

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 01 August 2013

Public Authority: East Riding of Yorkshire Council
Address: County Hall
Beverley
East Riding of Yorkshire
HU17 9BA

Decision (including any steps ordered)

1. The complainant requested documents held by East Riding of Yorkshire Council ("the council") showing that a particular council officer made it clear that she was married to another officer during the relevant period. The council said that it held this information in the form of information within job application forms however it cited the exemption under section 40(2) of the Freedom of Information Act 2000 ("the FOIA"). This exemption relates to personal data.
2. The Commissioner's decision is that the council incorrectly relied on the exemption under section 40(2) on this occasion. The Commissioner therefore finds the council in breach of its obligation to provide information under section 1(1)(b).
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - From the Head of Legal and Director of Corporate Resources application forms, disclose the written responses of the officer within the box headed by the questions "Are you related to a Member or Senior Officer of this Authority? (If so please give name(s) and relationships).
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 8 December 2011, the complainant requested information from the council. The Commissioner has only quoted below the part of the request that is relevant to this particular complaint.

"Ms Susan Lockwood AKA Mrs Darryll Stephenson

Following my recent FOI request (Case Reference Number: FS50371787) concerning the above recently employed East Riding of Yorkshire (ERYC) Officer...

...Two

I further wish to be provided in hard copy form copies of all prior such documents, submitted by this employee, which make it clear to Council Officers and Elected Members, that Ms Lockwood was in fact the spouse of Mr Darryl Stephenson erstwhile CEO of the Authority during the period of her employment"

6. The council refused the request as vexatious on 14 December 2011 using section 14(1) of the FOIA and upheld this position in an internal review on 17 January 2011.
7. The complainant subsequently submitted a complaint to the Commissioner and on 2 October 2012, the Commissioner issued a formal decision notice under section 50 of the FOIA in which he found that the request was not vexatious. For ease of reference, a copy of that decision notice may be accessed here:

http://www.ico.org.uk/~media/documents/decisionnotices/2012/fs_50431952.pdf

8. On 31 October 2012, the council supplied a new response to the request. The council said that it held documents that fall within the scope of the request in the form of job applications submitted by the council officer concerned. It said that only part of the documents contained the information requested. However, the council said that the exemption under section 40(2) applied to the relevant information contained within the document, the exemption relating to personal data. The council disclosed redacted copies of the job application forms concerned which essentially amounted to two pages showing the questions asked but not the responses. The information redacted included the information falling within the scope of the request, and also information outside the scope of the request.
9. On 14 November 2012, the complainant requested an internal review.

10. The council replied on 17 December 2012. It said that it wished to maintain that it had responded correctly.

Scope of the case

11. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He asked the Commissioner to consider whether the council had correctly withheld all the information that it had redacted from the job application forms provided to him. For clarity, the Commissioner's investigation only relates to the parts of the application forms that fall within the scope of the request and his investigation does not extend to the other redactions made.

Reasons for decision

Section 40(2) – Third party personal data

12. This exemption provides that third party personal data is exempt if its disclosure would contravene any of the Data Protection Principles set out in Schedule 1 of the Data Protection Act 1998 ("the DPA").

Is the withheld information personal data?

13. Personal data is defined by the DPA as any information relating to a living and identifiable individual. The information in this case clearly relates to living and identifiable individuals and is therefore personal data.

Would disclosure breach the Data Protection Principles?

14. The Data Protection Principles are set out in Schedule 1 of the DPA. The first principle and the most relevant in this case states that personal data should only be disclosed in fair and lawful circumstances. As there is no reason to consider that the disclosure would be unlawful, the Commissioner's considerations below have focused on the issue of fairness. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the individual and the potential consequences of the disclosure against the legitimate public interest in disclosing the information.

Reasonable expectations

15. The council told the Commissioner that it did not consider that disclosure of the information would be within the reasonable

expectations of the individuals concerned. It argued that information provided on job application forms is generally considered to be confidential and it highlighted that there is nothing on the form to indicate that any part of the information would be made available to the public.

Consequences of disclosure

16. The council said that disclosure would cause distress and may cause concern about what other information may be disclosed in the future. The council highlighted that there had been some media attention relating to this particular officer.

Balancing the rights and freedoms of the data subject with the legitimate interests in disclosure

17. There is always some legitimate public interest in the disclosure of any information held by public authorities. This helps to encourage the general aims of increasing transparency and accountability. In this particular case, there is a public interest in demonstrating that council officers have declared appropriate information clearly when they apply for council positions. This is particularly the case in relation to people in very senior positions. The individuals this request is concerned with were the most senior officers within the council and their expectations of transparency ought to be greater than other staff members in general. However, what favours disclosure of the information most in the circumstances of this case is the information that is publicly known.
18. Section 1(1) of the FOIA provides a general right of access to recorded information held by public authorities. Public authorities must generally state whether or not that information is held and provide it unless a valid exemption applies. It is sometimes the case that when a request is made in certain terms, actually confirming or denying whether the information is held will in itself reveal the information being sought or information that would otherwise be exempt. Where this is the case, public authorities have the option to refuse to confirm or deny that the information is held. Where the information is personal data the relevant provision is under section 40(5) of the FOIA.
19. The Commissioner notes that in this case the council did not seek to rely on the exemption under section 40(5). In other words, it chose to confirm that it held the information in the form of extracts from two job application forms. Given this, the Commissioner contacted the council and said that it did not appear that disclosure of the relevant information on the forms would be unfair. In response, the council refused to disclose the relevant parts of the forms and sought to continue its reliance on the exemption. It said that the application forms

contained standard wording and “the fact that the question is asked is therefore not something that the Council can withhold”. The council also referred to a previous appeal before the Information Tribunal (“the tribunal”). The council said that the outcome was that a job application form should be redacted of all personal data, even where the information was already known to the requester such as the name of the candidate.

20. In the Commissioner’s view, the council’s response to the complainant, by confirming that the information requested is held, confirms more than just the fact that a question about relationships with other council employees is asked on job application forms. Moreover, the tribunal case referred to does not assist in this matter. While there will often be general principles that apply to a certain type of information, general principles cannot be simply transferred to another case without any regard for the different circumstances involved. As discussed above, what matters most in this particular case is the fact that in view of what is already known publicly, there does not appear to be any merit in the council’s position that it is appropriate to continue to withhold the relevant part of the job application forms concerned. The Commissioner does not consider that disclosure of this information would be likely to cause the individuals concerned additional distress in the circumstances.

Would the disclosure be necessary?

21. For clarity, when a disclosure would be fair, the Commissioner must consider whether it would be necessary in accordance with Condition 6 in Schedule 2 of the DPA. The full wording of Condition 6 is as follows:

“The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject”.

22. There is a legitimate public interest in accountability and transparency and in the council complying with the FOIA unless there is a valid reason for not doing so. No such reason exists in this case and the Commissioner therefore considers that the disclosure should take place since it would not be unwarranted by reason of prejudice to the rights or legitimate interests of the data subjects.

Procedural issues

23. Section 1(1)(b) concerns the general duty to provide information upon request. Public authorities should generally comply with this section within 20 working days in accordance with section 10(1). The council

failed to do so on this occasion and the Commissioner therefore finds it breached these sections of the FOIA.

Right of appeal

23. 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

24. 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.
25. 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