

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 December 2013

Public Authority: Stockton-on-Tees Borough Council
Address: Municipal Buildings
Church Road
Stockton-on-Tees
TS18 1LD

Decision (including any steps ordered)

1. The complainant has requested a report from Stockton-on-Tees Borough Council ("the council") about an audit of social care interventions in respect of a named individual. The council provided the findings and recommendations of the report, but withheld the remainder under sections 40(2) and 41 of the FOIA. This was not accepted by the complainant, who asked the Commissioner to investigate whether the council was correct to withhold part of the report.
2. The Commissioner's decision is that the council correctly withheld part of the report under section 40(2) of the FOIA. However, the Commissioner identified that the council's response was provided outside 20 working days from the complaint's request, and was therefore in breach of sections 10(1) and 17(1).
3. The Commissioner does not require any steps to be taken.

Request and response

4. On 19 September 2012, the complainant asked the council to outline what information it might hold in relation to its involvement with a named individual. The complainant advised the council that a newspaper article dated 2 August 2012 had referred to an investigation taking place within the council, and that this was the basis of his request.

5. The council responded on 24 October 2012 and advised that the investigation referred to an administrative audit relating to social care interventions, but that the resultant report was exempt from disclosure.
6. On 7 March 2013, the complainant requested an internal review of the council's decision not to disclose the report.
7. The council provided the outcome of its internal review on 19 April 2013. It provided some information from the report (namely the findings and recommendations) but advised that it considered the remainder to be exempt under sections 40(2) and 41 of the FOIA.

Scope of the case

8. The complainant contacted the Commissioner on 28 March 2013 to complain about the council's handling of his request.
9. The Commissioner considers the scope of the case to be whether the council was correct to rely on section 40(2) of the FOIA to withhold part of the report. While the council has applied two exemptions to the withheld information, the circumstances of the matter means that the Commissioner has only needed to make a decision in respect of one.

Reasons for decision

Section 40(2) – Third party personal data

10. 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."

11. 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 withheld information personal data?

12. Personal data is defined by section 1 of the Data Protection Act 1998 ("the DPA") as:

*"data which relate to a living individual who can be identified—
a) from those data, or
b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the data controller or any person in respect of the individual"*

13. 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 the information requested is the personal data of multiple individuals, of whom one has been directly named in the request.

14. The Commissioner has considered the extent to which the report could be anonymised by removing the personal data, but has concluded that it would not be possible to redact the report in a meaningful manner without rendering it useless. The Commissioner is therefore satisfied that the withheld information in its entirety is personal data.

Is any of the information sensitive personal data?

15. Section 2 of the DPA defines sensitive personal data as personal data that consists of information about 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.

16. The Commissioner considers that the majority of the information falls into one or more of the above categories, and therefore represents the sensitive personal data of multiple individuals.

Would disclosure breach the data protection principals?

17. 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, the conditions of which are set out in schedule 2 of the DPA for personal data, and schedule 3 of the DPA for sensitive personal data.
18. 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 of the data subject

19. When considering whether a disclosure of personal data is fair, it is important to take account of whether the disclosure would be within the reasonable expectations of the individual. However, their expectations do not necessarily determine the issue of whether the disclosure would be fair. Public authorities need to decide objectively what would be a reasonable expectation in the circumstances. In this case, the council has explained that the information was obtained solely for the provision of education, health and social care services, and that the individuals concerned would have had no reasonable expectation of their personal data being publically disclosed.

Consequences of disclosure

20. The council has explained to the Commissioner that it perceives there to be a substantial risk of harm to the individuals should their personal data be disclosed, and has provided contextual information about the individuals and their circumstances to support this claim. The Commissioner has considered these details and has concluded that the council was correct to identify the risk of harm.

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

21. The report that has been requested relates to an audit of social care interventions in respect of a named individual, and as such is different from a serious case review, which the council have explained is drafted for public disclosure and holds no personal information. This distinction is important, as the Commissioner perceives that the complainant has requested the report under the assumption that it is similar to a serious case review, and has referred the council to the norm of such information being routinely disclosed.

22. The council has advised the Commissioner that it has already disclosed the findings and recommendations of the report, and considers this to be a reasonable action to ensure transparency and accountability. The council considers that the disclosure of the full report would be unnecessary, and furthermore, unfair for the reasons outlined above. Additionally, the council considers that the disclosure of the full report, of which the majority is sensitive personal data, would breach the right to respect for private and family life provided by Article 8 of the Human Rights Act 1998.
23. Lastly, the council has asked the Commissioner to consider the implications of the full report being disclosed. The council has advised that this could severely limit the extent to which individuals might provide their personal data to the council in the future, which would damage the quality of social care that the council is able to provide.

Conclusion

24. There is always some legitimate public interest in the disclosure of any information held by public authorities. This is because disclosure of information helps to promote transparency and accountability amongst public authorities. This in turn may assist members of the public in understanding decisions taken by public authorities and perhaps even to participate more in decision-making processes.
25. However, having considered the circumstances of this case and the withheld information itself, the Commissioner's view is that the right to privacy outweighs the legitimate public interest in disclosure. It is clear to the Commissioner that the disclosure of the full report would be outside the reasonable expectations of the individuals to which it pertains. Additionally, a significant part of the report is sensitive personal data, and that the disclosure of this into the public domain would place individuals at risk of harm. Additionally, such disclosure may limit the extent to which other individuals might be willing to share personal data with the council in the future, which could impede the council from undertaking its social care duties. The Commissioner therefore considers that the council was correct to withhold part of the report under the exemption provided by section 40(2).
26. As the Commissioner has found that the council's refusal under section 40(2) of the FOIA was valid, he has not considered it necessary to make a decision in relation to the council's application of section 41.

Section 10(1) – Time for compliance

27. Section 10(1) of the FOIA requires that a public authority should comply with the requirements of section 1(1) promptly, and in any event, within 20 working days following a request being received.
28. Section 1(1) of the FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds the information, and if so, to have that information communicated to him/her. This is subject to any exemptions or exclusions that may apply.
29. In this case the Commissioner has identified that the council provided held information outside 20 working days, and therefore breached the requirement of section 10(1).

Section 17(1) – Refusal of request

30. Section 17(1) of the FOIA requires that a public authority wishing to rely on an exemption must issue a refusal notice within the time for compliance provided by section 10(1).
31. In this case the Commissioner has identified that the council issued a refusal notice outside 20 working days, and therefore breached the requirement of section 17(1).

Right of appeal

32. If 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: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

33. 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.
34. 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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