

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 October 2012

Public Authority: London Borough of Enfield Council

Address: Civic Centre
Silver Street
Enfield
Middlesex
EN1 3XF

Decision (including any steps ordered)

1. The complainant requested information relating to her friend care provided to her friend at a care home. When this was refused she narrowed her request to information held about herself and her friend's cat.
2. The Commissioner's decision is that Enfield Council breached section 10(1) of the Act in that its refusal notice was issued outside of the 20 working days required by the Act, and subsequent disclosures of procedural information also fell outside of that period.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 6 June 2011, the complainant wrote to the council and requested information about social care records held about her friend by the council.
5. She followed up with a further request on 1 July 2011 for:
 - 1) *Under the Freedom of Information Act, please send a copy of Enfield Council's policy document regarding the recording of phone calls between members of the public and council staff, particularly related to complaints and connected issues.*

- 2) *Also, under the F.O.I. Act, I request a copy of Enfield Council's policy document regarding the recording of interdepartment communications, particularly relating to complaints and related enquiries etc. of members of the public.*
- 3) *And under the F.O.I. Act, I request a copy of the minutes of my 24/8/10 meeting with [officers names redacted] including my amendments.*
6. The council responded on 2 November 2011. It said that the information was exempt from disclosure under section 41 of the Act. The information which was requested was social care records relating to a third party and so was confidential.
7. The council did not carry out an internal review when asked to do so by the complainant.
8. After making a complaint and receiving an initial opinion from the Commissioner the complainant narrowed her request to information held about her and about her friend's cat. She also continued to request copies of the council's procedures.
9. The council eventually provided information to her relating to both her and to the cat. It also eventually provided information in respect of its procedures. This was during the course of the Commissioner's investigation.

Scope of the case

10. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
11. The Commissioner considers that the initial request was for copies of both her friends care records and copies of the councils procedures as outlined above.
12. However the Commissioner wrote to the complainant outlining that in his view the care records would be exempt under section 41 of the Act.
13. The complainant therefore wrote to the Commissioner asking the council to narrow the request to information it held about her and information held about the cat.
14. The complainant's request therefore encompassed personal information relating to her. This is exempt under section 40(1) of the Act. However

the council provided this information to the complainant when responding to her narrowed request.

15. The Commissioner's decision therefore relates to the complainant's narrowed request regarding the cat and the procedures which she asked for. He has also considered the late response of the council in relation to her first requests for information.
16. He has not considered the council's application of section 41 more closely given that the complainant accepted the Commissioner's initial view that the information was likely to be exempt because it was care records which would be held in confidence by the council.

Reasons for decision

Background

17. The Commissioner initially confirmed to the complainant that his preliminary view was that information belonging to her friend would not be able to be disclosed to her as it would be confidential information for the purposes of section 41 of the Act. The information would be medical and social care records belonging to the complainant's friend. As the complainant was not the next of kin or the appointed guardian for her friend the council could not legally provide her with that information without breaching the duty of confidence it owed to her friend. This confirmed the council's refusal notice which was provided to her on 2 November 2012. The complainant accepted this view and therefore narrowed her request to information relating to herself, together with any information relating to her friend's cat which was held by the council.
18. Personal information relating to the applicant is exempted from disclosure under the FOI Act by section 40(1). This is because the applicant has access rights to that information under The Data Protection Act 1998 (the DPA). The council however sought to provide this information to the complainant in addition to references to the cat. Without this the information would be difficult to separate and any disclosures made under the Act would be difficult to understand. For the avoidance of doubt however information relating to the complainant is exempt under section 40(1) of the Act. The Commissioner has carried out a separate assessment of the council's compliance with its obligations under the DPA in this respect.
19. It is important to note therefore that when the council provided the information to the complainant it did not actively distinguish the complainant's personal data from information relating to the cat.

20. In effect, the information which was held about the cat generally also referred to the complainant and her dealings with the council. The vast majority of the information was therefore personal data relating to her and was therefore exempt under section 40(1) of the Act.
21. The Commissioner considers that in this case this approach was helpful to the complainant. It ensured that the information she obtained was coherent rather than a mixture of redacted sentences which would have required the complainant to piece together the information she had obtained under each Act.
22. However disclosures under FOI are considered to be global in nature, i.e., to any member of the public. Therefore any disclosure of personal data under FOI could amount to a breach of the data protection principles, and in particular the requirement for fair processing under the first data protection principle.
23. The Commissioner considers therefore that any personal data disclosed by the council to the complainant was disclosed under the DPA rather than the FOI Act. He would not therefore expect the council to disclose any information about the complainant further if a further FOI request was received from a third party.
24. As regards the information specifically (and only) relating to cat the council also disclosed this information to the complainant during the course of the Commissioner's investigation.

Is further information held?

25. The council initially provided some information to the complainant in response to her narrowed request. However the complainant wrote back to the council highlighting that she believed further information was held, and asked the council to consider specific instances where she believed information about both her and the cat had not been provided. She also highlighted that the council had failed to provide her with a response to her request for the councils procedures.
26. After protracted correspondence between the Commissioner, the council and the complainant the council disclosed further information which it had not initially identified. Subsequently it informed the complainant that it had provided her with all of the information which it holds relating to either her and/or the cat.
27. The council also provided her with a copy of the procedures which she asked for, albeit that this was provided at a late point during the Commissioner's investigations.

28. The complainant still considers that further information is still held by the council. She has provided the Commissioner with examples of past events, past correspondence and past meetings which she says the council should hold records of. The Commissioner has indicated however that he believes that on a balance of probabilities all of the information held by the council which she is due under the Act has now been provided to her.
29. In *Bromley & Others v Environment Agency* . (EA/2006/0072). The First-tier Tribunal provided a set of criteria to determine whether, on a balance of probabilities further information is held by an authority:
 - i. The quality of the Public authority's initial analysis of the request.*
 - ii. The scope of the search that it decided to make on the basis of that analysis.*
 - iii. The rigour and efficiency with which the search was then conducted.*
 - iv. Discovery of materials elsewhere whose existence or content point to the existence of further information*
30. The Commissioner asked the council to provide him with a description of the searches which it had carried out when ascertaining whether any further information is held.
31. The council provided details of the searches it had carried out to the complainant and to the Commissioner. It explained that no paper records were maintained and that all relevant records were held on its 'Care First' database which is the client management system within Adult Care. It had carried out searches of the database to locate any relevant information. It had also consulted with various departments, including the Hospital Social Work Team, the Adult Complaints Officer and the Adults Information, Access and Governance Officer. The council also stated that a search was made of the email account of the Assistant Director whom the complainant had previously had correspondence with.
32. After asking the council to explain the searches it had carried out the Commissioner told the complainant that he considered that no further information was held on a balance of probabilities. He asked the complainant if she was satisfied with the council's response. She stated that she was not overly concerned with receiving further information as she believed that she now had the majority of it. As a matter of principle however she felt that it was important to voice her concerns that not all of the information which the council holds has been provided to her. She

still had further examples where the council should hold information which it had not disclosed to her.

33. The Commissioner notes that argument however his view is that where searches for the information have been appropriate and adequate, then on a balance of probabilities the information is not held by the authority.
34. The complainant was not an appointed carer, a legally appointed guardian or the next of kin. Her interest was purely as a concerned friend. That Commissioner considers that due to this her relationship with the authority initially only related to concerns which she expressed to them about her friends care, and about circumstances surrounding the homing of her friend's cat. The council's reasons for recording and retaining information or correspondence from the complainant may therefore have been lessened. She had no legal entitlement to be involved with her friends care other than as a concerned friend. It is therefore possible that some information which the complainant considers should be held was not in fact recorded or retained by the council where it was not specifically required for the purpose of providing an adequate record of the care provided to her friend.
35. The First-tier Tribunal has clarified that it is not for either the Tribunal or the Commissioner to consider what information 'should' be held by an authority. Where adequate and appropriate searches for information have not been able to locate it its decision in such cases is that the information is effectively not held for the purposes of the Act.
36. Having considered the searches which had been carried out previously, together with the description of the further searches carried out by the council the Commissioner is satisfied that on a balance of probabilities no further information is held by the council.
37. The Commissioner decision is that the council has therefore now complied with the requirements of the Act.

Procedural Issues

38. The Commissioner notes that the council did not initially provide the complainant with a response to her request. Her initial request was made on 6 June 2011 followed by a further request for copies of various procedures on 1 July 2011. The initial request was for information which the complainant subsequently accepted is subject to the exemption in section 41 of the Act. In spite of the fact that it considered that an exemption was applicable the council was still under a duty to issue a refusal notice stating that that was the case within 20 working days as

required by section 10 of the Act. In this case the refusal notice was not issued until 2 November 2012.

39. That response did not provide a copy of the procedures which she had asked for. These were subsequently provided during the course of the investigation between 24 May 2012 and 18 July 2012.
40. The Commissioner's decision is therefore that the council breached section 10(1) in failing to provide a refusal notice, nor information to which the complainant was entitled within 20 working days.
41. The subsequent narrowed request for information was dealt with during the course of the Commissioner's investigation. The Commissioner notes however that during his investigation the complainant continued to ask questions, to point out errors or omissions in the council's responses, or to raise concerns. These were responded to by the council albeit, on occasion, not within 20 working days.

Right of appeal

42. 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

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

43. 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.
44. 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