

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 29 September 2011

**Public Authority:** Bassetlaw District Council  
**Address:** Queen's Buildings  
Potter Street  
Worksop  
Nottinghamshire  
N80 2AH

#### Decision (including any steps ordered)

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1. The complainant has requested a copy of an investigation report about the alleged misconduct of a former member of staff.
2. The Information Commissioner's [the Commissioner] decision is that Bassetlaw District Council [the council] has correctly applied the exemption at section 40(2) of the Freedom of Information Act [the Act] to the requested information.
3. The Commissioner does not require the public authority to take any steps to ensure compliance with the legislation.

#### Request and response

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4. On 24 August 2010, the complainant wrote to the council and requested information in the following terms:  
  
"I am making a request under the Freedom of Information Act for a copy of the RSM Tenon Investigation Report into (a) the Anonymous Letters and (b) Letters from [name redacted] to [name redacted]."
5. The council responded on 29 September 2010. It stated that it held the requested information but refused to provide it due to the exemptions in sections 14(2) and 40.

6. The complainant requested an internal review on 1 October 2010. The council wrote to the complainant on 2 November 2010 with the result of the review it had carried out. The council upheld its initial refusal and informed the complainant that it also wished to rely on section 42.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 4 November 2010 to complain about the way his request for information had been handled.
8. During the course of the Commissioner's investigation the complainant stated that he wished to obtain a either copy of the report in its entirety, a redacted version of the report or a summary of the report. He stated that he was interviewed as a witness to the incident and he was not interested in obtaining information about himself as part of this request.
9. The Commissioner considers, and the council subsequently agreed, that the request was not a repeated request and as such section 14(2) is not relevant to this complaint. Therefore the scope of the Commissioner's investigation has focussed on the application of sections 40(2) and 42(1).

### **Reasons for decision**

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10. Section 40(2) provides an exemption for information which is the personal data of an individual other than the applicant, and where one of the conditions listed in sections 40(3) or 40(4) is satisfied.
11. In this case the relevant condition is contained in section 40(3)(a)(i), which applies where the disclosure of the information to any member of the public would contravene any of the data protection principles. This is an absolute exemption, and is therefore not subject to a public interest test.
12. The council has sought to rely upon this exemption to withhold the requested information, on the grounds that the disclosure of this information under the Act would be unfair and would therefore be in breach of the first principle of the Data Protection Act 1998 (the "DPA").
13. In order to establish whether this exemption has been correctly applied the Commissioner has first considered whether the withheld information is the personal data of a third party.

14. Section 1 of the DPA defines personal data as data which relate to a living individual, who can be identified:
  - from that data, or
  - from that data and other information which is in the possession of, or is likely to come into the possession of, the data controller.
15. In this case the withheld information is about a named third party who was the subject of the investigation report. Bearing this in mind, the Commissioner is satisfied that the withheld information is the personal data of a third party.
16. The Commissioner has gone on to consider whether the disclosure of the withheld information would be in breach of the first principle of the DPA.
17. The first principle requires that personal data is:
  - processed fairly and lawfully, and
  - that one of the conditions in schedule 2 is met.
18. The Commissioner has first considered whether the disclosure of the withheld information would be fair.
19. In considering whether disclosure of this information would be fair the Commissioner has taken the following factors into account:
  - whether disclosure would cause any unnecessary or unjustified damage or distress to the individual concerned;
  - the individual's reasonable expectations of what would happen to their information; and
  - are the legitimate interests of the public sufficient to justify any negative impact to the rights and freedoms of the data subject.
20. The council stated that the information was obtained for the purposes of council business to enable it to carry out an independent investigation into the alleged misconduct of an employee. Disclosure of the withheld information would be unfair, would cause unwarranted harm and undermine confidence and trust in the public authority's ability to process personal data. It informed the Commissioner that it believed the release of the withheld information would be unfair to the data subject. The Council stated that it did not have consent for disclosure nor did it think that the data subject would have had a reasonable expectation of the withheld information being released in this case. Instead, there was

an expectation of confidentiality and privacy. The Commissioner, having looked at the withheld information, is convinced that the reasonable expectations are a persuasive factor in indicating that the release of this information would be unfair.

21. The Commissioner notes that the withheld information is an investigation report about the alleged misconduct of a named individual who has since left the employment of the council. The Commissioner has been provided with no evidence that any information has been put into the public domain in relation to the investigation report. Bearing this in mind, he considers that the disclosure of the withheld information would be likely to result in an invasion of the third party's privacy, especially given that the report only reflects one side of the story. The subject of the report had not been approached for their side of the story before leaving the employment of the council.
22. The Commissioner considers that there is a legitimate interest in openness and accountability. In the circumstances of this case he considers that there is a valid interest in ensuring that the council has investigated the complaint against the named employee appropriately. However, he notes that the investigation report is incomplete as all parties have not had an opportunity to provide evidence. He does not consider that there is an overwhelming case to be made for the disclosure of the withheld information as it would not provide a complete picture of the circumstances surrounding the investigation which took place.
23. Consequently, the Commissioner considers that the disclosure of the withheld information in this case would be unfair and would breach the first data protection principle. Therefore this information should be withheld under the personal data exemption at section 40(2) by virtue of section 40(3)(a)(i).
24. Section 40(3)(a)(i) is an absolute exemption and therefore because the Commissioner has found this to be engaged to the report in its entirety, he has not gone on to consider the legal professional privilege exemption at section 42.

## Right of appeal

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25. 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: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

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.

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