

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 03 September 2013

Public Authority: London Borough of Camden

Address: Camden Town Hall
Judd Street
London
WC1H 9JE

Decision (including any steps ordered)

1. The complainant has requested statistical information relating to the number of adoptions to same sex couples. The London Borough of Camden (the council) withheld the requested information under section 40(2) of the FOIA as it considered that the information was personal data and that it would be unfair to release it.
2. The Commissioner's decision is that the council has incorrectly relied on section 40(2) to withhold the requested information
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Disclose the withheld information to the complainant.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 3 January 2013 the complainant requested the following information from the council:

"This request concerns the numbers of adoptions your council has agreed to same sex couples.

I do not wish to unduly take up your time so this request is confined to the period from the earliest date for which your records are readily available up to the end of December 2012. In your reply please provide the following information.

- 1. Please state the time period over which your data applies.*
 - 2. Please state the number of adoptions granted to male same sex couples.*
 - 3. Of these how many of the adopted children were a) male? b) female?*
 - 4. Please state the number of adoptions granted to female same sex couples.*
 - 5. Of these how many of the adopted children were a) male? b) female?"*
6. The council responded stating that it could confirm that 7 children were placed for adoption with same sex couples from April 2010 to present. However, it withheld the remainder of the information under section 40(2) as it considered that the number was so low that to categorise the figures by year or gender would identify the individuals concerned and that adopters would not expect their personal data to be released into the public domain. The council also noted that the information regarding the sexual orientation of the couples is sensitive personal data under the DPA.
 7. The complainant requested an internal review on 5 February 2013. The council provided the outcome of the internal review on 27 February 2013. The internal review found that the original response was correct and continued to withhold the requested information under the exemption at section 40(2) of the FOIA.

Scope of the case

8. The complainant contacted the Commissioner 1 March 2013 to complain about the way his request for information had been handled. He did not agree that the council was correct to withhold the requested information.
9. The Commissioner considers the scope of this investigation to be to consider whether the council was correct to rely on section 40(2) of the FOIA to withhold the requested information.

Reasons for decision

10. Section 40(2) provides that:

"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 the second condition below is satisfied."

11. Section 40(3) provides that –

"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"

Is the information 'personal data'?

12. In order for the exemption to apply the information being requested must constitute personal data as defined by section 1 of the DPA. Section 1 states 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 any other information which is in the possession of, or is likely to come into the possession of the data controller."

13. The information in this case consists of statistics regarding the number and gender of same sex couples who have adopted a child and the gender of each adopted child. As the council has stated in its response to the complainant, the numbers are very small. The Commissioner notes that the statistics do not need to be broken down by year just expressed over the period (2010-2012). The complainant has not disputed the time period proposed.

14. In this case, due to the very small sample, the council has argued that even in statistical form, the information relates to identifiable individuals.

15. The information to be disclosed will not be classed as personal data if it is effectively anonymised and therefore the section 40(2) FOIA exemption will not apply. This approach was confirmed in the High Court judgment *Department of Health, R (on the application of) v Information Commissioner*¹.
16. The Commissioner issued a Data Protection Code of Practice on anonymisation² in 2012 and he has drawn upon it when making his decision in this case. He has applied the test of whether it is reasonably likely that an individual data subject can be identified – from the data and other information. He has considered what information would be available to a motivated intruder and what knowledge may be used to assist with identification. The Commissioner has also taken into account pages 24-25 of the Code, covering prior knowledge and re-identification. In particular he notes that a relevant factor in considering whether identification will take place is whether the “intruder” will learn anything new.
17. The Commissioner accepts the sensitivity of the information and this would lead to the Council being cautious. However, having considered the Council’s arguments he finds that the reasonably likely test is not met. There are a number of variables – the Commissioner accepts that friends, neighbours and other members of the community may know of same sex couples who have children but they may not know that they are adopted. Adoption, involving the Council, may not have been the only way they became responsible for the children. Even though the numbers are small, and accepting that a journalist or others may be motivated to intrude, the Commissioner does not accept that the final piece of information is in the public domain, or is likely to reach the public domain, that would enable the identification to take place from the Council’s statistics. The fact that other professionals or friends may know all the data behind the statistics, and recognise it from the statistics, should not be classed as identification.
18. Whilst not a major factor in guiding his decision the Commissioner does note that very similar information has been disclosed by other Councils, with no evidence that identification has then taken place.

¹ Department of Health, R (on the application of) v Information Commissioner [2011] EWHC 1430 (Admin) (20 April 2011)

² ICO. Anonymisation: managing data protection risk code of practice (2012).
http://www.ico.org.uk/for_organisations/data_protection/topic_guides/anonymisation

19. The Commissioner has therefore concluded that section 40(2) was applied incorrectly by the Council. The Council are therefore required to disclose the information.

Right of appeal

20. 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

21. 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.
22. 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

Steve Wood
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