

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 September 2012

Public Authority: London Borough of Camden Council
Address: Camden Town hall
Judd Street
London
WC1H 9JE

Decision (including any steps ordered)

1. The complainant has requested information relating to a complaint made to London Borough of Camden Council (the Council). The Council refused to disclose this information and cited the exemption provided by section 40(2) (personal information) of the FOIA.
2. The Commissioner's decision is that the information requested is exempt under section 40(2) of the FOIA and so the Council is not required to disclose this information.

Request and response

3. On 16 April 2012 the complainant wrote to the Council and requested information concerning a complaint made to the Council by a third party in the following terms:
"What was complaint number 7365433? Who made it? What was the outcome? And what are the attachments 7362492?"
4. The Council responded on 8 May 2012. It stated that the request was refused, with the exemption provided by section 40(2) cited.
5. The complainant contacted the Council on 28 May 2012 and requested an internal review. Following the completion of the internal review the Council wrote to the complainant on 29 May 2012. It stated that the refusal under section 40(2) was upheld.

Scope of the case

6. The complainant contacted the Commissioner to complain about the way his request for information had been handled on 21 June 2012. At this stage the complainant indicated that he was dissatisfied with the refusal to disclose the requested information.
7. The Council clarified during correspondence with the Commissioner's office that, whilst the complainant quoted two reference numbers in his request, these relate to a single complaint.

Reasons for decision

Section 40

8. Section 40(2) of the FOIA provides an exemption for information that is the personal data of an individual aside from the requester and where the disclosure of that personal data would be in breach of any of the data protection principles. Consideration of this exemption is a two-stage process; first, it must be considered whether the information constitutes the personal data of an individual aside from the requester. Secondly, disclosure of this personal data must be in breach of at least one of the data protection principles.
9. Covering first whether the requested information constitutes personal data, section 1(1) of the Data protection Act 1998 (DPA) defines personal data as follows:

“personal data’ means data which relate to a living individual who can be identified:

 - a. *from those data, or*
 - b. *from those data and any other information which is in the possession of, or is likely to come into the possession of, the data controller”.*
10. The Council supplied to the Commissioner's office the information withheld from the complainant in the form of a record of the complaint referred to in the request. The Commissioner notes that this both relates to and identifies the individual who made the request and his view is, therefore, that this is personal data in accordance with the definition given in section 1(1) of the DPA.
11. The next step is to address whether disclosure of that personal data would be in breach of any of the data protection principles. The

Commissioner has focussed here on the first principle, which requires that personal data shall be processed fairly and lawfully and in particular whether disclosure would be fair to the individual named in the request. In forming a view on whether disclosure would be fair, the Commissioner has taken into account the reasonable expectations of the data subject, the consequences of disclosure upon the data subject and whether there is legitimate public interest in the disclosure of the information in question.

12. Covering first the reasonable expectations of the data subject, the view of the Commissioner is that it is likely that the data subject would hold an expectation of privacy in relation to this information. Disclosure under the FOIA means that information is made publicly available. The Commissioner regards as clearly the case that the individual who made the complaint would not expect the details of this to be made publicly available. Furthermore, the Commissioner also believes that an individual making a complaint would hold an expectation of confidentiality on the basis that they would expect that it would be necessary for the Council to operate a complaints procedure with a degree of confidentiality in order for this to be effective.
13. Turning to the consequences upon the data subject, the view of the Commissioner is that disclosure of the information would be likely to result in distress to the data subject. The reasoning for this is connected to the view given above that the data subject would hold an expectation of confidentiality in relation to this information. Having this expectation of confidentiality breached would be likely to cause distress to the individual who made the complaint.
14. Whilst the Commissioner has found that the data subject would hold an expectation of confidentiality in relation to this information and that breaching this expectation would be likely to result in distress to this individual, the information should nevertheless be disclosed if there is an overriding public interest in favour of this. However, in this case the view of the Commissioner is that no such public interest exists.
15. The information in question relates to an entirely localised issue. Given this, the Commissioner does not believe that there is any wider public interest in this information and so no basis on which to conclude that the factors against disclosure are outweighed.
16. The view of the Commissioner is that the data subject would suffer distress through the disclosure of the information in question as this individual would hold an expectation of confidentiality in relation to this information. As a result the Commissioner finds that disclosure would be unfair and in breach of the first data protection principle.

17. In conclusion, the Commissioner has found that the information in question is the personal data of an individual aside from the requester and that the disclosure of this personal data would be unfair and in breach of the first data protection principle. The exemption provided by section 40(2) of the FOIA is therefore engaged and the Council is not required to disclose this information.

Right of appeal

18. 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

19. 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.
20. 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

Jon Manners
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