

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 February 2012

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

Decision (including any steps ordered)

1. The complainant has requested an internal audit report produced as a result of a whistle blowing allegation against a residents association.
2. The Commissioner's decision is that Manchester City Council has correctly applied the exemption for personal data and is therefore entitled to withhold the requested information.

Request and response

3. The complainant requested the following information on 12 April 2011:

"I understand that the audit of the books of the [a residents association] has been completed. A FINAL REPORT has been circulated to staff and councillors of the Manchester City Council (MCC). I now request under the FOIA 2000 a copy of the aforementioned FINAL REPORT."
4. Manchester City Council ('the council') responded on 18 May 2011. It stated that a number of exemptions are engaged, including the exemption relating to third party personal information but the main exemption the council are relying on is section 31(1)(g) where a public authority exercises its functions, including for example, in determining whether any person is responsible for any conduct which is improper or, has failed to comply with the law.
5. The council explained that disclosure would discourage other whistle blowers from raising allegations, particularly involving public funds, if

reports in public domain risking whistleblowers identity becoming known. It stated that disclosure would be likely to undermine the trust members of the public and officers are entitled to expect in the confidentiality of the operation of the Council's anti fraud and anti corruption policy which would compromise the council's ability to detect and investigate all incidents or situations where fraud, malpractice or wrong doing is suspected.

6. The council recognised the public interest in openness and transparency in accounting for expenditure and ensuring funds allocated to independent organisations are properly used and accounted for but concluded that this was outweighed by the public interest in ensuring that the council does not discourage individuals from bringing forward allegations or cooperating with investigations for fear that the findings of an investigation, regardless of outcome, will be made public.
7. An internal review was provided on 4 August 2011 upholding the council's initial decision.

Scope of the case

8. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
9. The Commissioner has not considered the exemption at section 31(1)(g) in this decision notice. In correspondence with the council the Commissioner highlighted that for this exemption to apply, the prejudice caused by disclosure must be to the proceedings and inquiries themselves rather than the purpose for which they are brought or held and that a public authority should have the power to formally ascertain compliance with the law or judge whether any person's conduct is improper. The council then conceded that section 31(1)(g) is not engaged in this case and offered further arguments for the application of the personal data exemption at section 40(2).
10. The Commissioner therefore considers whether the council were correct to apply the personal data exemption to the requested information.

Reasons for decision

11. Section 40(2) of the FOIA 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 or section 10 of the Data Protection Act 1998 ('the DPA').

12. In order to rely on the exemption provided by section 40(2), the requested information must therefore constitute personal data as defined by the DPA. Section 1 of the DPA defines personal data as follows:

““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.”
13. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the data protection principles under the DPA. The Commissioner notes in this case that the council argued that disclosure of third party personal data would breach 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 -

 - (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.”
15. As explained above, the first consideration is whether the withheld information is personal data. The report is the outcome of an internal audit investigation into allegations of financial irregularity and fraud due to the actions of the chairman of the association. The Commissioner is satisfied that this is the personal data of the chairman of the association. Furthermore, the Commissioner considers that the information is sensitive personal data, by virtue of section 2(g) of the Data Protection Act 1998, as it consists of information relating to the alleged commission of an offence by the data subject.
16. The council have further submitted that unless the name of the residents association itself is withheld, personal data about specific individuals will not be truly anonymised. The Commissioner agrees with

the council's position as he is aware that the name of the chairman of the association is in the public domain.

17. As the Commissioner is satisfied that the withheld information is personal data, he now needs to consider whether disclosure would breach the first data protection principle, as the council has claimed, i.e. would disclosure be unfair and/or unlawful.
18. In deciding whether disclosure of this information would be unfair, the Commissioner has taken into account the nature of the information, the reasonable expectations of the data subjects, the consequences of disclosure on those data subjects and balanced the rights and freedoms of the data subjects with the legitimate interests in disclosure.

Nature of the information and reasonable expectations

19. The Commissioner recognises that information relating to allegations of financial irregularity and fraud carries a very strong general expectation of privacy due to its sensitive nature and the likelihood that disclosure could cause the data subject significant distress and could also cause permanent damage to their future prospects and general reputation.
20. With the above in mind, the Commissioner considered whether there appeared to him to be any reason why it would be fair to disclose the withheld information in this case.
21. The Commissioner acknowledges that the council was not under a duty to regulate the behaviour and actions of the residents association, being a self governing group of which the council was not a member. However, he recognises that as the council conducted an independent investigation in this case, it would owe a duty of confidence to the data subject in respect of that investigation. The Commissioner believes that disclosure in this case could jeopardise the trust that a residents association may have with the council conducting such an investigation; a trust that allows a free and frank working relationship and rests on the expectation that the council will protect the personal data of those involving in the investigation.
22. The Commissioner is satisfied that the data subject in this case would reasonably expect that information relating to allegations of financial irregularity and fraud would not be made available to the public at large.

Consequences of disclosure

23. The Commissioner is aware that the complainant in this case has been shown the report on a confidential basis and been provided with a confidential summary of the outcome of the investigation. However, the

FOIA is applicant blind and disclosure of information under the legislation constitutes disclosure to the world at large.

24. In order to assess the impact of the consequence of disclosure on whether disclosure would be fair, it is necessary to consider whether disclosure of the information would cause unwarranted damage or distress to the data subject.
25. The council have submitted that it would not be fair to identify the data subject when the investigation found no evidence that could be used to support further action. The Commissioner accepts this point and considers that disclosure of an unproven allegation, as stated earlier, would cause significant distress and could also cause permanent damage to their future prospects and general reputation.

Legitimate interests in disclosure

26. The Commissioner accepts that in considering 'legitimate interests', such interests can include broad general principles of accountability and transparency for its own sake along with specific interests which in this case is the legitimate interest in knowing that an allegation of financial irregularities and fraud has been made and investigated.
27. Whilst the Commissioner acknowledges that the chairman of the residents association is a lay position, he also considers that as the council partially funded the association, lay officers should be open to scrutiny and accountability because they are responsible for the spending of public funds.
28. The complainant has submitted that the fact that the data subject has been investigated for financial irregularity and fraud should be in the public domain so that data subject cannot hold another position with other residents associations which would potentially allow the alleged offences to be committed in the future.
29. The Commissioner is satisfied that there is a legitimate public interest in disclosure in this case.

Conclusion

30. The Commissioner acknowledges that the internal audit report describes the state of the records, the inadequate accounting for expenditure and the fact that the data subject challenged the council's right of access to the residents association's accounting information as a significant concern over the effectiveness of management and control expenditure in the association. However, as the report concluded that there was insufficient evidence to support a case of fraud, the Commissioner does not consider that the legitimate interest of the public knowing that an

allegation of financial irregularity and fraud has been made outweighs the legitimate interests of the privacy of the data subject. The data subject would not expect such sensitive information to be disclosed and disclosure of this type of information is likely to have a detrimental and distressing effect on the data subject.

31. Taking all this into account, the Commissioner concludes that it would be unfair to the data subject concerned to release the requested information as he considers that their right to privacy in relation to allegation of financial irregularity and fraud outweighs the interests of the public in knowing that such allegations have been made. The Commissioner has therefore decided that the council was entitled to withhold the information under section 40(2), by way of section 40(3)(a)(i).
32. As the Commissioner has decided that the disclosure of this information would be unfair, and therefore in breach of the first principle of the DPA, he has not gone on to consider whether there is a Schedule 2 condition for processing the information in question.

Right of appeal

33. 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: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

34. 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.
35. 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

Andrew White
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