

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 May 2013

Public Authority: Essex County Council
Address: County Hall
Chelmsford
Essex
CM1 1QH

Decision (including any steps ordered)

1. The complainant has requested a copy of a report considered by Essex County Council's (the council) Standards Committee in relation to the suspension of a named councillor, and the minutes of the decision. The council provided the complainant with access to the publically available minutes of the decision but with regard to the report it refused the request, relying on section 40(2) as the information was personal data and it would be unfair to disclose it. The council also stated that in the event that section 40(2) did not apply to any of the requested information, it considered that section 41 also applied.
2. The Commissioner's decision is that the council has correctly applied section 40(2) to the outstanding withheld information. The Commissioner does not therefore require the council to take any steps in this case.

Request and response

3. On 17 July 2012 the complainant made the following request for information under the FOIA:

"I'd be grateful if you could send me a copy of the report considered by The Joint Essex County Council and Essex Fire Authority Standards Committee concerning the suspension of Cllr (name redacted) and the minute of the committee's decision (with necessary redactions if appropriate)."

4. The council responded on 8 August 2012 and confirmed that it held both the report and the minutes. It refused to disclose the report stating that section 40(2) and section 41 were engaged. The council informed the complainant that the minutes were available online and provided him with a link to view them.
5. On 14 August 2012 the complainant requested an internal review of the decision to withhold the report. He drew the council's attention to a recent news article which disclosed some information about the Councillor's suspension. He argued that section 41 could not apply to information that had been reported in the press and that with regard to section 40(2) the public interest favoured disclosure.
6. The council provided the outcome of the internal review on 21 September 2012 in which it maintained its original position. However, the council did confirm that an additional set of closed minutes had been identified which were exempt from disclosure, and also provided some information outside the scope of the request to assist the complainant in the form of the information provided by the press office on the topic.

Scope of the case

7. The complainant contacted the Commissioner on 12 October 2012 to complain about the way his request for information had been handled.
8. The Commissioner considers the scope of this case to be to determine whether the council was correct to rely on section 40(2) and section 41 to withhold the report and the closed minutes of the decision.

Reasons for decision

9. 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."

10. 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"

Is the information personal data?

11. In order for the exemption to apply the information being requested must constitute personal data as defined by section 1 of the DPA. In this instance, the Commissioner accepts that information contained in the report and the minutes comprises the personal data of Councillor (name redacted), along with other individuals who were involved in the incidents to which the complaints related, which includes members of the public.

Is any of the information sensitive personal data?

12. Section 2 of the DPA defines sensitive personal data as personal data which consists of information on the following:

- an individual's mental or physical health,
- their political opinions,
- their sex life,
- their racial or ethnic origin
- their religious beliefs
- whether they are a member of a trade union
- the commission or alleged commission of an offence by them, or
- any proceedings for any offence they have committed or are alleged to have committed.

13. The Commissioner accepts that much of the personal data relating to Councillor (name redacted) and other individuals in the report falls into one or more of the above categories, and therefore constitutes sensitive personal data about them.

Does the disclosure of the information contravene any data protection principles?

14. the council argued that disclosure of the report and the closed minutes would contravene the first data protection principle which states:

"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".

15. In deciding whether disclosure of personal data would be unfair the Commissioner has taken into account the following factors:

- The individual's reasonable expectation of what would happen to their personal data.
- What damage or distress the individual would suffer if the information was disclosed.
- The legitimate interests of the public in knowing the circumstances and terms of the suspension of a councillor.

Reasonable Expectations

16. The requested information in this case relates primarily to two individuals, Councillor (name redacted) about whom the complaints were made, and the member of the public who made one of the complaints. For the purposes of this decision notice, this person shall be referred to as 'X'. There is also personal data relating to council employees and relatives of X. The Commissioner therefore recognises that the reasonable expectations of each individual may not be the same in all circumstances and where necessary he will take this into consideration.
17. The council has argued that the report in particular contains information on highly personal matters and the parties would therefore have an expectation of privacy. The council has also explained that the investigator informed both Councillor (name redacted) and X and she would ask the Standards Committee to keep the information of a sensitive or private nature confidential. The Commissioner therefore notes that the pre-hearing summaries for each complaint state that all documents will be withheld from the public and the press and that the meeting will not be held in public because to do so would identify X and their relatives. He considers that this increases the expectation of privacy and that all parties involved in the investigation would have a reasonable expectation that the information they provided would not be disclosed to the public by the council.

18. The Commissioner has also considered that the fact that much of the information is sensitive personal data, and therefore that the expectation of privacy will be greater.
19. The complainant has argued that as X has 'gone public'; they no longer have the same expectation of privacy. The council has recognised that there has been a small amount of local news coverage of Councillor (name redacted)'s suspension, some of which goes in to slightly more detail than the information the council has published. However, it considers that whilst X may have gone public to some extent, the withheld information contains much more detailed information than that which X has disclosed to the press. It therefore argues that X still has an expectation of privacy in relation to the more detailed information. In addition to this, the council argues that the other individuals mentioned in the report have not chosen to make information about themselves public, and so their expectation of privacy is still high.
20. The Commissioner has also had regard to the general expectations that surround disciplinary matters. When considering information relating to disciplinary matters or issues of conduct concerning an individual in a public role, it is the Commissioner's view that such information carries a general expectation of privacy due to its very sensitive nature and likelihood that disclosure could cause the individuals concerned distress and also likely to their reputation.
21. The Commissioner finds that due to the general expectation of confidentiality surround disciplinary matters, Councillor (name redacted) would have a reasonable expectation that the reports would not be disclosed to the world at large. He also finds that those council officers who contributed to the investigation and who therefore appear in the report would also have a general expectation that information regarding disciplinary matters would remain confidential. Finally, the Commissioner has had regard to the reasonable expectations of X and X's relatives who are members of the public. Whilst he accepts that X has made some information public, he considers this to be very limited. Due to the sensitive nature of the information contained in the report, as well as the fact that it is a disciplinary matter relating to a complaint X submitted, he considers that X and X's relatives would still have a reasonable expectation of privacy.

What damage or distress would the individual suffer if the information was disclosed?

22. The council has explained that due to the nature of the complaint that X made and the circumstances which brought it about, Councillor (name redacted) is concerned about the impact of releasing information which would be likely to cause further publicity. The results of such further

publicity would cause distress to his family X and X's family due to the nature of the complaint and the investigation, which records a great amount of detail about the circumstances and background which surround X's complaint, which is of a sensitive nature and includes sensitive personal data about both X and Councillor (name redacted).

23. The very fact that much of the information in the report is sensitive personal data means that the likely distress and damage to the individuals concerned is greater. The infringement on the privacy of those individuals is therefore more greatly unwarranted.
24. The Commissioner recognises that the release of the information in the report, particularly that which is sensitive personal data would be an unwarranted intrusion into the personal lives of those concerned. He therefore believes that it is more than probable that disclosure would cause distress to the individuals, in particular Councillor (name redacted), X and their respective families.

Legitimate interests of the public

25. Although the exemption contained in section 40(2) if found to be engaged is absolute and therefore not subject to the public interest test, the Commissioner will still consider legitimate interests in favour of disclosure.
26. In considering the legitimate interests of the public, the Commissioner notes that on the face of it, there would appear to be a public interest in knowing the circumstances which resulted in an elected councillor being suspended for six months. The council has acknowledged that there is a public interest in knowing further information about the reasons for suspending Councillor (name redacted) and why some aspects of the complaints were not upheld. The council also accepts that there is a more general public interest in transparency relating to the conduct of elected officials.
27. The complainant has argued that due to the information about the suspension, particularly in relation to X, which has been published in a local news report, the legitimate interests point towards disclosure. He also considers that as the six month suspension was the most severe sanction available to the Committee, this enhances the public interest in knowing the reasons for the decision to suspend Councillor (name redacted). He has also argued that due to the upcoming election, the public has a right to access the report in full in order to be fully informed about Councillor (name redacted) and therefore enable voters to make an informed decision about who to vote for.

28. The complainant also considers that the fact that X has made some information about the complaint and the suspension public means that any right to privacy has been waived. The Commissioner has had regard to the information in the local news report and in the withheld information and notes that the majority of the factual information in the news report is taken from a press release made by the council, and the public version of the minutes of the decision. Both these documents have been made available to the complainant. The Commissioner does accept that a small amount of information about the complaint and the suspension appears to have been made available to the press by X, but this information is very limited and amounts mainly to X's opinions about the outcome of the investigation. He also notes that as the council has not published any such information, disclosing the information in this case could serve to corroborate or add credence to information it would not otherwise disclose.
29. The Commissioner also notes that whilst X has made a very limited disclosure beyond the information published by the council, this does not mean that the other individuals contained in the report have agreed for such information to have been made public. Therefore their right to, and expectation of, privacy has not changed as a result of a local news story.
30. Whilst the council recognises such public interest arguments, its position is that the right to privacy of the individuals concerned, especially X and X's family, outweighs any public interest in this case.
31. The Commissioner agrees that there is a public interest in knowing the reason why an elected councillor was suspended, particularly due to the upcoming elections. However, due to the fact that much of the information in the reports and in the private minutes is sensitive personal data, he has little difficulty in finding that the balance of the public interest against the right to privacy lies heavily in the right to privacy of the individuals whose personal data and sensitive personal data is in the report.

Conclusion

32. The Commissioner therefore considers that, allowing for the personal and sensitive nature of the requested information, its disclosure would be disproportionate in view of the rights of Councillor (name redacted), X, their families and the other council officers, to privacy.
33. In light of the arguments presented above, the Commissioner has concluded that it would not be fair to disclose the requested information, and therefore that the council was correct to rely on section 40(2) to withhold it.

34. As the Commission has found that section 40(2) has been applied correctly to the withheld information, he has not found it necessary to consider the application of section 41.

Right of appeal

35. 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

36. 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.
37. 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
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