

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 30 July 2007

Public Authority: Coventry City Council
Address: Council House
Earl Street
Coventry
West Midlands
CV1 5RR

Summary

The complainant requested information relating to a complaint made about her whilst performing her duties as a councillor. The public authority released some of the information but refused to release the rest on the basis that it was exempt under sections 31 and 40 of the Freedom of Information Act 2000 (the "Act"). Having considered the relevant provisions of the Act and the submissions received from both parties, the Commissioner is satisfied that the public authority has validly withheld the requested information under section 40(1) of the Act and the Commissioner will now separately assess whether the complainant is entitled to the information under the provisions of the Data Protection Act 1998 .

The Commissioner's Role

1. The Commissioner's role is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. The complainant has advised that on 29 June 2005, she requested information from Coventry City Council (the "Council") in accordance with section 1 of the Act. The information requested was:

All letters and witness statements taken during the investigation into the complaint by another (name supplied) upon myself which has now been concluded.

3. In its letter to the complainant dated 21 July 2005, the Council advised the complainant that it had identified the information and that it intended to withhold it under the exemption in the Act at section 31 which concerns investigations conducted by public authorities.
4. The Council explained its reasoning for believing the exemption was engaged and also explained the basis upon which the public interest test had been applied by it.
5. On 21 July 2005, at the complainant's request, the Council provided a more detailed explanation of its refusal and advised that as the complainant had requested an internal review of the decision, its Appeals Panel would convene to reconsider the request.
6. In its letter dated 9 September 2005, the Council confirmed it had reviewed and upheld the original decision.

The Investigation

Scope of the case

7. On 23 September 2005 the Commissioner was contacted by the complainant who complained about the way her request for information had been dealt with by the Council. She did not believe that the information should have been withheld and also queried whether she was entitled to the information under the Data Protection Act 1998 (the "DPA").
8. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.

Chronology

9. On 3 November 2006, the Commissioner contacted the council. The Commissioner asked it to provide a copy of the withheld information and to clarify certain issues that arose as a result of the refusal to provide it. Having examined the information he asked the Council to consider whether use of the exemption at section 40 of the Act would be appropriate.
10. On 12 December 2006, the Council confirmed to the Commissioner that it now considered that the withheld information was the personal data of the statement makers and disclosure would contravene the data protection principles.
11. The Commissioner noted that some of the statement makers consented to the disclosure of their information. On 24 January 2007, the Commissioner asked the Council whether, if consent had been given to the disclosure of the information, the information had been disclosed to the complainant.

12. The Council provided an initial response to the Commissioner on 5 February 2007 providing some further clarification as to the nature of the information and the individuals to whom it related.
13. On 5 February 2007, the Commissioner again contacted the Council. In this correspondence, he asked for details as to whether information from specific named individuals who had consented to its disclosure had been released to the complainant.
14. In a response dated 26 February 2007, the Council confirmed that this information had not been disclosed to the complainant.
15. On 13 March 2007, the Commissioner asked the Council to explain its decision not to disclose the information to the complainant despite obtaining consent from the individuals in question.
16. In the circumstances, the Council agreed to disclose the information to the complainant where consent had been provided. This occurred on 4 April 2007, though the Commissioner notes that one of the disclosed statements ("the disclosed statement") had been redacted.
17. On 20 April 2007, the Commissioner contacted the Council for clarification as to which data protection principle would be breached by disclosure of the information. In an email of the same day, the Council responded stating that the first data protection principle would be breached through its disclosure.

Analysis

Exemption

Section 40(1)

18. Although the public authority has not referred to this exemption the Commissioner has considered whether section 40(1) of the Act applies to the information in question.
19. Under section 40(1), requested information that constitutes the personal data of the applicant, as defined in the DPA, is exempt from disclosure under the Act. This exemption is absolute and therefore requires no public interest test to be conducted. It is important to note that the correct access regime for information of this type is the DPA.
20. After careful consideration of the withheld information in this case the Commissioner is satisfied that it forms part of the personal data of the complainant held by the public authority, and that the complainant is entitled to request this information under section 7 of the DPA. In reaching this view the Commissioner has taken into account the nature of the statements. These focus on the alleged actions of the complainant. The Commissioner has formed the

view that in the circumstances of this case the contents of the statements are inextricably linked to the statement makers and the complainant and, therefore, form part of the personal data of the complainant.

21. In view of the above, the Commissioner considers that disclosure of this information is exempt under section 40(1) of the Act.

Sections 40(2) and 31

22. In view of the decision that the exemption under section 40(1) of the Act applies to the requested information, the Commissioner has not gone on to consider whether the exemptions at section 40(2) and 31 of the Act apply.

The Decision

23. The Commissioner's decision is that the public authority has dealt with the request for information in accordance with the Act, in that it correctly withheld the requested information.

Steps Required

24. The complainant having received some of the information requested and the Commissioner being satisfied that the withheld information is exempt, the Commissioner requires no steps to be taken.

Other Matters

Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:

Section 7 of the DPA gives an individual the right to request copies of personal data held about them – this is referred to as the right of Subject Access. Therefore, the Commissioner will go on to make an assessment under section 42 of the DPA as to whether the information in question in this case should be disclosed to the complainant under this access right. However, this assessment will be dealt with separately and will not form part of this Decision Notice, as the Commissioner does not believe it would be appropriate to record an assessment under section 42 of the DPA within a Decision Notice under section 50 of the Act.

The Commissioner notes that this request should have been dealt with as a subject access request, under section 7 of the DPA from the outset, and he would encourage public authorities to consider requests under the correct access regime from the first instance.

Right of Appeal

25. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 30th day of July 2007

Signed

**Steve Wood
Assistant Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Section 40(1) provides that –

“Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.”

Section 40(2) provides that:

“(2) Any information to which a request for information relates is also exempt information if-

- (a) it constitutes personal data which do not fall within subsection (1), and
- (b) either the first or second condition below is satisfied.

(3) The first condition is-

(a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of “data” in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-

- (i) any of the data protection principles, or
- (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and

(b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.”

The first data protection principle provides:

1. 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.

Section 31 provides that –

“(1) Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice-

- (a) the prevention or detection of crime,
- (b) the apprehension or prosecution of offenders,
- (c) the administration of justice,
- (d) the assessment or collection of any tax or duty or of any imposition of a similar nature,
- (e) the operation of the immigration controls,
- (f) the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained,

- (g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2),
- (h) any civil proceedings which are brought by or on behalf of a public authority and arise out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment, or
- (i) any inquiry held under the Fatal Accidents and Sudden Deaths Inquiries (Scotland) Act 1976 to the extent that the inquiry arises out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment.

(2) The purposes referred to in subsection (1)(g) to (i) are-

- (a) the purpose of ascertaining whether any person has failed to comply with the law,
- (b) the purpose of ascertaining whether any person is responsible for any conduct which is improper,
- (c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise,
- (d) the purpose of ascertaining a person's fitness or competence in relation to the management of bodies corporate or in relation to any profession or other activity which he is, or seeks to become, authorised to carry on,
- (e) the purpose of ascertaining the cause of an accident,
- (f) the purpose of protecting charities against misconduct or mismanagement (whether by trustees or other persons) in their administration,
- (g) the purpose of protecting the property of charities from loss or misapplication,
- (h) the purpose of recovering the property of charities,
- (i) the purpose of securing the health, safety and welfare of persons at work, and
- (j) the purpose of protecting persons other than persons at work against risk to health or safety arising out of or in connection with the actions of persons at work."