

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 26 May 2011

Public Authority: Isle of Anglesey County Council
Address: Council Offices
Llangefni
Anglesey
LL77 7TW

Summary

The complainant requested information that would identify a third party who passed information about her to the Council's Social Services Department. The Council stated that the information requested was the personal data of the third party and that it was exempt from disclosure. The Commissioner has considered this matter and concluded that the Council was correct to withhold the requested information. The Commissioner identified some procedural breaches of the Act but requires no steps to be taken.

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 16 January 2010, the complainant wrote to the Council and asked for disclosure of the name of a third party whom, according to the complainant had made "a completely untrue allegation" about her. The complainant also asked for the name of the business owned by that third party.
3. On 21 January 2010, the Council refused to disclose the requested information and said that the information was exempt under section 40(2) of the Act.

4. Following correspondence between the Commissioner and the complainant, the Commissioner wrote to the Council on 16 September 2010 and asked it to conduct an internal review of its decision to refuse the request.
5. The Council wrote to the complainant on 11 October 2010 with the findings of its internal review. The Council maintained its decision that it had disclosed under the Data Protection Act 1998 (the "DPA"), all of the complainant's personal data to which she was entitled under section 7 of that Act. The Council maintained that the identity of the third party referred to in paragraph two, above, and the name of the business he or she owned was exempt from disclosure under section 40(2) of the Act.

The Investigation

Scope of the case

6. On 8 September 2010, the complainant contacted the Commissioner to complain about the way her request for information had been handled. The complainant specifically asked the Commissioner to consider the Council's refusal to disclose the name of the third party and the name of the business he or she owned.
7. The Commissioner has considered whether the Commissioner correctly withheld the requested information.

Chronology

8. As set out in paragraph six, above, the complainant contacted the Commissioner regarding this matter on 8 September 2010. It was clear that in its refusal notice the Council had not provided details of its internal review procedure or the complainant's right to make a complaint to the Commissioner. The Commissioner therefore wrote to the Council on 16 September 2010 and asked it to undertake an internal review. He wrote to the complainant on the same day and informed her that he was unable to take any further action until the Council had completed its review.
9. On 11 February 2011, the complainant contacted the Commissioner to express her dissatisfaction with the outcome of the Council's internal review and the Commissioner re-opened his case. The Commissioner wrote to the complainant and the Council on 17 February 2011 to advise them that the complainant had been re-opened.
10. The Council provided a copy of the withheld information on 11 March 2011 and stated in its covering letter that it considered the information

to have been provided in confidence and section 41 of the Act to therefore be engaged as well.

Analysis

Exemptions

11. Section 40(2) of the Act states that information is exempt from disclosure if it constitutes the personal data of a third party and its disclosure under the Act would breach any of the data protection principles.

Is the requested information personal data?

12. Personal data is defined at section 1(1) of the DPA as:

“personal data means data which relate to a living individual who can be identified-

(a) from those data,

(b) from those data and other information which is in the possession of, or 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.”

13. When considering whether the information is personal data, the Commissioner had regard to his own published guidance, '*Determining what is personal data*'.¹
14. Taking into account his guidance on this matter, there are two questions that need to be considered when deciding whether disclosure of information into the public domain would constitute the disclosure of personal data:
 - (i) *“Can a living individual be identified from the data, or, from the data and other information in the possession of, or likely to come into the possession of, the members of the public?”*
 - (ii) *“Does the data ‘relate to’ the identifiable living individual, whether in personal or family life, business or profession?”*

¹http://www.ico.gov.uk/upload/documents/library/data_protection/detailed_specialist_guides/what_is_data_for_the_purposes_of_the_dpa.pdf

15. The requested information in this case is held in the social care records of a deceased person and is in the form of a file note recorded by a Social Worker or other employee of the Council. The file note records information relating to the complainant passed to the Council by the third party. The Council refused to disclose information that would identify the third party but it has disclosed the rest of the file note to the complainant under the provisions of section 7 of the DPA. The Commissioner is satisfied that the withheld information relates to a living individual who could be identified from it and that the information is the personal data of the third party.
16. The Commissioner has therefore gone onto to consider whether disclosure of the withheld information would breach any of the data protection principles.

Would disclosure contravene any of the data protection principles?

17. In its refusal notice of 21 January 2009, the Council stated that disclosure would breach the first data protection principle. The Commissioner agrees that the first principle is relevant in this case.
18. The first data protection principle requires that the processing of personal data be fair and lawful and,
 - at least one of the conditions in schedule 2 of the DPA is met, and
 - in the case of sensitive personal data, at least one of the conditions in schedule 3 of the DPA is met.
19. This means that in order to comply with the first data protection principle when dealing with personal data both requirements (fair and lawful processing and a schedule 2 condition) must be satisfied. If even one requirement cannot be satisfied, processing will not be in accordance with the first data principle.

Would disclosure be fair?

20. The Commissioner's approach to assessing whether disclosure under the Act would comply with the first data protection principle is to firstly assess whether disclosure would be fair.
21. In considering this issue, the Commissioner has taken the following factors into account:
 - The reasonable expectations of the data subjects.
 - Consequences of disclosure.

- The legitimate interests of the public.

The reasonable expectations of the data subjects

22. A data subject's expectations are likely in part to be shaped by generally accepted principles of everyday interaction and social norms, for example privacy. It is accepted that every individual has the right to some degree of privacy and this right is enshrined in Article 8 of the European Convention on Human Rights.
23. The Commissioner considers the right to privacy and the circumstances in which the information was imparted to be of particular relevance to this case. The information imparted by the third party relates to a sensitive issue regarding the estate of a now deceased person. The information provided by the third party implies that they have or considered themselves to have a certain level of knowledge of that issue and to be privy to information not widely available. The Commissioner makes no comment on the accuracy of the statement made by the third party, as it is not his role to do so. However, the Commissioner considers that, given the nature of the statement made by the third party, they would have had an expectation that their identity would not be disclosed into the public domain. The Commissioner considers that the third party would or should have had an expectation that the nature of the statement made to the Council could be relayed to the complainant at some point but that is not the issue to be considered by the Commissioner. He must consider whether it would be fair to disclose into the public domain, information that would identify the third party.
24. The fact that this information relates to the private, as opposed to public or professional life, of the third party has further significance. The Commissioner's awareness guidance on section 40² suggests that when considering what information third parties should expect to have disclosed about them, a distinction should be drawn as to whether the information relates to the third party's public or private life. Although the guidance acknowledges that there are no hard and fast rules it states that:

"Information which is about the home or family life of an individual, his or her personal finances, or consists of personal references, is likely to deserve protection. By contrast, information which is about someone acting in an official or work capacity should normally be provided on request unless there is some risk to the individual concerned."

²http://www.ico.gov.uk/~media/documents/library/Freedom_of_Information/Detailed_specalist_guides/PERSONAL_INFORMATION.ashx

25. In this case the statement made by the third party was clearly in a private capacity and not in any public facing role. As such, the Commissioner considers their identity should be afforded more protection than if the statement had been made in a professional capacity.
26. Taking the above factors into account, the Commissioner considers that the third party would have had a reasonable expectation that their identity would not have been disclosed.

The consequences of disclosure

27. The consequences of disclosure in this case are potentially significant both for the third party and the Council's Social Services Department.
28. If the identity of the third party were to be disclosed, the Commissioner considers that he or she could suffer significant distress. For example, the third party could suffer anxiety at the thought of potential harassment. The Commissioner has seen evidence that there is some strong feeling surrounding the matter of the deceased person's estate and he considers it likely that the complainant would be likely to suffer distress and significant upset of his or her name were disclosed. The Commissioner does not suggest that the complainant or other involved parties would undertake such harassment but considers that the potential for such harassment to take place would be likely to have a significant impact on the third party.
29. Disclosure could also have significant wider consequences for the Council's Social Services Department; namely a loss of confidence that the names of individuals who relay sensitive information to the Council would not be disclosed. This could impact on the Council's ability to provide effective social care. For example, the Commissioner considers that all Social Services Department rely to a certain extent on information passed to them by third parties to function effectively; whether to enable them to take effective intervention measures to protect vulnerable children or adults or to assist with investigations. The Commissioner considers that individuals would be less likely to provide information to Social Services Departments if they thought their names could be made public. This would impact on the effectiveness of such departments and could ultimately endanger individuals.
30. Taking into account the factors considered above, the Commissioner considers that the consequences of disclosure would be significant.

The legitimate public interest

31. Notwithstanding the data subjects' reasonable expectations or any damage or distress caused to them by disclosure, it may still be fair to

disclose the requested information if it can be argued that there is a more compelling public interest in disclosure. For example, in the case involving the MP's expenses the former Information Tribunal commented that:

'79. ...in relation to the general principle application of fairness under the first data protection principle, we find:

(..) the interests of data subjects, namely MPs in these appeals, are not necessarily the first and paramount consideration where the personal data being processed relate to their public lives'.

32. In considering 'legitimate interests', such interests can include broad general principles of accountability and transparency for their own sakes, as well as case specific interests. In balancing these legitimate interests with the rights of the data subject, it is also important to consider a proportionate approach, i.e. it may still be possible to meet the legitimate interest by only disclosing some of the requested information rather than viewing the disclosure as an all or nothing matter. However, in this case it is not possible for the Council to disclose any of the withheld information without revealing the identity of the third party.
33. While there may be a general public interest in accountability and transparency – for example, knowing from whom the Council obtains information and how it is used – the Commissioner has not identified any specific public interest in the withheld information being disclosed. The Commissioner acknowledges that the complainant has a personal interest in disclosure of the information but this is not the same as a public interest in disclosure.
34. The Commissioner considers that in this case the general public interest in disclosure for the purposes of furthering accountability and transparency are outweighed by the reasonable expectations of the third party and the consequences of disclosure. The Commissioner has therefore determined that in this case the disclosure of information that would divulge the identity of the third party would be unfair and would breach the first data protection principle. As such, he considers that section 40(2) is engaged and that the Council was correct to withhold the information.
35. As the Commissioner considered that the Council correctly applied section 40(2) of the Act he did not go on to consider whether section 41 was relevant in this case.

Procedural Requirements

36. Section 17(7) of the Act requires that a public authority refusing a request for information must include in its refusal notice details of its internal review procedure and the complaints right to make a complaint to the Commissioner. By failing to provide these details the Council breached section 17(7) of the Act and it has acknowledged this breach in correspondence with the complainant.

The Decision

37. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:
- It correctly applied section 40(2) of the Act to the withheld information.
38. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
- By failing to provide details of its internal review procedure or the right of complaint to the Commissioner, the Council issued an inadequate refusal notice and breached section 17(7) of the Act.

Steps Required

39. The Commissioner requires no steps to be taken.

Right of Appeal

40. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

41. 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.
42. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 26th day of May 2011

Signed

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

Legal Annex

Refusal of Request

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 17(7) provides that –

"A notice under section (1), (3) or (5) must –

- (d) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and
- (e) contain particulars of the right conferred by section 50."

Personal information

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 –

"Any information to which a request for information relates is also exempt information if-

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

Section 40(3) provides that –

"The first condition is-

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