

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 July 2015

Public Authority: City and County of Swansea
Address: Civic Centre
Oystermouth Road
Swansea
SA1 3SN

Decision (including any steps ordered)

1. The complainant requested a report on the outcome of a particular investigation into why an officer did not get a parking ticket in May 2014. The City and County of Swansea ('the Council') withheld the information requested under section 40(2) of the FOIA. The Commissioner's decision is that the Council correctly applied section 40(2) to the information it holds relevant to the request. The Commissioner does not require any steps to be taken.

Request and response

2. On 19 February 2015 the complainant wrote to the Council and requested information in the following terms:

"I have also read that you have now completed your investigation as to why [name redacted] did not get a parking ticket outside Swansea Museum in May 2014. As Swansea Council is a public body, what is the best way to get a report on the outcome of that investigation? Would it be via a Freedom of Information request or via the Local Government Ombudsman?"
3. The Council responded on 24 February 2015 and confirmed it held the information requested but considered it exempt under section 40(2) of the FOIA.

4. On 25 February 2015 the complainant requested an internal review of the Council's refusal to provide the information requested.
5. The Council provided the outcome of its internal review on 27 March 2015 and upheld its decision that the information requested was exempt by virtue of section 40(2) of the FOIA.

Scope of the case

6. The complainant contacted the Commissioner on 2 April 2015 to complain about the way his request for information had been handled.
7. The scope of the Commissioner's investigation into this complaint is to determine whether the Council should disclose the information it holds relevant to the request or whether it was correct in relying on section 40(2) of the FOIA.

Reasons for decision

Section 40 – the exemption for personal data

8. Section 40(2) of the FOIA states that information is exempt from disclosure if it constitutes the personal data of a third party and its disclosure under the FOIA would breach any of the data protection principles or section 10 of the Data Protection Act 1998 ('the DPA').
9. The Council considers that the information requested constitutes the personal data of the individual who was the focus of the investigation and that disclosure would breach the first data protection principle.

Is the requested information personal data?

10. In order to rely on the exemption provided by section 40, the information being requested must constitute personal data as defined by section 1 of the DPA. It defines personal information as data which relates to a living individual who can be identified:
 - from that data,
 - or from that data and other information which is in the possession of, or is likely to come into the possession of, the data controller.

11. In considering whether the information requested is "personal data", the Commissioner has taken into account his own guidance on the issue¹. The two main elements of personal data are that the information must "relate to" a living person, and that person must be identifiable. 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 them in any way.
12. The withheld information in this case comprises information relating to an internal investigation into a Council officer who parked on double yellow lines at a particular location and was not issued with a fixed penalty notice. There has been some media attention relating to the incident in question. In addition, a member of the public filmed the incident which includes images of the officer concerned along with other parking wardens and this video has been uploaded to the internet. The withheld information relates directly to the individual who was the subject of the investigation as it represents biographical information about him. The Commissioner is therefore satisfied that the withheld information is the personal data of that individual.
13. The withheld information also includes information which identifies other individuals involved in the investigatory process. In respect of the other individuals named in the report due to their involvement in the investigation, the Commissioner is satisfied that the information clearly identifies them by name and reveals the role they played in the investigatory process. Therefore the withheld information can be said to relate to those individuals and so constitutes their personal data. However even if this was not the case the withheld information, taken as a whole, is the personal data of the individual who was the subject of the investigation.

Would disclosure breach one of the data protection principles?

14. 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. He considers the first data protection principle to be most relevant in this case. The first data protection principle has two components:

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http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Data_Protection/Detailed_specialist_guides/PERSONAL_DATA_FLOWCHART_V1_WITH_PREFACE001.ashx

- personal data shall be processed fairly and lawfully; and
- personal data shall not be processed unless at least one of the conditions in DPA schedule 2 is met.

Would disclosure be fair?

15. In considering whether disclosure of the information requested would comply with the first data protection principle, the Commissioner has first considered whether disclosure would be fair. In assessing fairness, the Commissioner has considered the reasonable expectations of the individual concerned, the nature of those expectations and the consequences of disclosure to the individual. He has then balanced against these the general principles of accountability, transparency as well as any legitimate interests which arise from the specific circumstances of the case.

Reasonable expectations

16. The Council argues that the information relates to the personal and working life of the individual who was the subject of the investigation. It contends that there is a strong expectation of confidence in any disciplinary or personnel related matter. As such, the individual who was the subject of the investigation, and other individuals involved in the investigation would have formed a reasonable expectation that the information would be treated in confidence and would only become known to the limited people directly involved in the internal disciplinary investigation process, and certainly not put in the public domain. This expectation of confidence was also made clear to the individuals concerned at the interview stage.
17. The Council confirmed that it had consulted with the individuals involved in the investigation and all refused consent for the information to be placed in the public domain. Further, the Council is concerned at the effect that the references to the incident that are in the public domain has already had on the individuals concerned.
18. The Council confirmed that the individual who was the subject of the investigation occupies a "middle management" role and is not considered to be a senior officer. The individual has an operational public facing role, which includes contact with members of the public but does not have a high profile public facing role. The officer is responsible for making operational day to day decisions, as are all officers of the Council, but is not responsible for major policy decisions or for expenditure of public funds

19. The Commissioner considers that employees of public authorities should be open to some degree of scrutiny and accountability and should expect that some personal data about them may be released because their jobs are funded by the public purse. However, he considers that certain types of information should generally not be disclosed, even though such information relates to an individual's professional life and not their personal life. One of these types of information is information that relates to disciplinary/personnel matters. His general view is that this type of information should remain private.
20. The Commissioner therefore considers that those involved in internal investigations, whether as the person against whom any allegations are made or as witnesses, would normally have a reasonable expectation prior to participating in the process that the information that they provide will not be disclosed to the public. He is therefore satisfied that those involved in the investigation 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

21. The Commissioner's published guidance explains that in assessing fairness, authorities should consider the likely consequences of disclosure in each particular case. Personal information should not be used in ways that have unjustified adverse effects on the individuals concerned. It is often the case that the detrimental consequences resulting from a disclosure would be obvious. It will also be important to consider the level of distress that disclosure would be likely to have and this will depend on the nature of the information.
22. The Council argues that given the expectations of the individuals referred to above, disclosure would cause damage and/or distress to the individual who was the subject of the investigation.

Balancing the rights and freedoms of the data subjects with the legitimate interest in disclosure

23. Notwithstanding a data subject's reasonable expectations or any damage or distress caused to them by disclosure, depending on the circumstances of the case, it may still be fair to disclose requested information if there is a more compelling public interest in disclosure.
24. The Council confirmed that, as a general principle, it does not comment publicly on private staffing matters. The Council advised that, as a result of publicity surrounding the incident, it provided statements about its policies to the press. It considers that the public interest has been

adequately served by the general statements made in respect of action being taken in regard to staffing matters.

25. The Council considers that, on balance, the harm that would be caused to the individual through disclosure of information relating to a private disciplinary matter "far outweighs the public interest that could exist".
26. The complainant considers that section 40 of the FOIA does not apply as the incident which prompted the internal investigation, including the name of the individual, is already in the public domain. The complainant considers that there is a clear, legitimate interest in releasing the information withheld under section 40(2), to enable the public to understand what actions the Council took to address the matter, particularly as parking is a contentious topic with local residents and in light of the media attention about the incident in question.
27. In considering 'legitimate interests', the Commissioner's view is that such interests can include broad general principles of accountability and transparency for their own sakes as well as case specific interests. The Commissioner considers that there is a legitimate public interest in public authorities being transparent in the way they discharge their duties in order to promote accountability and public confidence.
28. The Commissioner notes that a number of media articles about the incident in question have been published and that footage of the incident has been posted on various internet sites and webpages. In the circumstances of this case, the Commissioner accepts that there is a valid legitimate interest in ensuring that the Council has investigated issues relating to the incident fully. He is obviously not able to provide detailed comments on the nature or outcome of the investigation. However, the Commissioner notes that, from the evidence available to him, it appears that the Council carried out a detailed investigation into the incident and there is therefore nothing to suggest that the relevant issues were not properly investigated.
29. The Commissioner also notes that, whilst the Council has acknowledged that an investigation took place, it has not made any public statements which provide details of the investigation or details of the findings of the investigation.
30. Having considered the nature of the withheld information and the facts of this case as outlined above, the Commissioner does not consider that the legitimate interests of the public in accessing this information are sufficient to outweigh the individuals' right to privacy. The Commissioner considers that the individuals had a strong expectation of privacy in relation to the withheld information and that to release this information would be unfair and likely to cause damage or distress to them.

31. In conclusion, the Commissioner finds that disclosure of the information requested would be unfair and would therefore contravene the first data protection principle. In light of this, it has not been necessary for him to go on to consider whether disclosure of this information is lawful or whether one of the conditions in Schedule 2 of the DPA is met. He has therefore decided that the Council has correctly applied section 40(2) to the withheld information.

Right of appeal

32. 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

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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