

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 February 2015

Public Authority: South Gloucestershire Council

Address: Council Offices
Castle Street
Thornbury
South Gloucestershire
BS35 1HF

Decision (including any steps ordered)

1. The complainant has asked South Gloucestershire Council to provide him with the names and contact details of the Management Committee and/or Trustees of a named football club. The Council has relied on the exemption provided by section 40(2) of the FOIA to withhold this information.
2. The Commissioner's decision is that section 40(2) has been properly applied and the Council is entitled to rely on its provisions to withhold the information which the complainant seeks.
3. The Commissioner does not require the Council to take any further action in respect of this matter.

Request and response

4. On 23 September 2014, the complainant wrote to South Gloucestershire Council and requested information in the following terms:

"Please provide me with any information the Council holds with regards to the names, addresses or other contact information for the members of the Management Committee / Trustees of [a named football club at a named address].

Any other information you are able to provide on the Club (and specifically anything regarding their closure, or non-closure) would also be helpful."

5. The Council acknowledged the complainant's request on 2 October, advising him that it would be dealt with under reference FIDP/005019-14.
6. The Council responded to the complainant's request on 6 October, advising him that the information requested about names, addresses and contact details of the Management Committee members and/or Trustees is personal data which is exempt from disclosure under section 40 of the FOIA.
7. The complainant responded to the Council's refusal notice by asking the Council to carry out an internal review of its decision. The complainant asserted that section 35(2) of the Data Protection Act does not offer protection against disclosure of the contact information of the Club's Management Committee or Trustees.
8. The Council wrote to the complainant to explain how section 35(2) of the DPA works in respect of disclosure of personal data. The Council pointed out to the complainant that he had not provided any information as to why it is necessary for the Council to disclose the information he seeks. The Council also informed the complainant that it would also have to have a legal duty to hand over the requested information, or have a power to do so.
9. The complainant responded to the Council by confirming that the information he seeks, "is needed for the purpose of, and in connection with, legal proceedings (including prospective legal proceedings (in respect of one of its clients", and, "...the information is necessary for the purpose of establishing, exercising or the defending legal rights of one of our clients".
10. Following further correspondence, the Council confirmed to the complainant that it would be undertaking an internal review of its decision and that he should receive the outcome of that review by 3 November.
11. On 10 November the complainant wrote to the Council again. In his letter the complainant informed the Council that he had not received the promised internal review.
12. On 11 November the Council apologised to the complainant for not sending him its internal review. The Council advised the complainant that his email requesting the internal review would be forwarded to its Legal Team, asking that it should receive their urgent response.
13. The Council completed its review and wrote to the complainant on 17 November. The Council advised the complainant that its decision to withhold the requested information was correct and it confirmed that the

Council holds some information relevant to the request on its Licencing System (FLARE) and on its Grants System.

14. The Council informed the complainant that he could access information relating to the club, in respect of Grants and Licensing, on its website and it provided the complainant with a link to that information.

Scope of the case

15. The complainant contacted the Commissioner on 17 November 2014 to complain about the way his request for information had been handled. In particular the complainant expressed his concern about the Council's failure to consider the reasons he gave in his request for review about the exemption provided by section 35(2) of the DPA.
16. In this notice the Commissioner sets out his decision in respect of the Council's reliance on section 40(2) of the FOIA to withhold the names, addresses and contact details of the Management Committee and/or Trustees of the [named sports club].

Reasons for decision

Section 40 – Personal information

17. The Council has relied on section 40(2) of the FOIA to withhold information relevant to the complainant's request.
18. Section 40(2) provides an exemption from disclosure, for information which is the personal data of any third party and where disclosure would breach any of the data protection principles contained in the Data Protection Act 1998 ("the DPA") or section 10 of that Act.
19. In order to rely on the exemption provided by section 40, the information being sought must constitute personal data as defined by the DPA. The DPA defines personal data 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 or, 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 intention of the data controller or any other person in respect to the individual.'

20. The information sought by the complainant consists of the personal names and addresses and other contact details of individuals associated with [a named football club at a named address]. The Commissioner has no difficulty in determining that this information constitutes the personal data of living individuals.
21. The Commissioner must now consider whether disclosure of the requested information would breach any of the data protection principles contained in Schedule 1 of the DPA. He considers that the first data protection principle is the one most relevant in this case.

The first data protection principle

22. The first data protection principle has two components:
 1. Personal data must be processed fairly and lawfully, and
 2. Personal data shall not be processed unless one of the conditions in Schedule 2 of the DPA is met.
23. The Council has informed the Commissioner that the football club referred to by the complainant is run by volunteers and it asserts that these persons would have no expectation that their contact details would be disclosed to the public. The information sought by the complainant relates to the private lives of the individuals concerned. These facts being the case, the Council satisfied itself that disclosure of their names and contact details would be unfair to the individuals concerned and would contravene the first data protection principle.
24. The Commissioner shares the Council's conclusion about fairness. However for the avoidance of doubt he has also considered whether the any of the conditions for processing in Schedule 2 of the Data Protection Act can be met.
25. The relevant condition in this case is condition 6. This states –

"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."
26. For the purpose of this case, the key word in condition 6 is 'necessary'.

27. Disclosure of information under the Freedom of Information Act has the effect of putting information into the public domain and it is not solely a disclosure to the complainant so that he can satisfy his purpose.
28. If the information sought by the complainant was to be disclosed to the World, it would be 'bald', lacking any specific meaning or context and consequently the Commissioner can adduce no necessity for such a disclosure where this is not required by law. Furthermore, such a disclosure could only add to the unfairness to the individuals concerned.
29. The Commissioner's decision is that the Council is entitled to rely on the exemption to disclosure provided by section 40(2) of the FOIA.
30. Whilst it is clear that the complainant requires the requested information to pursue a legal matter, he has not demonstrated that there are legal proceedings in prospect. Likewise the complainant has not been able to identify the relevant parties to any prospective litigation.
31. The complainant is misguided in his belief that the Council is obliged to provide him with the information he seeks under the provisions of the FOIA by virtue section 35(2) of the Data Protection Act. The Commissioner is obliged to make clear to the complainant that the provisions of section 35 of the DPA are not relevant to his consideration of the section 40(2) exemption in this case.
32. The Commissioner must advise the complainant that section 35(2) is itself subject to a test of necessity: It allows personal data to be disclosed where the disclosure is required by statute, the common law or by the order of a court or tribunal. In these circumstances the legal obligation overrides any objections to disclosure which may be voiced by the individuals concerned.
33. Where the personal data is required for, or in connection with, any legal proceedings – including prospective proceedings, the provisions of section 35(2) become permissive and discretionary; they permit the Council to make the disclosure of personal data, but only after exercising its discretion. In this case the Council has exercised its discretion and has determined that it should not make the disclosure to the complainant.

Right of appeal

34. 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

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

35. 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.
36. 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