

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 13 March 2007

Public Authority: Gloucestershire County Council
Address: Shire Hall
Westgate Street
Gloucester
Gloucestershire
GL1 2TG

Summary

The complainant made a request for a copy of a petition which was submitted by a councillor in relation to his tenancy. In response to the request, the Council released some information under the Data Protection Act 1998 (DPA). This was limited to the heading "Undesirable Tenant" followed by the complainant's address at the time. The Council stated that the names, addresses and signatures of those who signed the petition were exempt from release under section 40 (2) of the Freedom of Information Act 2000 (the FOIA). The Commissioner has investigated and is satisfied that the exemption has been correctly applied.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the FOIA. This Notice sets out his decision.

The Request

2. On 29 June 2005, the complainant wrote to the Head of Corporate Property Services at the Council, and made the following information request:

"Further to our telephone conversation of this afternoon I am writing to confirm that you told me that you have received from [a councillor] a petition containing signatures that he had collected from people in the parish of Standish and surrounding area. The petition refers to the end of tenancy review of my farm, which you are currently undertaking. As you are aware from our conversation this

document is evidence in relation to a complaint that I have lodged regarding the conduct of a County Councillor.

I am to hold a meeting with my legal advisor to decide on whether further legal action should be taken and I am therefore requesting that you make available to me a copy of the petition”.

3. The complainant wrote a further two letters to the Council on 3 July 2005 and 11 July 2005. He explained that he believed the local farming community had become very hostile towards him and alleged that malicious and false information could have been used in order to coerce people into signing the petition. He expressed concern that the petition might prejudice his application for tenancy renewal and asked for consideration to be deferred until the Standards Board had investigated his complaint about the actions of the councillor.
4. The Council responded on 12 July 2005 and stated that the petition would not in any way compromise the review of the tenancy and that it would not extend the deadline for receipt of the complainant's application. The Council also refused to provide a copy of the petition.
5. A representative of the Tenant Farmers Association and the complainant emailed the Council on 18 July 2005 and asked it to respond to the complainant's information request according to the provisions of the relevant Information Act. All subsequent communications to the Council and the Commissioner have been submitted by the complainant's representative and, for the sake of clarity, the Commissioner refers to both parties as the “complainant” throughout the remainder of this notice.
6. The Council responded formally on 29 July 2005. It stated that it had decided to release the heading of the petition under the DPA. The heading reads, “Undesirable Tenant” followed by the complainant's address at the time. The Council also stated that it considered the names, addresses and signatures on the petition were the personal data of third parties and exempt from release under section 40 (2) of the FOIA. The Council explained that disclosure would breach the first data protection principle since it would not be fair to the signatories who would have expected confidentiality.
7. The complainant requested an internal review of the refusal on 3 August 2005 and the Council wrote to the complainant on 11 August 2005 to advise that the appeal had been unsuccessful. The arguments proposed have been summarised and considered in the Analysis section of this notice.

The Investigation

Scope of the case

8. On 16 August 2005, the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant

specifically asked the Commissioner to consider whether the Council had correctly applied the exemption under section 40 (2).

Chronology

9. The Commissioner wrote to the Council on 2 October 2006 and 4 October 2006 to make initial enquiries and the Council responded on 23 October 2006. It supplied a copy of the petition and copies of all the correspondence between the Council and the complainant. It explained that the petition had been received by the Council on 27 June 2005 but it did not know who co-ordinated the petition or what was said to the signatories about the onward use of the petition. It stated that it had understood that there had been bad feeling between the complainant and his neighbours.
10. The Commissioner wrote to the complainant on 22 November 2006. The Commissioner stated that he had viewed a copy of the full petition and, excepting the heading of the petition, all the information in the petition was third party personal data. The Commissioner stated that his provisional view was that the exemption had been correctly applied. He advised the complainant that the Council had offered to disclose a figure for the number of signatories further to a telephone conversation on 21 November 2006.
11. In response to a letter of dissatisfaction from the complainant on 28 November 2006, the Commissioner wrote to the Council on 11 December 2006 to request further information. In the intervening period, the Commissioner received an email from the complainant on 21 December 2006 stating that a number of the signatories' names had already been released in the final report into the conduct of the councillor and also the number of signatories. He stated that he believed the signatures had been collected in a local public house.
12. The Council responded to the Commissioner on 16 January 2007. It confirmed that the councillor had delivered the petition. It stated that it could offer no comment about the objectives or motives behind the petition other than that it was not connected to any planning application. It confirmed that no other information accompanied the petition, although the Council was aware of a number of concerns that had been expressed locally about the complainant's behaviour. Following this, the complainant had submitted a complaint to the Standards Board. The Council enclosed a copy of the resulting finding.
13. On the subject of what part the petition played in the decision not to renew the complainant's tenancy, the Council explained that the decision related to the Council's management plan for the Standish Estate of which the complainant's farm at the time formed part. It explained the plan and the significance of the petition in the following terms:

"This plan envisages that as possession of holdings becomes available the opportunity would be taken to amalgamate the land with adjoining farms and to dispose of farm-houses and out-buildings. This follows a general policy of estate rationalisation designed to increase the size, and thereby the commercial viability, of retained farms across the rural estate. I am assured by Mr Coats, the Council's

Head of Property Services, that the petition was entirely irrelevant to the decision-making process and did not influence it in any way”.

Findings of fact

14. The complainant believes that the Council has incorrectly applied section 40 (2) because the petition as a whole constitutes his personal data and the signatories cannot be described as “disinterested third parties”. He has also alleged that the petition influenced the Council’s decision not to renew his tenancy.
15. The Council has stated that the exemption under section 40 (2) is engaged because the names, addresses and signatures of the signatories are third party personal data. It has stated that the petition was not taken into account when the decision not to renew the complainant’s tenancy was made.

Analysis

Exemption

16. The Commissioner considers that the names, addresses and signatures on the petition clearly fall within the definition of “personal data” according to section 1 (1) of the DPA. The addresses and signatures relate to an identifiable person by name and their appearance on the petition reveals the opinion of each signatory that the complainant is an “Undesirable Tenant”. The Commissioner has viewed a copy of the petition and is satisfied that there is no other information within the petition except for the heading which has been released under the DPA.
17. It is therefore the Commissioner’s view that the information relating to the signatories constitutes third party personal data under the FOIA. It is apparent that the complainant has objected to the term “third party” because he believes the term represents the level of deliberate involvement of a particular party to a matter and has argued that the signatories cannot be described as “disinterested third parties”. The Commissioner wishes to clarify that the term used is a technical one and simply means that the party referred to is neither the complainant nor the Council.
18. The Commissioner has also considered that the petition as a whole is the personal data of the complainant as the petition is clearly designed to have a direct and significant effect on him. At the same time, it is clear that it would not be possible to release a copy of the petition without disclosing the third party personal data of the signatories. The request for this part of the information has therefore been considered under the FOIA.
19. The complainant has argued that if an exemption is applied to the majority of the complainant’s personal data because it is also the personal data of the signatories, the heading of the petition, being a comparatively small amount of information, is of no value. He has argued that the statement made by the heading of the petition can only be judged by knowing the number of signatories.

The Commissioner notes that this figure appears to have been released to the complainant by the Council.

20. The Council has stated that the exemption under section 40 (2) of the FOIA applies to the full details of the petition because disclosure of the signatories' details would contravene the first principle set out in Schedule 1 of DPA that personal data shall be processed fairly and lawfully. The first principle also specifies in particular that personal data shall not be processed unless at least one of the conditions in Schedule 2 applies. With the exception of condition 6 (1), the Commissioner did not consider that any of the conditions were relevant. Condition 6 (1) requires the balancing of the legitimate interests of the complainant and those of the signatories and this is discussed below.
21. The complainant has alleged that the petition prejudiced his application for tenancy renewal and it is understood that the complainant desires a copy of the petition for the purpose of pursuing further complaint or legal action. While the Commissioner accepts that the petition is the personal data of the complainant as well as the signatories because it was clearly designed to have an effect on him, the complainant has not provided any evidence to the Commissioner to substantiate his claim that the petition influenced the Council's decision not to renew his tenancy and when the Commissioner enquired whether the petition was taken into account when the decision was made, the Council confirmed that it was not and provided an explanation for the decision.
22. The complainant has also expressed the view that he should have a right to know who each of the signatories were in order to address their concerns directly. The Commissioner accepts that the complainant is curious to know who each of the signatories were but considers that the complainant has not made a strong argument for the benefit of approaching the signatories directly. Further, the Commissioner is not convinced that the complainant's ability to pursue a complaint would be hindered by not possessing a copy of the petition itself.
23. From this point, the Commissioner went on to consider whether the processing would be unwarranted in any case "by reason of prejudice to the rights and freedoms or legitimate interests of the data subject" in accordance with condition 6 (1) of Schedule 2 of the DPA. In order to determine whether the processing would be unwarranted, the Commissioner considered whether disclosure would be fair according to the first principle of Schedule 1 of the DPA.
24. In considering whether disclosure would be fair, the Commissioner has had regard to whether the signatories are likely to have expected confidentiality. The complainant has argued that signatories to a petition expect their participation to become public in all circumstances. The Commissioner does not agree that petitions have a generalised status and that the circumstances surrounding its submission are irrelevant. Petitions might be sent to newspapers, in which there will obviously be no expectation of privacy; others might be sent in confidence for fear of reprisals.
25. Although the petition itself contains no indication of the level of confidentiality the signatories may have expected and the Council can offer no comment on this, the

Commissioner has considered that the nature of the information is such that it is likely that the signatories submitted the information in confidence for fear of reprisals. The Commissioner has taken into account that the Council is aware of disputes between the complainant and his neighbours in this regard and considers that such disputes add credence to the argument that the information was likely to have been submitted in confidence. The Commissioner was also convinced by the Council's argument that the petition was more likely to have been submitted in confidence because it was against a person and not a general cause. The fear of reprisals is likely to be heightened in such a circumstance because of the greater potential to cause personal offence.

26. The Commissioner was not convinced by arguments proposed by the complainant that the petition should be disclosed because it was signed in a public place and not signed by "disinterested third parties". Although the signatures may have been gathered in a public house, it does not follow that the signatories would have expected the petition to be made available to the wider public and in particular, the complainant himself, who was obviously not present when the signatures were gathered. The Commissioner accepts that the signatories were not "disinterested" as it is clear that the petition was intended to have an effect on the complainant but this does not suggest that they had no expectation of confidentiality.
27. The complainant has stated that he can identify at least two of the signatories and that some of the names were released in the final report of the investigation into the actions of the councillor by Gloucestershire Standards Committee. The Commissioner has not taken this into account as he is being asked to consider the disclosure under the FOIA of a petition containing the names of all of the signatories and also their addresses and signatures.
28. The Commissioner accepts that there are some circumstances in which it may be appropriate to reveal the particulars of petitions, notably where the petition has been submitted in relation to a planning application. This is partly because the petition forms part of a formal process of objection and the risk of reprisals is not as great as for petitions that are submitted on an informal, personal basis. The Commissioner considers that where no obvious indication of confidentiality or otherwise is evident, it is appropriate to judge the expectation of confidentiality by the nature of the petition itself and relevant circumstances.

The Decision

29. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the FOIA. Given that the petition was likely to have been submitted in confidence and that distress may be caused to the signatories if the petition was disclosed, the Commissioner has decided that the processing of the data would breach the first data protection principle of the DPA. He has also not found that any of the conditions in Schedule 2 for the processing of personal data are applicable. The Commissioner therefore considers that the Council has correctly applied the exemption under section 40 (2) of the FOIA.

Steps Required

30. The Commissioner requires no steps to be taken.

Right of Appeal

31. Either party has the right to appeal against this Decision Notice to the Information 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

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

Dated the 13th day of March 2007

Signed

**Jane Durkin
Assistant Commissioner**

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

Legal Annex

Personal information.

Section 40(1) provides that –

“Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.”

Section 40(2) provides that –

“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.”

Section 40(3) provides that –

“The first condition is-

- (a) in a case where the information falls within any of 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 this 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.”