

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 28 September 2009

Public Authority: Manchester City Council
Address: Town Hall
Albert Square
Manchester
M60 2LA

Summary

The complainant requested details of benefit payments made to a named individual. The Council refused to confirm or deny whether it held information falling within the scope of the request and cited the exemption under section 40(5)(b)(i) of the Act. The Commissioner finds that confirming or denying whether the requested information is held would disclose personal data and would breach the first data protection principle. Therefore the Commissioner is satisfied that the Council correctly applied section 40(5)(b)(i) of the Act and no further steps are required.

The Commissioner's Role

1. The Commissioner's duty 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. On 6 August 2008 the complainant requested the following information from Manchester City Council (the 'Council'):
 - "1. Following the exposure by the MENs [Manchester Evening News] on 6 August 2006 of the [named individual], when were payments by this City Council stopped?
 2. What were the total sums paid to him during the 3 and a half years?

3. What measures has the City Treasurer taken to retrieve all the monies paid to him, and on his behalf?
4. Has the City Council been successful in this endeavour?"
3. The Council responded on 16 September 2008 and refused to confirm or deny whether it held the requested information because to do so would contravene the data protection principles. The Council cited the exemption under section 40(5)(b)(i) of the Act.
4. The complainant requested an internal review on 1 October 2008 and the Council responded with the outcome of this review on 13 November 2008. The refusal of the request was upheld.

The Investigation

Scope of the case

5. On 9 December 2008 the complainant contacted the Commissioner to complain about the Council's decision to withhold the requested information.

Chronology

6. The Commissioner established that the newspaper article referred to in the request stated that that the named individual had been in receipt of benefit payments.
7. Having reviewed the nature of the request and the correspondence supplied by the complainant, the Commissioner decided that it was not necessary to contact the Council for further information or arguments in support of its decision to withhold the requested information.

Analysis

Procedural Matters

8. In its refusal notice and internal review response the Council did not adequately explain why the exemption provided by section 40(5)(b)(i) was engaged. Although it stated that confirming or denying whether it holds the requested information would breach the data protection principles, it did not explain why this would be a disclosure of personal data or specify which data protection principle this disclosure would breach. Therefore, the Council did not comply with the requirement of section 17(1)(c).
9. In failing to respond to the request within twenty working days following the date of receipt, the Council breached section 10(1) of the Act. It therefore also

breached section 17(1) of the Act because the refusal notice was not provided within the statutory period.

Exemption

Section 40(5)(b)(i)

10. Section 40(5)(b)(i) provides that a public authority is not obliged to confirm or deny whether requested information is held if to do so would:
 - constitute a disclosure of personal data; and
 - this disclosure would breach any of the data protection principles or section 10 of the Data Protection Act 1998.
11. The Commissioner's analysis of whether the above criteria would be fulfilled follows.

Would confirming or denying whether information is held reveal personal data of the data subject?

12. The complainant has requested information relating to the possibility of benefit payments being made to a named individual by the Council.
13. The Commissioner considers that confirming or denying whether the information is held would constitute a disclosure of personal data. Confirming or denying would inevitably disclose whether or not an individual has received benefit payments from the Council. As this information clearly relates to an identifiable individual, the Commissioner accepts that this information would constitute personal data.

Would disclosure of this personal data be unfair and in breach of the first data protection principle?

14. The first data protection principle states that:

“Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless at least one of the conditions in Schedule 2 is met...”
15. When assessing whether it would be fair to process personal data, it is important to consider the data subject's expectation of disclosure. The Commissioner would consider it reasonable that a member of the public would have an expectation that information revealing whether or not they receive benefits would not be disclosed widely under the Act.
16. The Commissioner makes a clear distinction when issuing decisions about requests for information relating to professional matters and information relating to an individual outside their professional capacity. The Commissioner's policy has been that he considers it more likely that disclosure of personal data would be unfair where the information relates to an individual's private matters than if it relates to their professional capacity. In this case, the information relates to an

- individual in a non-professional capacity and their interests are the first consideration when determining whether disclosure would be fair.
17. Disclosing whether or not an individual is in receipt of benefits would reveal information relating to their personal situation and, specifically, whether they have received financial assistance from the Council.
 18. The fact that an individual may or may not receive benefits would also disclose information about that individual's entitlement, or otherwise, to benefits. An individual's entitlement to receive benefit payments is determined by the Council with reference to their personal circumstances. Although specific reasons for an individual's entitlement or non-entitlement to benefits would not be specified by the Council confirming or denying whether it holds the requested information, the fact that they may or may not be entitled to benefits would, in itself, be an unfair disclosure of personal data unless there is an overriding reason that nevertheless justifies disclosure of this fact to the public. The Commissioner does not consider that any such reason exists in this case.
 19. The Commissioner's conclusion is that confirming or denying whether the requested information is held would constitute an unfair disclosure of personal data. Therefore, the exemption from the duty to confirm or deny provided by section 40(5)(b)(i) is engaged.
 20. In making this decision the Commissioner has first concluded that confirming or denying that the requested information is held would constitute a disclosure of personal data as it is clear that it would disclose information which is linked to identifiable individuals. Secondly, the Commissioner concludes that the disclosure of this personal data would be unfair and would therefore be in breach of the first data protection principle. The Commissioner has taken into account the nature of the requested information, the fact that disclosure would reveal information relating to an individual's personal and private circumstances about which they would have an expectation of non-disclosure, and that there is no overriding reason justifying disclosure.

The Decision

21. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act in that the exemption from the duty to confirm or deny provided by section 40(5)(b)(i) is engaged.
22. However, the Commissioner has also decided that the Council failed to comply with the procedural requirements of section 17(1), section 17(1)(c) and section 10(1), as covered above at paragraphs 8 and 9.

Steps Required

23. The Commissioner requires no steps to be taken.

Right of Appeal

24. 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@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

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.

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 28th day of September 2009

Signed

**David Smith
Deputy Commissioner**

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

Legal Annex

Freedom of Information Act 2000

Section 17

Section 17(1) provides that -

“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.”

Section 40

Section 40(5) 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) he 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
 - (ii) by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed).”

Data Protection Act 1998

Section 1(1) provides that –

“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.”

The first data protection principle provides that –

“Personal data shall be processed fairly and lawfully...”