is exempt information, to state which exemptions are being relied on and why it is considered that the exemptions apply. In the view of the Commissioner the public authority's letter of 21 February 2005, while referring to section 40, gave a less than thorough account of its meaning and failed to specify which parts of that exemption it was thought were applicable to the information sought. The public authority's subsequent letter of 22 March 2005 was also less than specific about the application of section 40 and additionally appeared to contain (without any specific citation) a reference to section 41 of the Act (Information provided in confidence). The Commissioner is therefore of the view that the public authority's response did not conform sufficiently to the requirements of this section of the Act in that; they should have set out clearly which part of section 40 they were relying on; stated which data protection principles they thought would be breached by release, and why; and clarified whether or not they were also relying on section 41.

The Exemption

- 4.4 The public authority, in refusing to release the information sought by the complainant, said that the information they held constituted personal data about a third party and that release of that information would be in breach of the data protection principles. Section 40 was cited.
- 4.5 Third party data is covered by sections 40(2) and (3) of the Act (see above). In deciding whether or not the processing of personal data under the Act meets the requirements of the data protection principles, in particular that of fair and lawful processing (the first principle), the Commissioner needs to have in mind the fact that section 40 (3) of the Act specifically refers to disclosure to members of the public. The test to apply in such circumstances, therefore, is whether or not disclosure of the information sought to **any** member of the public, not simply the



individual who requested it, would constitute fair and lawful processing. It is clear that the expectation of the market trader in this instance would be that the personal information he had provided to the public authority in terms of his contact details was information provided for a specific purpose and that it would not therefore be subject to release into the public domain. That expectation seems to the Commissioner to be reasonable. It is therefore the Commissioner's view that such a disclosure would constitute unfair processing, would not have been within the reasonable expectation of the data subject and would therefore be in breach of the first data protection principle. As section 40 is an absolute exemption, except in certain circumstances not applicable here, there is no requirement to consider the question of the public interest.

- 4.6 The Commissioner has not considered as part of this decision whether or not the complainant might have any right to the information sought under the terms of the Data Protection Act 1998.

5. The Commissioner's Decision

- 5.1 The Commissioner's decision in this matter is that the public authority has not dealt with the complainant's request in accordance with the following requirements of Part I of the Act:

Section 17 (1) (b)– in that it refused the complainant's request for information but when communicating this to the complainant failed to specify which part of section 40 it thought applicable to the information sought and indicated, without specific attribution, the possible applicability of section 41.

Section 17 (1) (c)- in that it did not explain in sufficient detail its reasons for relying upon the exemptions cited.

Section 17 (7) – in that the public authority failed to provide to the complainant any details as to how he could complain about the decision not to release the information he had sought to him.

- 5.2 The Commissioner is satisfied that the information sought has been correctly withheld under section 40 of the Act.

6. Action Required

- 6.1 In view of these matters the Commissioner hereby gives notice that in exercise of his powers under section 50 of the Act he does not require any remedial steps to be taken by the public authority.



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7. Right of Appeal

7.1 Either party has the right to appeal against this Decision Notice to the Information Tribunal (the "Tribunal"). Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

7.2 Any Notice of Appeal should be served on the Tribunal within 28 days of the date on which this Decision Notice is served.

Dated the 12th day of July 2006

Signed

**Phil Boyd
Assistant Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**