

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 5 June 2007

Public Authority: Yorkshire Forward
Address: Victoria House
Victoria Place
Leeds
LS11 5AE

Summary

On 28 June 2005 the complainant requested information from Yorkshire Forward, a Regional Development Agency, regarding corporate events it had hosted from 2003 to date. Yorkshire Forward responded on 4 July 2005, providing information it had already issued in response to a previous request made by a different requester. The Information Commissioner finds that Yorkshire Forward complied with section 11 of the Freedom of Information Act 2000 (the "Act"). Yorkshire Forward refused to provide the names and organisations of delegates attending its events on the basis of the exemption at section 40(2) of the Act. The Information Commissioner's decision is that Yorkshire Forward correctly applied section 40(2) in respect of the names of individuals attending events. However the Commissioner considers that the names of the organisations represented would not normally be personal data and therefore would not be exempt from disclosure under section 40(2) of the Act. He requires that Yorkshire Forward disclose this information in respect of events it hosted between 2003 and 28 June 2005. The Commissioner also finds that the refusal notice issued by Yorkshire Forward did not comply with section 17 of the Act.

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 Act. This Notice sets out his decision. The relevant legislation is stated in the Legal Annex appended to this Notice.

The Request

2. On 28 June 2005 the complainant made the following request for information to Yorkshire Forward:

“I would like to see all information relating to Yorkshire Forward’s corporate hospitality, events, and entertainment of potential clients, members of the business community, politicians and other guests from 2003 to date:
including, but not restricted to, dinners, lunches, breakfasts, drinks receptions, awards ceremonies, and the use of hospitality boxes or tickets for sporting or other events. I would like to see the amount spent, broken down per event, and lists of guests attending (including which organization they represented, if any), again broken down by event. I would also like to see any reports relating to any such event in particular or to corporate hospitality in general.
I would be interested in any information held by your organization regarding my request. I understand that I do not have to specify particular files or documents and that it is the organisation’s responsibility to provide the information I require.”
3. Yorkshire Forward responded to the complainant’s request on 4 July 2005. It provided information which it stated had been supplied to another requester who had recently made a similar request. Yorkshire Forward explained this approach by stating that it was supplying him with information in relation to “a similar enquiry.... in an effort to supply you with as much information as possible without incurring considerable cost to the organization.” The information provided was as follows:
 - (i) Expenditure on corporate hospitality and entertainment for the years 2002 to 2005 to date, inclusive
 - (ii) Events held by Yorkshire Forward or supported by it to date in 2005 in York.
 - (iii) Expenditure on the York events together with details, including expenditure and the number of people attending.
 - (iv) Events held in 2005 to date in North Yorkshire.
 - (v) Details of the latter North Yorkshire events including expenditure, venue, purpose, numbers of guests attending and any celebrity hosts.
 - (vi) Event details similar to that provided in (ii) to (v) above, for the years 2003 and 2004.
 - (vii) Details of events held in the remainder of Yorkshire in 2003 and 2004 including expenditure.
 - (viii) Events held outside Yorkshire in 2003 and 2004.

However Yorkshire Forward refused the complainant’s request for the details of delegates who attended events, stating that “this is against the Data Protection Act”. In its response, Yorkshire Forward did not

specify to the applicant any right he had to apply for an internal review or to appeal to the Commissioner.

4. The complainant responded to Yorkshire Forward on 6 July 2005 that he was dissatisfied with the response he had received and in particular with the public authority's reliance on the Data Protection Act 1998 ("the DPA") as grounds for its refusal to provide details of delegates. He also stated that the reports he had requested remained outstanding.
5. Yorkshire Forward replied to the complainant by email on 6 July 2005. It reiterated its refusal under the terms of the DPA to provide the information requested about people attending events. It stated that it had no generic reports on corporate hospitality except those relating to expenditure, which it stated it had already supplied. Yorkshire Forward also stated that it had no formal system of reporting on events, although it did carry out a number of different types of analyses of events, but stated that to provide this information would be likely to incur costs which would breach the cost limit specified in section 12 of the Act. It therefore suggested that the complainant clarify the type of reports he required. At the request of the complainant, Yorkshire Forward clarified two expenditure figures it had provided in its original response. Yorkshire Forward also specified the complainant's right to seek an internal review and thence to appeal to the Commissioner.
6. The complainant provided clarification of the type of reports he wished to see and on 22 July 2005 Yorkshire Forward provided copies of its Event Feedback Statistics and Event Evaluation Forms for the events that it held on its system.
7. On 14 July 2005 the complainant wrote to Yorkshire Forward to complain about the handling of his original request for information. Yorkshire Forward treated this as a request for an internal review and it provided the complainant with the outcome of that review, upholding the original decision, in a letter dated 27 September 2005.

The Investigation

Scope of the case

8. On 10 October 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 the following points:
 - (a) The alleged failure of Yorkshire Forward to provide the information he had requested.

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 - (b) The alleged failure of Yorkshire Forward to apply an exemption correctly under the Act.
 - (c) The alleged failure of Yorkshire Forward to give information in the form/format in which he had requested it.
- 9. The Information Commissioner has noted that, in its response to the complainant of 6 July 2005, Yorkshire Forward applied section 12 of the Act, on the basis that the cost of the work involved in providing the information requested would exceed the defined appropriate limit. However in view of the fact that this matter has been resolved by way of the complainant's subsequent clarification of his request, the Commissioner has confined his investigation to the matters raised by the complainant in his letter of 10 October 2005.

Chronology

- 10. The Commissioner wrote to Yorkshire Forward on 30 August 2006 asking for clarification of its handling of the complainant's requests.
- 11. In view of Yorkshire Forward's application of section 40(2) of the Act, the Commissioner wrote to Yorkshire Forward on 12 September 2006 to clarify its handling of the complainant's request and in particular its application of the DPA.
- 12. Yorkshire Forward responded to the Commissioner's letters on 6 October 2006. In summary, it stated that its view was that the names of individuals attending functions were personal data which it should not disclose. Yorkshire Forward stated that, in order to encourage people to attend functions, it gave a promise that their names would not be disclosed to third parties. It also provided details of its arrangements with regard to the confidentiality of delegates' personal details.
- 13. The Commissioner wrote to the complainant and to Yorkshire Forward with an initial view in respect of the complaint on 13 November 2006. The Commissioner also sought and obtained from Yorkshire Forward an acknowledgement of procedural shortcomings in its handling of the request and an assurance that it had taken steps to improve its procedures for the handling of future information requests.
- 14. The complainant emailed the Commissioner on 11 December 2006 with his assessment of the Commissioner's initial views. In summary, the complainant queried why individuals who are entertained by a public organisation at public expense should not expect to have the requested information made public. He stated that in his view it should not be possible for an organisation to avoid the Act simply by giving assurances of confidentiality to individuals with which it deals.
- 15. The Commissioner considered the complainant's further points in reaching his decision.

Analysis

16. In his letter to Yorkshire Forward dated 12 September 2006, the Commissioner clarified the relationship between Yorkshire Forward and delegates attending corporate events, together with the type of expectations held by those delegates regarding the use of their personal details.
17. Yorkshire Forward stated that it provided an undertaking to delegates that the personal information they provided: "will be stored securely and will not be released to any other organisation". Yorkshire Forward explained to the Commissioner that this information is only used by Yorkshire Forward to keep delegates informed of issues of interest to them.
18. Yorkshire Forward stated that lists of delegates, containing individual names and company details, were only issued to delegates at some events. It stated that it maintained its position of confidentiality regarding delegates' details and that it always sought prior approval when quoting companies or delegates. Yorkshire Forward also asserted that its employees were consistently made aware of the need for confidentiality. It further stated that when events were publicised by the media, the photos tended to be crowd shots or of key speakers rather than of individuals.
19. The Commissioner has analysed the correspondence between Yorkshire Forward and the complainant, considering the response of the authority to the complainant's requests for information in the light of the above background information provided by Yorkshire Forward and in relation to the requirements of the Act.

Procedural issues

Section 11

20. The response provided by Yorkshire Forward on 4 July 2005 to the complainant's request for information dated 28 June 2005 consisted of a response provided to an earlier request made by a different requester. It was not specific to the actual request made by the complainant in so far as this response included additional details not covered by the scope of the complainant's request. The complainant alleged that Yorkshire Forward had failed to comply with the requirements of the Act in that the information was not in the format specified in his request. In the Commissioner's view, the fact that further information not covered by the scope of the complainant's request was also provided has no bearing on the public authority's compliance with section 11 of the Act. The Act does not prohibit the disclosure of information in addition to that which is requested.

The complainant did however request that the information be broken down by event from 2003 to the date of his request. The Commissioner finds that as Yorkshire Forward provided the complainant with information broken down by event within the years specified in the request, it complied with its obligations under section 11 of the Act.

Section 17

21. The refusal notice issued by Yorkshire Forward on 4 July 2005 failed to comply with section 17 of the Act in three respects. First, it did not specify the provisions of the Act on which it was relying in refusing to provide the information requested and in particular its reliance on section 40(2) of the Act. Second, the refusal notice did not address the complainant's request for "reports". Third, the refusal notice did not comply with section 17(7) of the Act, in that it failed to inform the complainant of the authority's internal review procedure and of the complainant's right of appeal to the Information Commissioner. However, the Commissioner does note that Yorkshire Forward's subsequent responses dated 6 July 2005 and 27 September 2005 did outline this right of appeal.

Exemptions

Section 40

22. In its reply to the complainant dated 6 July 2005, Yorkshire Forward relied on section 40(2) of the Act as a basis for withholding delegates' names and the organisations they represent.
23. As stated earlier, the Commissioner wrote twice to Yorkshire Forward to clarify its application of section 40. After considering the explanations and background provided by Yorkshire Forward, the Commissioner is satisfied that, on balance, the names of individual delegates constitute personal data for the purposes of the DPA.
24. In respect of the names of individual delegates, the Commissioner's view is that it would be unfair to disclose this information. The Commissioner is satisfied that, in the circumstances of this case, there exists an expectation of confidentiality on the part of delegates attending events hosted by Yorkshire Forward, particularly since delegates are given an express assurance by Yorkshire Forward to this effect. In this case, given the expectations of the data subjects in relation to their personal data, the Commissioner's view is that disclosure of the names of delegates attending events hosted by Yorkshire Forward would be unfair and therefore in breach of the first data protection principle. The Commissioner therefore considers that Yorkshire Forward was correct to withhold this information on the basis of the exemption provided by section 40(2) of the Act.
25. However the Commissioner has also considered separately the

question of disclosure of the names of organisations represented by individuals attending events hosted by Yorkshire Forward. On balance, the Commissioner considers that, when considered in isolation from the individual delegates, the names of organisations represented would not normally be personal data and therefore would not be exempt from disclosure under section 40(2) of the Act.

The Decision

26. The Commissioner's decision is that the public authority dealt with the following element of the request in accordance with the requirements of the Act:

- it complied with the requirements of section 11 of the Act in so far as the information it provided to the complainant in response to his request was provided in the format requested and in so far as the provision of extra information did not breach section 11 ; and
- it correctly applied the exemption afforded by section 40(2) of the Act in refusing to disclose the names of delegates attending events hosted by Yorkshire Forward.

27. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

- the refusal notice dated 4 July 2005 stating that the Data Protection Act applied to the request did not comply with section 17(1) of the Act in that it failed to state clearly the basis on which the information is exempt, namely that it sought to apply the exemption under section 40 of the Act; and
- the refusal notice failed to comply with section 17(7) of the Act in that it did not specify the complainant's right to request an internal review and to appeal to the Information Commissioner.
- the refusal notice incorrectly applied the exemption afforded by section 40(2) of the Act in refusing to disclose the names of organisations represented at events hosted by Yorkshire Forward.

Step Required

28. The Commissioner requires Yorkshire Forward to disclose to the complainant the names of the organisations represented by attendees at corporate events hosted by Yorkshire Forward from 2003 to 28 June

2005. In undertaking this step, Yorkshire Forward should however consider whether any of the organisations are sole traders or partnerships whose businesses take their name from the individual trader or partners. In such instances, Yorkshire Forward should consider whether such data should be disclosed. Yorkshire Forward must take the step required by this notice within 35 calendar days of the date of this notice.

Other matters

29. Although it does not form part of this Decision Notice, the Commissioner wishes to highlight the following matter. In the interests of public accountability and openness, the Commissioner recommends that Yorkshire Forward reconsider its current policy in respect of providing a guarantee to delegates attending events it hosts that their names and that of their organisations will not be disclosed in future.

Failure to comply

30. Failure to comply with the step described above may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

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 5th day of June 2007

Signed

**Graham Smith
Deputy Commissioner**

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

Legal Annex

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 11(1) provides that –

“Where, on making a request for information, the applicant expresses a preference for communication by any one or more of the following means, namely –

- (a) the provision to the applicant of a copy of the information in permanent form or in another form acceptable to the applicant,
- (b) the provision to the applicant of a reasonable opportunity to inspect a record containing the information, and
- (c) the provision to the applicant of a digest or summary of the information in permanent form or in another form acceptable to the applicant,

the public authority shall so far as reasonably practicable give effect to that preference.”

Section 17(1) provides that -

“A public authority which ... 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) 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 such information or state that the authority does not provide such a procedure, and
(b) contain particulars of the right conferred by section 50.

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.”