

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 May 2015

Public Authority: South Ribble Borough Council
Address: Civic Centre
West Paddock
Leyland
PR25 1DH

Decision (including any steps ordered)

1. The complainant requested information from South Ribble Borough Council (the Council) relating to a complaint about his business. The Council confirmed it held information within the scope of the request. It provided the complainant with some of that information but refused to provide the remainder, citing section 40(2) (personal information) of the FOIA.
2. The Commissioner's decision is that the Council correctly applied section 40(2). He requires no steps to be taken.

Request and response

3. Following a recent complaint made to the Council about his business, on 18 December 2014 the complainant wrote to the Council and requested information in the following terms:

"Kindly provide nature of the complaint giving date and time received plus name and address of complainant"

4. The Council responded on 19 January 2015. It disclosed the nature of the complaint and that the complaint was received from a member of the public. However it refused to provide the remaining requested information, citing the following exemptions as its basis for doing so:
 - section 40 FOIA (personal information); and

- section 41 FOIA (information provided in confidence).
5. The complainant requested an internal review on 29 January 2015, specifying details of the complaint he is interested in, namely:
- (i) *was the complaint verbal or written*
 - (ii) *date and time of complaint*
 - (iii) *if written, exact wording of complaint*
 - (iv) *if verbal exact wording of the complaint, if recorded from the said recording, alternatively from the contemporaneous notes*
 - (v) *how many calls/letters were received from the complainant - please provide dates and time of all communications*
 - (vi) *how many calls/letters were made/sent by the relevant department to the complainant - please provide dates and times of all communications*
6. The Council sent him the outcome of its internal review on 25 February 2015. It revised its position. It released some information, responding as follows:
- i. *the complaint was received verbally*
 - ii. *information withheld*
 - iii. *not applicable*
 - iv. *information not held*
 - v. *One. Further information withheld*
 - vi. *One. Further information withheld*
7. The Council confirmed that it is relying on sections 40 and 41 of FOIA to refuse to disclose the withheld information.

Scope of the case

8. The complainant contacted the Commissioner on 5 March 2015 to complain about the way his request for information had been handled.
9. During the course of the Commissioner's investigation, the Council clarified that it does not hold the requested address information.
10. The Commissioner considers the scope of his investigation to be the Council's application of sections 40 and 41 to the recorded information withheld by the Council.

Reasons for decision

Section 40 personal information

11. Section 40(2) of the FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3) or 40(4) is satisfied.
12. In this case the relevant condition is contained in section 40(3)(a)(i). This applies where the disclosure of the information to any member of the public would contravene any of the principles of the Data Protection Act (DPA).
13. The Commissioner has therefore considered:
 - whether the withheld information constitutes personal data; and if so
 - whether disclosure would breach one of the data protection principles.

Is the information personal data?

14. The definition of personal data is set out in section 1(1) of the Data Protection Act 1998 (DPA). This provides that, for information to be personal data, it must relate to an individual and that individual must be identifiable from that information.
15. Information will relate to a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them, has them as its main focus or impacts on them in any way.
16. The withheld information in this case, a copy of which was provided to the Commissioner during the course of his investigation, records details of the individual who made the complaint together with the date and time of the complaint.
17. The Commissioner is satisfied that, given the nature of the information and the context in which it was created, the withheld information constitutes information that falls within the definition of 'personal data'.
18. In other words, he is satisfied that it relates to a living individual who may be identified from that data and that it constitutes their personal information.
19. He has reached that conclusion on the basis that the focus of the information is the person who made the complaint and that the

information is clearly linked to that individual because it is about their complaint to the Council.

20. Having accepted that the information requested constitutes the personal data of a living individual other than the applicant, the Commissioner must next consider whether disclosure would breach one of the data protection principles.
21. The Commissioner considers the first data protection principle is most relevant in this case.

Would disclosure contravene the first data protection principle?

22. The first data protection principle 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."

23. In the case of a FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be fair, lawful and would meet one of the DPA Schedule 2 conditions (and one of the Schedule 3 conditions if relevant). If disclosure would fail to satisfy any one of these criteria, then the information is exempt from disclosure.

Would disclosure be fair?

24. In considering whether disclosure of personal information is fair the Commissioner takes into account the following factors:
 - the individual's reasonable expectations of what would happen to their information;
 - the consequences of disclosure (if it would cause any unnecessary or unjustified damage or distress to the individual concerned); and
 - the balance between the rights and freedoms of the data subject and the legitimate interests of the public.
25. Under the first principle, the disclosure of the information must be fair to the data subject, but assessing fairness involves balancing their rights and freedoms against the legitimate interest in disclosure to the public.

Reasonable expectations

26. In the Commissioner's view, a key issue to consider in assessing fairness is whether the individual concerned has a reasonable expectation that their information will not be disclosed. These expectations can be shaped by factors such as an individual's general expectation of privacy and also the purpose for which they provided their personal data.
27. In this case, the Council explained to the Commissioner that the information:

"was plainly communicated to SBRC in confidence".
28. The Commissioner recognises that people have an instinctive expectation that a public authority, in its role as a responsible data controller, will not disclose certain information and that they will respect its confidentiality.
29. The Commissioner considers that most people who make complaints to public authorities, including to a Council as in this case, do so with the expectation that such matters would be treated with some degree of confidentiality.
30. In the circumstances of this case, the Commissioner is satisfied that the individual would have had a reasonable expectation that the withheld information, which constitutes their personal data, would not be disclosed to the public at large.

Consequences of disclosure

31. As to the consequences of disclosure upon the data subject, the question – in respect of fairness - is whether disclosure would be likely to result in unwarranted damage or distress to that individual.
32. The Commissioner considers that disclosure in this case would amount to an infringement into the privacy of the individual making the complaint and has the potential to cause damage and distress, particularly as he has found that disclosure of the information would not have been within their reasonable expectations.

The legitimate public interest

33. Assessing fairness also involves balancing the individual's rights and freedoms against the legitimate interest in disclosure to the public. Despite the reasonable expectations of individuals and the fact that damage or distress may result from disclosure, it may still be fair to disclose the requested information if it can be argued that there is a more compelling public interest in its disclosure.

34. The interest in disclosure must be a public interest, not the private interest of the individual requester. The requester's interests are only relevant in so far as they reflect a wider public interest.
35. The Commissioner considers that the public's legitimate interests must be weighed against the prejudices to the rights, freedoms and legitimate interest of the individual concerned. The Commissioner has considered whether there is a legitimate interest in the public (as opposed to the private interests of the complainant) accessing the withheld information.
36. The complainant made submissions in relation to his interest in the information in this case being disclosed. However, while the complainant may have personal reasons for wanting access to the requested information, the Commissioner must consider whether or not it is appropriate for the requested information to be released to the general public.
37. In other words, the Commissioner must consider whether there is a sufficient wider legitimate public interest which would outweigh the rights and freedoms of the individual who contacted the Council to make a complaint.
38. While the complainant's wish to access this information is a matter that the Commissioner can appreciate, in the Commissioner's view it is nonetheless a personal need.
39. The Commissioner accepts that legitimate interests include the general public interest in transparency. He notes that, in this regard, the Council has disclosed some information about the complaint which would generally satisfy any wider public interest. However he has not seen any evidence to indicate that there is a sufficient wider legitimate public interest in this case which would outweigh the rights and freedoms of the data subject and support further disclosure.

Conclusion

40. As disclosure under FOIA is considered to be disclosure to the public at large and not to the individual applicant, it is the legitimate interests of the public in disclosure that must be balanced against the interests of the data subject, including their right to privacy.
41. Taking all of the above into account, the Commissioner is satisfied that it would be unfair to the individual concerned to release the requested information. Disclosure would not be within their reasonable expectation and the loss of privacy could cause unwarranted distress.

42. The Commissioner is therefore satisfied that South Ribble Borough Council was entitled to withhold the information under section 40(2) by way of section 40(3)(a)(i).
43. As the Commissioner has concluded that the disclosure of this information would be unfair, and therefore be in breach of the first principle of the DPA, he has not gone on to consider whether there is a Schedule 2 condition for processing the information in question.

Right of appeal

44. 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

45. 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.
46. 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

Rachael Cragg
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF