

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

### **Decision notice**

**Date:** 27 January 2017

**Public Authority:** North Somerset Council  
**Address:** Town Hall  
Walliscote Grove Road  
Weston-super-Mare  
BS23 1UJ

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

---

1. The complainant has requested the identity of attendees at specific Vulnerable Learners' Service Panel meetings. The Commissioner's decision is that North Somerset Council has correctly applied the exemption at section 40(2) of the FOIA. She does not require the public authority to take any steps to ensure compliance with the legislation.

#### **Request and response**

---

2. On 3 August 2016, the complainant wrote to North Somerset Council ('the council') and requested information in the following terms:  
  
"Please identify the attendees (name and position) at each of the Vulnerable Learners' Service Panel meetings held on  
  
8 June 2016, 15 June 2016, 22 June 2016, 29 June 2016, 6 July 2016 and 13 July 2016"
3. The council responded on 5 August 2016 and provided the job titles of attendees but not the names.
4. On the same day the complainant requested an internal review. He stated that he is not aware of any grounds under the FOIA for the council to withhold the names of the people that attended the meetings.
5. The council provided an internal review on 26 August 2016. It apologised for not providing the reason for withholding the names and

explained that the names are withheld under the exemption for personal data at section 40(2) of the FOIA.

## **Background**

---

6. At the Commissioner's request, the council provided a description of the purpose and outcome of the Vulnerable Learners' Panel Meetings. It said that the Vulnerable Learners' Service ('VLS') takes all decisions in relation to integrated support for children and young people with special educational needs and that decisions are taken through the following three panels:
  - SEND Panel (Special Education Needs and Disability Panel). This was formerly known as the Vulnerable Learners' Panel and it is still occasionally referred to by this name.
  - Out of Schools Panel.
  - Solutions Panel. This panel handles cases for which there are complex family circumstances.
7. The council explained that the purpose of the SEND panel is to consider the specific circumstances relating to individual service users and to take decisions to improve the outcomes for those children and young people.

## **Scope of the case**

---

8. The complainant contacted the Commissioner on 28 August 2016 to complain about the way his request for information had been handled.
9. The Commissioner has considered the application of the exemption for personal data at section 40(2) of the FOIA.

## **Reasons for decision**

---

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

10. 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').
11. In order to rely on the exemption provided by section 40(2), the requested information must therefore constitute personal data as

defined by the DPA. Section 1 of the DPA defines personal data as follows:

“personal data” means 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.”

12. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, she must establish whether disclosure of that data would breach any of the data protection principles under the DPA.

### **Is the withheld information personal data?**

13. As explained above, the first consideration is whether the withheld information is personal data. The Commissioner is satisfied that the requested names of attendees are personal data.

### **Does the disclosure of the information contravene any of the data protection principles?**

14. The council considers that the disclosure of the information would contravene the first data protection principle.

15. 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.”

16. In deciding whether disclosure of this information would be unfair, the Commissioner has taken into account the nature of the information, the reasonable expectations of the data subjects, the consequences of disclosure on those data subjects and balanced the rights and freedoms of the data subjects with the legitimate interests in disclosure.

### **Nature of the information and reasonable expectations**

17. The information in this case relates to attendance at specific council meetings.
18. In the Commissioner's guidance on 'Requests for personal data about public authority employees'<sup>1</sup>, it is stated that information about an employee's actions or decisions in carrying out their job is still personal data about that employee, but given the need for accountability and transparency about public authorities, there must be some expectation of disclosure.
19. It also states that it is reasonable to expect that a public authority would disclose more information relating to senior employees than more junior ones. Senior employees should expect their posts to carry a greater level of accountability, since they are likely to be responsible for major policy decisions and the expenditure of public funds. The Commissioner also considers that it may also be fair to release more information about employees who are not senior managers but who have public facing roles and represent their authority to the outside world, as a spokesperson or at meetings with other bodies.
20. In this case, the officers in question occupy a range of posts. The council said that it accepts that the majority of officers named in the meeting minutes are managers or have "team leader" or "senior" in their job titles and that these officers have a reduced level of expectation relating to the public disclosure of their personal information, particularly when this data relates to the officers in their professional role. The council also explained that the officers involves hold public facing roles in that as part of their responsibilities they regularly communicate and meet with service users and their families or carers.
21. The Commissioner considers that it would be reasonable for more junior officers to have a greater expectation of privacy and that their names would not be disclosed to the public at large but that more senior officers would have a greater expectation that their personal data would be disclosed.

---

<sup>1</sup> [https://ico.org.uk/media/for-organisations/documents/1187/section\\_40\\_requests\\_for\\_personal\\_data\\_about\\_employees.pdf](https://ico.org.uk/media/for-organisations/documents/1187/section_40_requests_for_personal_data_about_employees.pdf)

### **Consequences of disclosure**

22. In order to assess the impact of the consequence of disclosure on whether disclosure would be fair, it is necessary to consider whether disclosure of the information would cause unwarranted damage or distress to the data subjects.
23. In its response to the Commissioner's enquiries, the council explained that when handling the original request the service involved failed to highlight their concerns over the consequences of disclosure on the officers involved and that the internal review process did not seek these views from the service manager. However, the service manager's concern is that officers in the service have experienced threatening and abusive behaviour from a member of the public arising from VLS panel meetings, which warranted intervention from the Director of Children's Services, and that the disclosure of officers' names to the public will prompt further such cases.
24. The council explained that whilst the member of the public to whom the service manager refers is not the complainant in this case, any disclosure of information is made to the public at large and there is a reasonable expectation that the information will come to the attention of the member of the public referred to.
25. Taking the above into account, the Commissioner's view is that disclosure of the withheld information could cause harm or distress to the officers by exposing them to abusive behaviour which could impact on their emotional well-being.

### **Balancing the rights and freedoms of the data subjects with the legitimate interests in disclosure**

26. The Commissioner accepts that in considering 'legitimate interests', such interests can include broad general principles of accountability and transparency for its own sake along with specific interests which in this case is the legitimate interest in knowing which officers attended specific meetings.
27. The complainant has said that the council routinely publishes minutes of meetings on its website that include all attendees and that it is important for transparency that the senior individuals are named.
28. The council acknowledges that minutes of panel meetings are kept by the service but maintains that it has never published the minutes of SEND panel meetings. It pointed out to the Commissioner that the SEND Panel guidance notes state that:

“There should be no public disclosure of a decision made at the panel other than through the SEN Officer or nominated practitioner unless agreed otherwise at the Panel.”

29. The council said that in this case the seniority of the officers involved has been established through the disclosure of their job titles. The Commissioner considers that this goes some way towards meeting the legitimate public interest in this case.
30. The council also said that it is reasonable to assume that any request made for information over the narrow period of time defined in the original request relates to decisions which were made at those SEND panels and it therefore follows that the legitimate interest in disclosure is based solely on the requester's private interests.

### **Conclusion on the analysis of fairness**

31. Taking all of the above into account, the Commissioner concludes that it would be unfair to the individual officers to release the requested information. Whilst disclosure may have been within the officers' reasonable expectations, it is clear that the loss of privacy could cause unwarranted harm or distress by exposing officers to abusive behaviour. She acknowledges that there is a legitimate interest in knowing which officers attended specific meetings, but does not consider that this outweighs the officers' rights to privacy, and deems the publication of the officers job titles as going some way to satisfying the legitimate interest in this case. She considers that the officers' rights and freedoms are not outweighed by the legitimate public interest in disclosure, and accepts that disclosure of the personal data in this case could cause damage and distress and would be unfair and unnecessary in the circumstances. The Commissioner has therefore decided that the council was entitled to withhold the information under section 40(2), by way of section 40(3)(a)(i).
32. As the Commissioner has decided that the disclosure of this information would be unfair, and therefore in breach of the first principle of the DPA, she has not gone on to consider whether there is a Schedule 2 condition for processing the information in question.

## Right of appeal

---

33. 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)

34. 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.
35. 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 .....**

**Deborah Clark**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**