

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 October 2015

Public Authority: London Borough of Croydon
Address: Bernard Weatherill House
8 Mint Walk
Croydon
CR0 1EA

Decision (including any steps ordered)

1. The complainant has requested information from the London Borough of Croydon ("the Council") relating to whether an employee at the Council is currently under an internal or external investigation.
2. The Commissioner's decision is that the Council was correct to apply section 40(5)(b)(i) of the FOIA to the request.
3. The Commissioner requires the Council to take no steps.

Request and response

4. On 19 May 2015, the complainant wrote to the Council and requested information in the following terms:
 1. *Is [redacted name] currently under any internal or external investigation?*
 2. *Has [redacted name] ever been under an internal or external investigation?*
 3. *If [redacted name] has been under an internal or external investigation what was such dates?*
 4. *If [redacted name] has been or is under an internal or external investigation what was this for?*
5. The Council responded on 4 June 2015 and applied section 40(2) of the FOIA to the request.

6. Following an internal review the Council maintained its previous decision.

Scope of the case

7. The complainant contacted the Commissioner on 1 July 2015 to complain about the way his request for information had been handled.
8. He disputed the Council's application of section 40(2) to his request.
9. During the Commissioner's investigation the Council revised its position and considered that section 40(5)(b)(i) applied to the request.
10. The Commissioner has had to consider whether the Council was correct to apply section 40(5)(b)(i) to the request.

Reasons for decision

11. Section 1 of the FOIA provides two distinct but related rights of access to information that impose corresponding duties on public authorities. These are:

- the duty to inform the applicant whether or not requested information is held and, if so,
- the duty to communicate that information to the applicant.

12. Section 40(5)(b)(i) provides that:

"The duty to confirm or deny –

(a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection(1), and

(b) does not arise in relation to other information if or to the extent that either –

(i) the giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or...."

13. Therefore, for the Council to be correct in relying on section 40(5)(b)(i) to neither confirm nor deny whether it holds information falling within the scope of the complainant's request the following conditions must be met:
 - Confirming or denying whether information is held would reveal personal data of a third party; and
 - That to confirm or deny whether information is held would contravene one of the data protection principles.
14. Section 1(1) of the Data Protection Act 1998 ("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 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 intentions of the data controller or any other person in respect of the individual'.
15. The Commissioner considers that the way in which the request is worded clearly indicates that the complainant is seeking personal information which can be linked to a named individual. The Commissioner is therefore satisfied that if the Council confirmed the requested information is held, it would constitute disclosure of personal data of a third party.

Would confirming or denying that the requested information is held breach a data protection principle?

16. Any authority must process (i.e. in this case confirm or deny if the information is held) that information in line with the data protection principles of the DPA. The first data protection principle requires that the data is processed fairly and lawfully, and in particular that one of the conditions in schedule 2 of the Act applies.
17. The Commissioner must consider whether confirming or denying whether relevant information is held would breach any of the data protection principles of the Data Protection Act 1998. The relevant principle in this case would be the first data protection principle.
18. The first data protection principle states that:

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.

19. When considering whether confirming or denying if the requested information is held would be fair for the purposes of the first data protection principle the Council would need to consider whether the individual would have any expectation that the Council would confirm or deny if this kind of information were held about them. In this case the question is whether an employee at the Council would have an expectation that the Council would confirm or deny if information was held about an investigation into them in response to an FOIA request.
20. When considering this it is important to note that when a request is received under the FOIA, a public authority must consider the request as if it has been received from any member of the public. It is not able to take into account any private or personal reasons which the requester may have for requesting the information. Nor can he take into account any prior knowledge that the requestor has about the issues that lie behind the request. Further to this, disclosures under the FOIA are intended to be global in nature and so the Council must consider a disclosure to the whole world rather than to a specific requester.
21. It is clear in this case that the individual concerned would have a reasonable expectation that information relating to internal or external investigation, if held, would not be disclose to the world in response to an information request.
22. The Commissioner has also considered the public's legitimate interests in the knowing if the requested information is held against any prejudice to the rights, freedoms and legitimate interests of the data subject concerned. He has considered whether there is a legitimate interest in confirming whether the requested information is held. He has determined that there is no legitimate interest in confirming to the public whether the requested information is held.
23. Due to the matters considered above and in all of the circumstances of this case the Commissioner is satisfied that it would be unfair to confirm or deny whether the requested information is held. To do so would disclose information about the data subject which would represent an unwarranted infringement by the Council on the employee's privacy. The absolute exemption provided by section 40(5)(b)(i) is therefore engaged and the Council is not required to confirm or deny whether it holds the requested information.

Right of appeal

24. 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

25. 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.
26. 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