

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 19 July 2011

Public Authority: Surrey Heath Borough Council
Address: Surrey Heath House
Knoll Road
Camberley
Surrey
GU15 3HD

Summary

The complainant requested information consisting of the names of the members of a youth council and their place of residence. Surrey Heath Borough Council refused to provide the names, citing section 40(2) of the Act. The Commissioner has investigated the complaint and finds that Surrey Heath Borough Council correctly applied section 40(2) of the Act. However, it provided the locations of the members of the Youth Council that had been obtained from Surrey County Council but confirmed during the course of the investigation that it did not hold the specific addresses. The Commissioner has concluded that, on the balance of probabilities, the address information is not held by Surrey Heath Borough Council and therefore it complied with section 1(1)(a) in stating that the information was not held. However, Surrey Heath Borough Council breached section 10(1) of the Act in not confirming that it did not hold this information within the statutory timeframe.

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 Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. On 17 November 2010, the complainant requested the following information from Surrey Heath Borough Council (the "Council"):

"Please supply a list of the members of the Youth Council and their place of residence within the Borough."
3. On 3 December 2010 the Council responded, citing the exemption under section 40(2) of the Freedom of Information Act – third party personal data. The reasons given were that this would be a breach of the first data protection principle that personal information is processed fairly and lawfully. Information can be disclosed;
 - (i) if there is a legitimate public interest in disclosure.
 - (ii) the disclosure must be necessary to meet that public interest.
 - (iii) the disclosure must not cause unwarranted harm to the interests of the individual.
4. The Council explained that the requested information did not meet the criteria for disclosure. It further explained that the members of the Youth Council were minors and that it had a duty to protect their personal data in line with the third criterion above. A chart was provided with the geographical locations of the members of the Youth Council and a breakdown of the numbers of youth councillors area by area. It subsequently transpired that this information had been obtained after the request in an attempt to aid the complainant.
5. On the day the Council responded, the complainant requested an internal review, based on his view that any individual involved in making decisions should be identified. He does not appear to have queried the information provided concerning place of residence or asked for more specificity.
6. The Council provided its internal review on 13 December 2010. The reviewer stated that it was important to protect the identity of minors and that the greater responsibility lay in withholding the requested information. The internal review also addressed the meaning of the word "promptly" with regard to its initial response which was within the statutory timeframe in accordance with its objective reading of the request.

7. On 20 December 2010 the Council clarified its internal review. It said that the information was personal data involving minors, and that the Council did not have their parents' consent to disclose this information.
8. On the same day the complainant emailed the Council to say that he did not agree with the withholding of the information, as other councils revealed information about the individuals on their youth councils. He argued that one of the individuals involved had spoken at a planning decision meeting and revealed personal details about him/her self. He further explained that the Council needed to be accountable because of its budget.

The Investigation

Scope of the case

9. On 18 December 2010 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:
 - That it was discussions at the Youth Council, which were chaired by [named individual] that fundamentally influenced the decision of the planning committee.
 - That a member of the Youth Council was allowed to speak at a planning meeting.
 - That the Council had not stated what harm they perceived would occur if the identities of the members of the Youth Council were disclosed.
 - That he believed that he had the right to know the identity of minors if they had influenced decisions that affected his quality of life.

Chronology

10. On 25 January 2011 the Commissioner wrote to the Council outlining the complaint and asking for further argument.
11. On 8 February 2011 the Council wrote to the Commissioner reiterating its view that the requested information was exempt under section 40(2) for the reasons it had given in its internal review. The Council also explained that it had not interpreted the request as requiring the actual addresses of the members of the Youth Council and that it did not hold the addresses of these individuals.

12. On 13 May 2011 the Commissioner wrote to the complainant explaining that he was of the view that the information was exempt from disclosure as it would be likely to breach the first data protection principle. He pointed out that the requested information concerns minors, not senior council officials, which meant that it was very unlikely that the Commissioner would order these names disclosed.
13. The complainant responded by saying that youth council members were named on social networking sites. He also made the point that the FoIA did not exclude minors and that it was not democratic that individuals taking part in decision-making should remain anonymous.
14. On 16 May 2011 the complainant reiterated that he wanted the names of the individuals. He also said that he wanted their specific places of residence.
15. On 17 May 2011 the Commissioner repeated that his initial view was that this information should be withheld. He also explained that, although the Council had not objectively read the request for "*place of residence*" as involving specific addresses, he would not, in fact, be likely to order such information disclosed.
16. On 20 June 2011 the Commissioner wrote again to the Council. He acknowledged the two objective readings of the request and that the Council had interpreted that request as involving general information about location, rather than specific addresses. However, he said that the complainant had in fact wanted the specific addresses and had confirmed this in an email. He asked further questions regarding how the Council had determined that it did not hold the specific addresses of the members of the Youth Council. The Commissioner also requested that, if the Council did not hold the specific addresses of the Youth Council members at the time of the request, then this should be confirmed to the complainant and the Commissioner copied in to that response.
17. On 5 July 2011 the Council copied the Commissioner into its confirmation to the complainant that it had not held the specific addresses of the Youth Council at the time of the request.

Analysis

Substantive Procedural Matters

Section 1 – Is the requested information held?

18. Section 1(1) of the Act states 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."

19. In this case the Commissioner has considered whether, at the time of the request, the Council held any recorded information concerning the specific addresses of the members of the Youth Council.
20. The Commissioner is mindful of the Tribunal's decision in *Bromley v The Information Commissioner and the Environment Agency (EA/2006/0072)*. The Commissioner accepts the statement from the Tribunal's decision that "there can seldom be absolute certainty that information relevant to a request does not remain undiscovered somewhere within a public authority's records".
21. The Commissioner follows his guidance in applying the civil standard of the balance of probabilities in determining whether the Council does hold any recorded information within the scope of the request.
22. In deciding where the balance lies in cases such as this one, where the complainant has asked him to consider the public authority's response with regard to whether or not the requested information is held, the Commissioner has considered both:
 - the scope, quality, thoroughness and results of the searches; and
 - other explanations offered as to why the information is not held.
23. On 20 June 2011 the Commissioner asked the Council detailed questions about the nature of the searches carried out by the Council in order to make the determination outlined in the paragraph above.
24. The Council responded on 5 July 2011. The following answers were given:
 - Firstly it was explained that it had searched for certain primary sources such as contacts within Surrey County Council, partner organisations.

- There is no information held on laptops or hard drives within the Council. There is only one designated officer involved with the Youth Council who acts as the gatekeeper and any information is forwarded to that officer.
 - The search terms used were listed. The designated officer has an organised electronic file and all relevant information on the Youth Council is maintained on that file.
 - No information is held in paper files.
 - No information was previously held that is no longer held.
 - No information relevant to the request was deleted or destroyed.
 - There was no statutory requirement to hold the requested information.
 - The only information relating to the request held by the Council at the time of the request were the names of the youth councillors. The request detailed 'place of residence' and the Council interpreted this as 'the area they lived in'. The information about the location of the Youth Council members was obtained from Surrey County Council in order to aid the complainant and was not held at the time of the request.
25. Given the explanation of the searches which had been carried out, and the wider explanation as to why the Council was sure that no information is held the Commissioner accepts that, on a balance of probabilities, the Council does not hold relevant information in this instance.

Exemptions

Section 40(2) – Personal information

26. The full text of section 40 of the Act is available in the Legal Annex at the end of this Notice.
27. Section 40(2) of the Act states that information is exempt from disclosure if it constitutes the personal data of a third party and its disclosure under the Act would breach any of the data protection principles.
28. In its letter to the complainant of 3 December 2010, the Council argued that the requested information – the names of the Youth Council members - was personal data and moreover the personal data of minors.

29. The Council also argued that disclosure of the information requested would lead to unjustified and unnecessary damage and distress to the data subjects, that this would be unfair and therefore contravene the first data protection principle.
30. However, the complainant pointed out that individuals involved in decision-making needed to be identified, even if they were minors.
31. In order to reach a view on the Council's application of this exemption, the Commissioner firstly considered whether or not the requested information was in fact personal data.

Is the requested information personal data?

32. Personal data is defined at section 1(1) of the DPA as:
"personal data means data which relate to a living individual who can be identified-
 - (a) from those data,*
 - (b) from those data and other information which is in the possession of, or likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual."*
33. When considering whether the information is personal data, the Commissioner had regard to his own published guidance, '*Determining what is personal data*'.¹
34. Taking into account his guidance on this matter, there are two questions that need to be considered when deciding whether disclosure of information into the public domain would constitute the disclosure of personal data:
 - (i) "Can a living individual be identified from the data, or, from the data and other information in the possession of, or likely to come into the possession of, the members of the public?"*
 - (ii) Does the data 'relate to' the identifiable living individual, whether in personal or family life, business or profession?"*

¹ Found at:
http://www.ico.gov.uk/upload/documents/library/data_protection/detailed_specialist_guides/what_is_data_for_the_purposes_of_the_dpa.pdf

35. The Commissioner has considered the information requested and considers that it is unequivocally personal data as it directly identifies individuals by name.

Would disclosure contravene the first data protection principle?

36. The Council has stated that disclosure of the information would breach the first data protection principle. The first data protection principle requires that the processing of personal data be fair and lawful and, at least one of the conditions in schedule 2 is met, and in the case of sensitive personal data, at least one of the conditions in schedule 3 is met. In the case of personal data, both requirements (fair and lawful processing and a schedule 2 condition) must be satisfied to ensure compliance with the first data protection principle. If even one requirement cannot be satisfied, processing will not be in accordance with the first data principle.

Would disclosure be fair?

37. In considering whether disclosure of the withheld information would be fair, the Commissioner has taken the following factors into account:
- The reasonable expectations of the data subjects.
 - The consequences of disclosure.
 - The legitimate interests of the public.

The reasonable expectations of the data subjects

38. A data subject's expectations are likely, in part, to be shaped by generally accepted principles of everyday interaction and social norms, for example privacy. It is accepted that every individual has the right to some degree of privacy and this right is enshrined in Article 8 of the European Convention on Human Rights.
39. The Commissioner considers that this right to privacy and family life is of particular relevance to the requested information as it directly relates to the personal and family life of each individual. He has not considered the matter of the specific addresses as he has established, on the balance of probabilities, that this information was not held. The Council only holds geographical location which it did not hold at the time of the request and obtained from Surrey County Council. However, he does consider that, were the individuals to be identified by name, combined with the small numbers of individuals identified in each geographical location already provided to the complainant, it would not be within the reasonable expectations of the individuals.

40. The fact that this information relates to their private as opposed to public or professional lives has further significance. The Commissioner's awareness guidance on section 40 suggests that when considering what information third parties should expect to have disclosed about them, a distinction should be drawn as to whether the information relates to the third party's public or private life². Although the guidance acknowledges that there are no hard and fast rules it states that:

"Information which is about the home or family life of an individual, his or her personal finances, or consists of personal references, is likely to deserve protection. By contrast, information which is about someone acting in an official or work capacity should normally be provided on request unless there is some risk to the individual concerned."

41. Based on the above, the Commissioner has concluded that the data subject would have a reasonable expectation that the information would not be disclosed.

The consequences of disclosure

42. The Commissioner has noted the Council's comments in its internal review that it would be:

"...gravely concerned about causing unnecessary harm or distress to the young people if we released their identity."

43. The Commissioner accepts that disclosure of such information poses a very real possibility of causing distress to the individuals concerned. In this case the Commissioner considers that there is an unquantifiable risk in the disclosure of the requested information. The Commissioner understands that the aim of the Youth Council is to provide local young people with a broader understanding of community issues. The Youth Council has no role within the Council's decision making processes. Even if these individuals have been involved in any public decision-making process they are minors and as such, require a high degree of protection.

The legitimate public interest

44. Notwithstanding the data subjects' reasonable expectations or any damage or distress caused to them by disclosure, it may still be fair to

² Found at:

http://www.ico.gov.uk/~/_media/documents/library/Freedom_of_Information/Detailed_speci alist_guides/PERSONAL_INFORMATION.ashx

disclose the requested information if it can be argued that there is a more compelling public interest in disclosure.

45. In considering 'legitimate interests', such interests can include broad general principles of accountability and transparency for their own sakes as well as case specific interests. In balancing these legitimate interests with the rights of the data subject, it is also important to consider a proportionate approach.
46. The Commissioner has concluded there is no legitimate interest in disclosure. The Council has explained that the role of the Youth Council in this instance was restricted to one member speaking for a planning application on behalf of someone else. Arguments for and against the development in question were made during public speaking time, and considered by the planning committee. The Youth Council members took no part in the voting. The reasonable expectations of the data subjects and the potential consequences of disclosure significantly outweigh any argument that an individual may have played a small part in a democratic process. The Commissioner has therefore determined that it would not be fair to disclose the requested information.
47. Taking into account the above factors, the Commissioner has determined that the disclosure of the requested personal data that is held would not be fair. Having determined that it would not be fair to disclose the requested information, it is not necessary for the Commissioner to consider a Schedule 2 condition, as in the Commissioner's opinion, disclosure would breach the first data protection principle.

Procedural Requirements

Section 10

48. The Commissioner accepts that the Council was only aware of one objective reading of this request and so did not seek clarification under section 1(3). However it was later found that there was an alternative objective reading. In consequence the statutory time period for compliance commenced on the date of the original request. As the Council did not confirm that it did not hold the requested information within the statutory timeframe it breached section 10(1) of the Act.

The Decision

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

- Section 40(2)

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

- Section 10(1)

Steps Required

50. The Commissioner requires no steps to be taken.

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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

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.

Dated the 19th day of July 2011

Signed

**Pamela Clements
Group Manager, Complaints Resolution
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

General Right of Access

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."

Time for Compliance

Section 10(1) provides that –

"Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."

Personal information

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,

The Data Protection Act 1998

The first principle states that:

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.