

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 April 2019

Public Authority: Mid Ulster District Council

Address: Philip.Moffett@midulstercouncil.org

Decision (including any steps ordered)

1. The complainant has requested information from the Council relating to a Planning Committee meeting. The Council applied section 40(2) of the FOIA as a basis for non-disclosure of some of the information ('the withheld information').
2. The Commissioner's decision is that the Council has correctly applied the above exemption to the information not disclosed to the complainant.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 6 July 2017, the complainant wrote to the Council and requested information in the following terms:

"I should be grateful if you would forward a copy of the closed minutes relating to the above application [I/2012/0398/F] from the Planning Committee meeting on Tuesday 4 July 2017 when available as they cannot be accessed via the public website."
5. The Council responded to the complainant on 2 August 2017, stating that it does hold the requested information, providing some of it, however redacting some of the information (the withheld information) under section 40 (2) of FOIA (personal data of third parties).

6. On 18 August 2017, the complainant requested an internal review from the Council. As the internal review request was from an individual known to the Council, who claimed to be acting on behalf of the complainant, the Council did not process that request as it had received no written authority for that individual to act on the complainant's behalf. In order to progress this matter, as there have been substantial delays incurred to date, the Commissioner has used her discretion to make a decision on this case in the absence of an internal review.
7. The complainant contacted the Commissioner on 16 October 2017 to complain about the way the request had been handled.

Scope of the case

9. After the Commissioner had requested the Council's submissions as to its handling of the complainant's request, the Council wrote to the Commissioner on 9 July 2018 with said submissions.
10. The Commissioner has considered the Council's handling of the complainant's request and in particular its application of section 40(2) of the FOIA to the withheld information.

Reasons for decision

Section 40(2) of FOIA – personal information of third parties

11. Section 40(2) of FOIA states that information is exempt from disclosure if it constitutes personal data and either the first or the second condition in section 40(3) is satisfied. The first condition in section 40(3) states that the disclosure of personal data would (i) contravene any of the data protection principles, or (ii) section 10 of the Data Protection Act 1998 ("DPA"). In this case the Council has explained that it considers that disclosing the withheld information to the complainant would be unfair and would breach the first data protection principle. Therefore, this satisfies the first condition in section 40(3) of FOIA. The DPA 1998 has since been superseded by the General Data Protection Regulation ('GDPR') and the Data Protection Act 2018, however the Commissioner has considered the Council's handling of the complainant's request at the actual time of the request, which was before the GDPR and Data Protection Act 2018 were in force.

12. 'Personal data' is defined under section 1(1) of the DPA 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 the data controller or is likely to come into possession of the data controller.
13. The Commissioner considers that the information withheld under section 40(2) is personal data, as it consists of information relating to people who attended or were discussed at the specified Planning Committee meeting. These are living individuals and could be identified from the information.

Would disclosure of the withheld information be unfair?

14. The Commissioner has considered whether the disclosure of this information would be fair. In considering whether disclosure of personal information is fair the Commissioner takes into account the following factors:
 - the individuals' 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(s) and the legitimate interests of the public.

Reasonable expectations of the data subject

15. The Council explained that the withheld information contains sensitive personal information (to do with their health) relating to living individuals. It considers that those individuals would not expect that sensitive personal information, which they had provided voluntarily, to be disclosed into the public domain.

Would disclosure cause damage and distress to the data subjects?

16. The Council has informed the Commissioner that it does not have the consent of the data subjects to disclose their personal and sensitive personal information.

17. Having viewed the withheld information the Commissioner considers that, due to the reasonable expectations of the data subjects in this situation, disclosure of the withheld information and the likelihood of identification of individuals from this would constitute an intrusion into their privacy, which would be likely to cause them some degree of distress, given the nature of the information. The Commissioner has gone on to consider whether this intrusion would be unwarranted, or whether there is any legitimate interest in disclosure of the data subjects' personal information.

Balancing the rights and freedoms of the individuals with the legitimate interests in disclosure

18. In cases where complying with an information request would involve disclosing personal data, the Commissioner will always be mindful of the importance of protecting the privacy of individuals. Therefore, in order to find in favour of disclosure, it would need to be shown that there is a compelling interest in disclosure which would make it fair to do so.
19. The Commissioner has considered whether there is any wider legitimate interest in the disclosure of the information in question. Clearly disclosure is of interest to the complainant, however the Commissioner cannot see any wider legitimate interest which would outweigh the rights and freedoms of the individuals.
20. The Commissioner, having considered all aspects of the complainant's request and the Council's response, concludes that it would be unfair to disclose the withheld information and that no legitimate interest exists in favour of disclosure which would outweigh the rights and freedoms of the data subjects involved.

Right of appeal

21. 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: 0116 249 4253

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

22. 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.
23. 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

Deirdre Collins
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF