

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 August 2013

Public Authority: Wycombe District Council
Address: Queen Victoria Road
High Wycombe
Buckinghamshire
HP11 1BB

Decision (including any steps ordered)

1. The complainant requested emails between officials of Wycombe District Council (the Council) relating to the investigation of a complaint made about him. The Council initially refused the request under the exemptions provided by sections 42(1) (legal professional privilege) and 36(2)(b)(i) and (ii) (inhibition to the free and frank provision of advice and exchange of views) of the FOIA. Following the intervention of the Commissioner the Council agreed that the requested information is the personal data of the complainant and issued a fresh response under section 7 of the Data Protection Act 1998 (DPA).
2. The decision of the Commissioner is that this information is the personal data of the complainant and so is exempt from the FOIA under section 40(1) (personal information of the requester).

Request and response

3. On 5 October 2012, the complainant wrote to the Council and requested information in the following terms:
"I would like to see copies of all emails between [two named Council officials] regarding this case".
4. The Council responded on 19 October 2012. At this stage the Council refused the requests under the exemption provided by section 42 (legal professional privilege) of the FOIA.

5. The complainant responded on the same date and requested an internal review. The Council responded with the outcome of the internal review on 5 December 2012. The refusal under section 42 was upheld and the Council now also cited sections 36(2)(b)(i) and (ii) (inhibition to the free and frank provision of advice and exchange of views).

Scope of the case

6. The complainant contacted the Commissioner on 7 December 2012 to complain about the refusal of his information request. The complainant indicated at this stage that he did not agree with the reasoning given by the Council for withholding this information.
7. The wording of the request refers to "*this case*". This is a reference to an investigation stemming from a complaint made about the complainant. Early in the handling of this case the possibility of the requested information being the personal data of the complainant was raised with the Council and it was asked to consider whether this was the case. If the Council concluded that the information requested was the personal data of the complainant and hence exempt under section 40(1) of the FOIA, it was asked to issue a fresh response to the complainant that addressed his request under section 7 of the Data Protection Act 1998 (DPA).
8. The Council responded to the ICO and indicated that it now agreed that the requested information was the personal data of the complainant. A fresh response was issued to the complainant, dated 2 July 2013. This addressed the request as a subject access request made under section 7 of the DPA. The Council maintained that it would not disclose this personal data and now relied on section 7(3) (personal data of third parties) and Schedule 7(10) (legal professional privilege) of the DPA.
9. Following this fresh response, the complainant confirmed that he wished the ICO to issue a decision notice formalising the conclusion that the information he requested is his own personal data and to reach a conclusion on whether this request had been dealt with in accordance with section 7 of the DPA. The analysis in this notice concerns section 40(1) of the FOIA. The issue of whether the request was dealt with in accordance with section 7 of the DPA is commented on further in the "*Other matters*" section below.

Reasons for decision

Section 40(1)

10. Section 40(1) of the FOIA provides an exemption for information that is the personal data of the individual making the information request. This exemption is absolute, with no requirement to show that disclosure would be likely to result in prejudice or to argue that it would be in the public interest to withhold this information. If the requested information is the personal data of the individual making the request, it is exempt.
11. The definition of personal data is given in section 1(1) of the DPA:

"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".*
12. When describing the background to his information request, the complainant stated that *"this case"* referred to in his information request concerned *"a Standards Case being taken out against me by two former councillors"*. On the basis of this description, the view of the Commissioner was that it was likely that emails concerning this case would relate to and identify the complainant. They would, therefore, be his personal data.
13. As covered above, when this issue was raised with the Council it agreed that this information would be the personal data of the complainant. Whilst the Commissioner has not had sight of the information in question, clearly the Council has. On the basis of the background description from the complainant and the agreement from the Council, the Commissioner concludes that this information is the personal data of the complainant. The exemption provided by section 40(1) is, therefore, engaged and the Council is not required to disclose this information under the FOIA.

Other matters

14. As covered above at paragraph 9, the complainant asked the Commissioner to also consider whether his request was dealt with in accordance with section 7 of the DPA. An assessment has been carried out under section 42 of the DPA and the outcome of this communicated to the complainant separately.
15. The approach of the Commissioner is that where a request is made under the FOIA for information that is the personal data of the requester, the request should automatically be dealt with under section 7 of the DPA without requiring the requester to make a further request specifically citing section 7 of the DPA and without issuing a refusal notice under section 40(1) of the FOIA.
16. The Council should be aware of this and ensure that it adopts this approach in relation in future situations where an individual mistakenly seeks to access their own personal data via the FOIA.

Right of appeal

17. 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

18. 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.
19. 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

Jon Manners
Group Manager

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