

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 April 2018

Public Authority: Local Government & Social Care Ombudsman
Address: PO Box 4771
Coventry
CV4 0EH

Decision (including any steps ordered)

1. The complainant has requested information associated with a complaint he had submitted to the Local Government & Social Care Ombudsman (LGO) about Eden District Council. LGO withheld the majority of the information under section 40(1) of the FOIA as it is the complainant's own personal data. It released this information to the complainant under the Data Protection Act, having redacted the personal data of third persons. LGO has withheld some information under section 44(1)(a) of the FOIA (prohibitions on disclosure).
2. The Commissioner's decision is that:
 - LGO is entitled to rely on section 44(1)(a) with respect to the information it has withheld under this exemption.
3. The Commissioner does not require LGO to take any steps.

Request and response

4. On 24 August 2017 the complainant wrote to LGO and requested information in the following terms:

"I hereby make a formal request to you...that under the FOIA Act ALL information relating to this matter (confidential case 16017425) be sent to me at the earliest opportunity... If any of the information

contains third party details then under the DPA this personal identification material should be redacted and the information sent to me. The information should NOT be withheld because YOU deem it irrelevant. If EDC sent information to you they obviously thought it relevant and I have the legal right to see said information. That is the law, even if said information is redacted."

5. On 27 August 2017 the complainant wrote again to LGO with the following associated request:

"The letter dated 23rd May 2017 is explicit. I ask that the information requested under the FOI Act in that letter be provided without any further unacceptable, unprofessional and technically unlawful delay. Following your own protocols, confirmed by you in your letter dated 23rd August 2017, the information requested should have been provided by the 21st June 2017."

6. LGO responded on 14 September 2017. It said that most of the information the complainant has requested is exempt from release under the FOIA under section 40(1) as it is his own personal data. LGO said the complainant was entitled to this information under the Data Protection Act (DPA) and it released this information to him under the DPA. Personal data of third parties had been removed from two of the documents named: [1] 'Assessment Panels, Additional Papers' and [2] 'Code of Conduct Complaint - [Complainant's Name]'.
 7. The complainant subsequently submitted a complaint to the Commissioner regarding LGO's response to him under the DPA, and this has been dealt with separately.
 8. In its response LGO confirmed it holds other information in its case files and said it had decided it would not be appropriate to release this information to the complainant.
 9. LGO provided a review on 2 October 2017. It advised the complainant that it was withholding the remaining information falling within the scope of his request under section 44(1)(a) of the FOIA. LGO advised that the Local Government Act 1974 prohibited it from releasing this information as it had obtained the information in the course of, or for the purposes of an investigation.
 10. LGO re-stated this position in further correspondence to the complainant dated 5 October 2017.

Scope of the case

11. The complainant contacted the Commissioner on 12 October 2017 to complain about the way his request for information had been handled.
12. The Commissioner's FOIA investigation has focussed on whether LGO can withhold some of the information falling within the scope of the complainant's request under section 44(1)(a).

Reasons for decision

Section 44 – prohibitions on disclosure

13. Section 44(1)(a) of the FOIA says that information is exempt information if its disclosure (otherwise than under the FOIA) by the public authority holding it is prohibited by or under any enactment.
14. Section 44 is an absolute exemption; that is, it is not subject to any public interest test.
15. In its submission to the Commissioner LGO has confirmed that section 32(2) of the local Government Act (LGA) 1974 prohibits the disclosure of the information it has withheld. LGO has explained that, under the LGA, the Ombudsman is not permitted to disclose any information obtained in the course of, or for the purposes of, the investigation of a complaint unless the Ombudsman considers it necessary for the investigation (or for other very limited reasons mostly related to legal proceedings).
16. The Commissioner must therefore decide whether the information was obtained by the LGO in the course of, or for the purposes of an investigation and whether any of the exceptions to the prohibition on disclosure apply in this case.

Has the withheld information been obtained by LGO?

17. LGO has explained that the only information it has withheld under the FOIA was obtained from Eden District Council (EDC) and comprises an email exchange - within the 'Assessment Panels, Additional Papers' document - between a councillor and a council officer which does not refer to the complainant by name. LGO has provided the Commissioner with a copy of this email exchange and she notes that it is as LGO describes. The Commissioner is satisfied that the withheld information was obtained by LGO from elsewhere ie from EDC.

Was the information obtained in the course of, or for the purposes of, an investigation?

18. Part III of the LGA concerns investigations by the LGO into complaints about maladministration in local government. In order for section 32(2) of the LGA to apply, the information must have been obtained in relation to such an investigation.
19. The Commissioner is satisfied that the LGO obtained the information in question in the course of, or for the purposes of, such an investigation. This is because it is an investigation the complainant himself requested from the LGO, and it is an investigation into EDC's conduct in relation, broadly, to a planning matter.

Would any of the exceptions from section 32(2) of the LGA apply?

20. Sections 32(2)(a) to (c) of the LGA set out situations where the non-disclosure clause in the LGA would not apply. A disclosure in line with the FOIA is not amongst the situations listed and so none of these exceptions apply here.

Conclusion

21. LGO has told the Commissioner that the complainant submitted his request after the investigation into his complaint was complete and that he also had a review of this complaint decision. The Commissioner accepts, however, that section 32(2) of the LGA does provide a statutory bar to the disclosure of the withheld information. The exemption provided by section 44(1)(a) is, therefore, engaged and LGO is not required to disclose this information.

Right of appeal

22. 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

23. 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.
24. 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

Pamela Clements
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