

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 March 2012

Public Authority: London Borough of Camden
Address: Town Hall
Judd Street
London
WH1H 9JE

Decision

1. The complainant has requested copies of emails received or sent by a named councillor on his camden.gov.uk email address on a specified date. The London Borough of Camden (the council) disclosed some emails, but withheld some other emails on the grounds that they were personal data. The Commissioner's decision is that the withheld emails are not held by the council and do not fall to be disclosed under FOIA. The Commissioner does not require the public authority to take any steps.

Request and response

2. On 28 April 2011, the complainant wrote to the council and requested information in the following terms:

"I would like to have a copy of any emails received or sent by [named councillor] on his Camden.gov.uk email address, on 13 April 2011. Please redact any names or other personal information."
3. The council responded on 17 June, disclosing some emails and stating that correspondence with ward residents or e-mails on personal matters, are exempt from disclosure under FOIA. It cited the exemption at section 40(2) and 40(3) of FOIA, which exempts information from disclosure if it is personal data and disclosure would breach the data protection principles.
4. Following an internal review the council wrote to the complainant on 30 August 2011. It continued to apply the exemption at section 40 of FOIA

to the information which it was withholding. It disagreed with the contentions put forward by the complainant in his request for internal review, that:

- any personal data could simply be redacted from the emails; and that
- in any event, emails sent and received to his camden.gov.uk email address cannot be 'personal matters' as the councillor will have a private email address for that purpose.

Scope of the case

5. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He objected to the council's refusal to supply all of the emails which he had requested. His position may be summarised as follows:
 - section 40 of FOIA relates only to 'personal data'. Any personal data contained in these emails could be redacted and the remainder disclosed; and
 - with reference to the Commissioner's guidance on information produced or received by councillors¹, this states that correspondence between councillors or information held by a councillor for their own private, political or representative purposes will not usually be covered by the FOIA. The complainant disputes this position. He argues that a councillor has his own private email account for truly 'private' matters and it is implicit in his use of his camden.gov.uk account that any such correspondence should not be considered to be private.
6. The Commissioner understands the complainant to be arguing that use of a camden.gov.uk email address for correspondence explicitly renders any correspondence on that email account part of the business of the council. He is therefore disputing the position adopted by the Commissioner in his guidance and he argues that the emails can be disclosed if any personal data they contain is redacted.

¹http://www.ico.gov.uk/for_organisations/guidance_index/~/_media/documents/library/Freedom_of Information/Detailed_specialist_guides/fep109_information_produced_or_received_by_councillors_v1.ashx

7. The Commissioner considers the scope of this case is therefore to determine whether any part of the emails withheld by the council can be disclosed.

Reasons for decision

8. Section 3(2) provides that –

“For the purposes of this Act, information is held by a public authority if –

(a) it is held by the authority, otherwise than on behalf of another person, or

(b) it is held by another person on behalf of the authority.”

9. Having examined the withheld emails, the Commissioner observes that none of these emails are about council business but instead relate either to correspondence between the councillor and constituents in his role as a ward councillor, or to personal matters of the councillor, or business which is external to his council activities.
10. Because this information is not council business, it cannot be argued to be held by the councillor on behalf of the council. It may instead be considered to be held by the council, on behalf of the councillor as an individual, solely by virtue of being hosted on the council's email systems.
11. The complainant argues that, by definition, emails which are sent and received to a council email account cannot be private. This ignores the fact that a person may have no control over which email address a correspondent chooses to send a message to. It is entirely possible for correspondents to send an email about a private matter to a council email address. That does not make the email itself any less private, nor any more subject to FOI, than it would have been if it had been sent to a private email address.
12. Whether or not the use of a council email address for non council business is appropriate is not a matter for the Commissioner to determine. It seems to him that there is no obvious reason why such arrangements may not be agreed by mutual consent, or established custom and practice, between councillors and councils.
13. The Commissioner's position remains that unless the information in the emails relates to council business, it is not held by the council in its own right, and there is no right of access under FOIA. This is clear from the

provisions of section 3(2) of FOIA. Not all information held by councillors is held by the public authority. Councillors generally have three different roles:

- They will act as a member of the council in relation to carrying out the council's functions, eg as a member of a committee. Information held by councillors in this role is covered by FOIA as information held by (or on behalf of) the council.
 - They will act as a representative of residents of their ward, eg holding surgeries, corresponding about particular constituents' issues, and looking into complaints. However, this is not an executive function of the council itself as a collective body, but rather a function of the councillor as an individual representative. Information held by councillors in this role is not therefore covered by FOIA as it is not information held by (or on behalf of) the council.
 - They may represent a political party. Any information held by councillors relating to party political business is again not held by (or on behalf of) the council and therefore not covered by FOIA.
14. It is not disputed that a council is made up of councillors and that, once elected, councillors become members of the council. However, this does not mean that everything councillors do is council business and therefore covered by FOIA. The point is a functional one – are they acting in their capacity as members of the council in carrying out the functions of the council, or are they carrying out a separate constituency role or even acting in a purely personal capacity?
15. This is similar to the established position of Members of Parliament. It is also consistent with the position under the Data Protection Act 1998 (DPA) where elected members have to notify as a separate data controller when acting as a representative of the residents of their ward.
16. The Commissioner finds that the refused information is not held by the council for the purposes of FOIA. It has therefore not been necessary to consider the council's refusal of the information under the provisions of section 40 of FOIA. The council should, instead, have denied that the requested information was held by it, under section 1(1)(a) of FOIA.

Right of appeal

17. 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

18. 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.
19. 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