

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 25 September 2014

**Public Authority:** Northamptonshire County Council  
**Address:** County Hall  
Northampton  
Northamptonshire  
NN1 1AT

#### **Decision (including any steps ordered)**

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1. The complainant has requested information relating to actions it took when it handled the death of her father whilst in care. She considers that the council mishandled the estate of her father allowing fraud to take place by her sister. She has asked for details as to why the council took the actions it did, and for the names of council officers who were involved in handling the case. The council answered questions relating to the former, but claimed section 40(2) (personal data) as regards the latter.
2. The Commissioner's decision is that some of the requests (which relate to why the council took the actions it did) were not requests for recorded information and are therefore not eligible requests under the Act. He has not therefore considered these further within this decision notice.
3. The Commissioner has also decided that the council was correct to apply section 40(2) to the request for the names of officers who were involved in the case. The council also responded to a further request for the number of staff who no longer worked at the council from a list of six individuals. However it initially only provided details for five members of staff rather than six. It did rectify this after the Commissioner's intervention however its response fell outside of the twenty working days required by section 10(1).

4. The Commissioner's decision is that the council breached section 10(1) in that it did not initially respond providing details of the six named staff within a period of 20 working days.
  - The Commissioner does not require the council to take any steps.

## Request and response

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5. In an undated request, the complainant wrote to the council and requested information in the following terms:
  1. *"Why did NCC accept an inadequate General Power of Attorney document from [name redacted], when, in June/July 2007 they informed her that she would have to register her father's condition of severe dementia and having no mental capacity with HM Court of Protection, which would require the raising of the Lasting Power of Attorney document?"*
  2. *Why did NCC ask [name redacted], ([name redacted]'s husband, who was not listed as an attorney on her GPA) to raise a monthly direct debit mandate in 2009, which allowed NCC to take funds totalling £21,246.76 from [name redacted]'s Lloyds current account for supposed care costs arrears, including three direct debit payments amount to £669.00 in the two months after his death.*
  3. *Why did NCC illegally accept a cheque from [name redacted] for the sum of £14,687.14 she withdrew from her father's account after his death and which the council cashed on the 5<sup>th</sup> of May 2010 with the certain knowledge they would be in a breaking Probate Law as a General Power of Attorney ceases on the death of the donor and the deceased account must be closed immediately after death. My father's accounts remained open until August 2012.*
  4. *Why did [name of council officer redacted] of NCC refund £6,403.78 when my father's account had already been finalized, only after I queried the extra care costs taken by the council, and why did she pay the refund to [name redacted]'s solicitors [name of solicitors redacted] when she informed me, in a letter dated the 24<sup>th</sup> November 2011, she was returning the sum to my father's estate? [Name of solicitors] never applied for or were granted the Letters of Administration they informed me in a letter dated the 18<sup>th</sup> August 2010 they were applying for to the Probate Registry. Why haven't NCC or the Police ordered [name of solicitors] to return the money they are still illegally holding the estate?"*

6. The council responded on 14 March 2014. It referred the complainant to a previous response which it had provided to her in letters dated 24 November 2011 and on 30 January 2013. Those responses provided her with the answer to the questions asked, but did not refer to any recorded information which could answer the questions. In effect, her sister had provided her own contact details to the council as the correct person to contact to discuss issues relating to her father and the rest of the actions which the complainant has issues with followed on from this.
7. Following an internal review the council wrote to the complainant on 25 April 2014. It stated that it had answered her previous questions in previous letters to her dated 24 November 2011 and 30 January 2013.
8. On 28 April 2014 the complainant wrote to the council and made a further request for the names of staff who worked at the time who dealt with her father but who no longer work for the council.
9. On 29 April 2014 the complainant wrote back to the council again. She provided a list of six staff who worked for the council between 2010 and 2013. She asked how many of these staff still worked at the council, but clarified that she did not need to know their names.
10. On 7 May 2014 the council responded. It said that its stance remained the same, and that it did would not release the names of ex-employees in accordance with section 40(2) of the Act.
11. On 9 May 2014 the complainant wrote the authority and clarified that she had not asked for the council to provide the names of the officers and so section 40(2) should not apply.
12. On 23 May 2014 the council wrote to the complainant and said that of the five members of staff which the complainant had named only one continues to work at the council.
13. After receiving the complaint the Commissioner noted that the council's response had only accounted for 5 members of staff, not six, and asked it to respond to the complainant providing details of the other person.
14. The council therefore wrote to the complainant on 12 September 2014 clarifying its response as regards the 6 members of staff.

### **Scope of the case**

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15. The complainant contacted the Commissioner to complain about the way her request for information had been handled. She considers that the council has not answered her questions.

16. The Commissioner considers that the complaint is that the council has failed to comply with the Act and provide the complainant with the information which she has asked for.

## **Reasons for decision**

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### Are the initial 4 questions requests for the purposes of the Act?

17. The Commissioner has considered the initial 4 questions which the complainant asked the council to respond to. The Act provides the right to recorded information held by an authority. It does not however provide individuals with a general right to have any questions it asks of an authority to be answered. The First-tier Tribunal has however decided that where recorded information is held by an authority which can answer a question then this information should be considered for disclosure to the requestor as falling within the scope of a request.
18. In this case the first 4 questions relate to the actions of the council when it dealt with the estate of the complainant's father. In effect the questions ask the council to explain why it carried out certain actions in respect of her father's estate.
19. The Commissioner has considered the questions, and is satisfied that they are asking the council to explain itself, rather than making requests for recorded information. As such, the requests are not eligible requests under the FOI Act and the council was under no obligation to respond to them under the Act unless it held recorded information which could answer the questions.
20. For its part the council explained to the complainant that her sister had completed a form which named her as a point of contact for matters relating to the complainant's father's care. A financial assessment had been issued to her due to this, and this was responded to by her brother-in-law setting up a direct debit for her father's outstanding care arrangements. Thus the council had dealt with the complainant's sister rather than the complainant when dealing with matters relating to her father's estate due to this.
21. The council has therefore answered the questions asked by the complainant and explained its actions.
22. Given the response it is also clear that the recorded information which the council does hold relates to the financial affairs of her father, such as the form detailing her sister as the point of contact and the direct debit form which was completed by her brother-in-law. The provision of this information would not however answer the complainant's question –

the answer to her question is simply that forms were received identifying her sister as the point of contact and the council therefore dealt with, (as it considered) the correct parties given the details it had been provided with.

23. The Commissioner does not therefore consider that the form completed by her sister, or the direct debit form completed by her brother-in-law needs to be considered for disclosure by the council in response to these requests. In any event, this information would be likely to be exempt under section 40(2) if it were to be considered for disclosure.

### **Section 40(2)**

24. The complainant requested the names of employees of the council who had worked on her father's care but who no longer work for the council. The council applied section 40(2) to the information.
25. Information is exempt from disclosure on the basis of section 40(2) if it constitutes third party personal data (i.e. the personal data of anyone other than the individual making the request) and either the first or second condition in section 40(3) is satisfied.

### Is the information personal data?

26. Personal data is defined in section 1 of the Data Protection Act (DPA) as follows:

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

27. The information which the complainant has requested is details of staff who worked at the council at the time her father was receiving care, but who no longer work there. The information would identify individuals and would provide details about whether they still work at the council or not. The Commissioner is therefore satisfied that the information is personal data.

### Would the disclosure of the information contravene any of the data protection principles?

28. For section 40(2) to apply, either the first or second condition in section 40(3) must be satisfied. The first condition in section 40(3) states that

disclosure of personal data would contravene any of the data protection principles or section 10 of the DPA.

29. The first data protection principle states:

*'Personal data shall be processed fairly and lawfully and, in particular shall not be processed unless –*

*At least one of the conditions in schedule 2 [DPA] is met....'*

30. In deciding whether disclosure of personal data would be unfair, and thus breach the first data protection principle, the Commissioner takes into account a range of factors including:

- The reasonable expectations of the individual in terms of what would happen to their personal data,
- The consequences of disclosing the information, i.e. what damage or distress would the individual suffer if the information was disclosed?

31. Furthermore, notwithstanding the data subject's reasonable expectations or any damage or distress caused to them by disclosure, it may still be fair to disclose the requested information if it can be demonstrated that there is a pressing social need for a disclosure of the information to the public which overrides the expectations of the individual or any detriment that may be caused.

32. The first thing to note is that, as employees who have dealt with the administrative arrangements surrounding the care provided to the complainant's father the individuals would be likely to expect that their names would be provided to family members at that time.

33. However this was during the period in which care was being provided or the estate was being dealt with once her father had died. This current request falls outside of that period and relates to the allegations of fraud made by the complainant. The request is that the council names those individuals who no longer work at the council who dealt with the case previously.

34. Disclosures under the Act are considered to be to the whole world, or to any member of the public.

35. In this context the Commissioner considers that the individuals would have no expectation that their names would be disclosed to the whole world in response to an FOI request. The Commissioner also considers that it would not have been obvious to the individuals that this might occur.

Is there a pressing social need for the information to be disclosed?

36. The complainant has suggested that the individuals were complicit in fraud. This has not been proven and the council has provided an explanation as to why the actions taken by the individuals occurred – that the individuals were simply following the contact details which were provided to the council by her sister.
37. The question for the Commissioner is not whether the complainant has a pressing need for the information. It is whether the public as a whole has a pressing social need for that information to be disclosed.
38. In this context, an allegation of fraud has been made to both the council and the police. The correct authorities have therefore been notified of the complainant's suspicions. There is therefore no pressing social need for the public as a whole to know how many of those involved in her father's care still work at the council.
39. The Commissioner is therefore satisfied that there is no pressing social need for the council to disclose the names of those who have left the council. The disclosure of their names would therefore breach the first data protection principle.

The numbers of specific staff who have left the council

40. The complainant has also provided a list of names and asked the council to confirm the number of those who no longer work at the council. She has identified the individual officers concerned but said that given its earlier response the council did not need to identify which of the officers remained, and who had left; just the numbers concerned.
41. The council provided its response to this stating that of the 5 of the officers named only one still worked at the council. The complainant however had initially named six officers, not five.
42. The council however corrected this mistake once the Commissioner had pointed this out.

Section 10(1)

43. Section 10(1) requires that :

*"Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."*

44. The complainant made her request to the council for details of the number of staff who remained at the council out of the 6 she named on 9 May 2014. Although the council answered this within 20 working days however it only provided the details of 5 members of staff.
45. Following the Commissioner's intervention the council responded as regards all 6 members of staff on 12 September 2014. This exceeds the 20 working days stipulated in section 10(1) of the Act.
46. The Commissioner's decision is that the council therefore did not comply with section 10(1) of the Act. The Commissioner however recognises that this was simply an error on the council's behalf.



## Right of appeal

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47. 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: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

48. 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.
49. 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**