

Freedom of Information Act 2000 (FOIA)

Decision Notice

Date: 30 September 2013

Public Authority: Department of the Environment

Address: 10-18 Adelaide Street
Belfast
BT2 8GB

Decision (including any steps ordered)

1. The complainant requested information relating to mobile telephones issued to staff by the Department of the Environment. The Department provided some information to the complainant and withheld further information under section 40(2) of the FOIA. The Department also claimed that part 6 of the request was not a valid request under section 8(1)(c) of the FOIA. The Commissioner's decision is that the Department was entitled to rely on section 40(2) in relation to the withheld information. However the Commissioner finds that part 6 of the request was valid and requires the Department to provide a response to it in accordance with the provisions of the FOIA.
2. 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 FOIA and may be dealt with as a contempt of court.

Request and response

3. On 1 July 2012 the complainant requested the following information from the Department:

"1. A copy of your policy document stating all email correspondence is to be deleted after 3 months.

2. A copy of your policy document stating that no notes or minutes are to be kept of group meetings - the purpose of the group meeting and the decision process linked to it.

- 3. A list of all department supplied mobile phones for the Belfast planning office.*
 - 4. Itemised lists of calls for each phone for May 2012 and costs/invoices.*
 - 5. A copy of your mobile phone policy with specifics as to reimbursement of private use etc.*
 - 6. A copy of all emails sent and received from 1 May 2012 to 31 May 2012 inclusive of [two named employees]."*
4. The Department responded to the request on 2 August 2012 in the following terms:
 1. The Department provided explanatory information and a copy of a relevant memorandum.
 2. The Department advised that it did not hold this information.
 3. The Department confirmed that mobile phones had been supplied to 5 staff.
 4. The Department provided the total cost of the 5 mobiles phoned during the time period specified. However the Department refused to provide any further detail, citing the exemption at section 40(2) of the FOIA.
 5. The Department provided this information in full.
 6. The Department refused this part of the request on the grounds that it was not a valid request under section 8(1)(c) of the FOIA.
 5. The complainant requested an internal review on 17 August 2012.
 6. The complainant did not receive a response, and he complained to the Commissioner on 9 November 2012. The Commissioner wrote to the Department on 15 January 2013 and 12 March 2013 to remind it of its obligations under the FOIA.
 7. Following the Commissioner's intervention the Department communicated the outcome of the review on 16 April 2013 in the following terms:
 1. and 5. The Department did not review these parts of the request as it had provided the information to the complainant.
 2. The Department confirmed that it did not hold this information, but directed the complainant to further information on how planning applications are processed.

3. and 4. The Department confirmed that it sought to rely on section 40(2) in respect of the withheld information in relation to these parts of the request.
6. The Department confirmed its view that this part of the request was invalid under section 8(1)(c) as it did not adequately describe the requested information.
8. The Commissioner contacted the complainant on 4 June 2013 to ascertain whether he was now content. However the complainant advised that he had not received the outcome of the internal review from the Department. The Department subsequently re-issued its letter of 16 April 2013.

Scope of the case

9. On 19 June 2013 the complainant confirmed to the Commissioner that he remained dissatisfied with the way his request for information had been handled.
10. The complainant specifically asked the Commissioner to consider the Department's response to parts 3, 4 and 6 of his request, as well as the time taken to conduct the internal review. Therefore the Commissioner's investigation focused on these issues.
11. During the course of the Commissioner's investigation the Department identified an additional mobile phone issued to a member of staff. The Department therefore clarified to the complainant that the total number of phones issued was 6, and provided a revised total cost.

Reasons for decision

Section 40(2)

12. Section 40(2) of the FOIA states that a public authority is not obliged to disclose information that is the personal data of an individual other than the applicant 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 (the DPA).

Would disclosure of the requested information constitute a disclosure of personal data?

13. The Department relied on the exemption at section 40(2) in respect of the information withheld in relation to parts 3 and 4 of the request. The Department was of the view that the names of members of staff issued with mobile phones, as well as any information relating to the use of those mobile phones, was personal data relating to the individuals concerned. The Department further stated that details of any call would also be the personal data of the person receiving the call.
14. The DPA defines personal data as:
"...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 intention of the data controller or any other person in respect of the individual."
15. The Commissioner notes that the complainant asked for details of the mobile phones issued to staff by the Department. The Department provided the total number of phones, but refused to provide any further information. The Commissioner accepts that the individuals concerned could be identified by information relating to the mobile phones in question, especially if combined with other information held by the Department. Therefore the Commissioner is satisfied that the information requested at parts 3 and 4 of the complainant's request is personal data relating to the staff members issued with mobile phones.
16. The Commissioner does not necessarily accept the Department's argument that information relating to a call will be personal data of the person receiving the call. If a call is made to an organisational telephone number (for example, the ICO helpline), as opposed to an individual's work telephone number (for example, a case officer's direct extension), then it is unlikely to be personal data. However, given that the Commissioner has accepted that the information will be personal data of the Departmental staff member, it is not essential for the Commissioner to consider this further.

Would disclosure of the requested information breach any of the data protection principles?

17. The fact that requested information comprises personal data does not itself mean that the information cannot be disclosed. Section 40(2)

states that the information is only exempt if its disclosure would breach any of the data protection principles or section 10 of the DPA.

18. In this case the Department argued that disclosure of the withheld information would breach the first data protection principle.

The first data protection principle

19. The first data protection principle has two main components. They are:

- the requirement to process all personal data fairly and lawfully; and
- the requirement to satisfy at least one DPA schedule 2 condition for the processing of all personal data.

20. The Department argued that disclosure of the withheld information would be unfair and would not satisfy any of the schedule 2 conditions.

Would disclosure of the information be fair?

21. In assessing fairness, the Commissioner has considered the reasonable expectations of the individuals concerned, the nature of those expectations and the consequences of disclosure to the individuals. He has then balanced these against the general principles of accountability, transparency and legitimate public interest in disclosure.

Expectations of the individuals concerned

22. The Commissioner has produced guidance on information relating to public authority employees¹. This guidance recognises that public authority employees should expect that some information about them may be published, as there is a legitimate public interest in accountability and transparency. The guidance also notes that the more senior an employee is, the greater their expectation should be that information relating to their professional life would be disclosed.

23. The Department did not explicitly address individuals' expectations in its correspondence with the complainant or the Commissioner. However the Department did argue that it would be

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http://www.ico.gov.uk/for_organisations/guidance_index/~media/documents/library/Environmental_info_reg/Practical_application/section_40_requests_for_personal_data_about_employees.ashx

"...unwarranted for officers to be placed in a position where every call made and received for a business purpose is open for scrutiny."

24. The Commissioner largely agrees with this argument, and also notes that Departmental staff are permitted to use mobile phones for personal use (as long as the costs of such calls are reimbursed in line with departmental policy). Itemised bills held by the Department do not distinguish between telephone calls made in a business capacity, and those made in a personal capacity. Therefore disclosure of the itemised bills would also potentially disclose details of personal calls made by individuals. The Commissioner considers it reasonable to assume that individuals would not expect information relating to their personal lives to be disclosed into the public domain in this manner.
25. The Commissioner also notes that, although the individuals occupy roles where they would routinely come into contact with the public, none of the individuals involved is particularly senior (ie grade 5 or above). The Commissioner considers that this strengthens the expectation that personal information would not be disclosed into the public domain.

Consequences of disclosure on the individuals

26. The Commissioner's guidance notes that the degree of intrusion caused by disclosure of an individual's personal data will often depend on the nature of the information to be disclosed.
27. The Department has argued that individuals would be likely to be distressed by the disclosure of detailed information relating to calls made on Departmental mobile phones, as they would feel subject to undue scrutiny. In addition, the Department argued that disclosure of mobile phone numbers could expose staff to unwanted calls from the public outside of office hours as staff would generally take their mobiles home with them. The Department was concerned that this could lead to harassment of staff.

Conclusion

28. The Commissioner considers that public authorities are generally expected to demonstrate accountability and transparency by informing the public how it spends public money. In this case the Commissioner notes that the Department has disclosed the number of mobile phones issued, and the total phone bill for the time period specified by the complainant.
29. The Commissioner is satisfied that the withheld information in relation to parts 3 and 4 of the requests is personal data relating to the respective

Departmental staff. The Commissioner accepts that there will often be a legitimate public interest in the disclosure of information relating to the work of public authority employees, but in this case he agrees with the Department that disclosure of the names of staff and itemised telephone call lists relating to the phones they use would be disproportionate and would not meet any legitimate public interest.

30. In light of the above the Commissioner is satisfied that it would not be fair to disclose the withheld information relating to parts 3 and 4 of the request. Therefore the Commissioner finds that the Department was entitled to rely on the exemption at section 40(2) of the FOIA in respect of this information.

Part 6 of the request

31. Section 1(1) of the FOIA states:

"Any person making a request for information to a public authority is entitled—

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request...."

32. Section 8(1)(c) provides that:

"In this Act any reference to a "request for information" is a reference to such a request which –

(a) is in writing,

(b) states that name of the applicant and an address for correspondence, and

(c) describes the information required."

33. The Commissioner's position is that although it is the case that the FOIA provides a right of access to information rather than to copies of documents, requests may refer to specific documents as a way to describe the information requested. A request for a particular document, such as an email, should generally (unless the context makes clear that this is not the case) be interpreted as a request for all of the information that may be recorded in that document.

34. In addition the Commissioner considers that the purpose of section 8(1)(c) is to enable the public authority to identify the requested information. The Commissioner notes that the FOIA does not prescribe how the requested information must be described, or define what constitutes an adequate description. Section 1(3) of the FOIA provides that the public authority may seek clarification from the applicant if

required to assist with identifying and locating the requested information.

35. The Department maintained that this part of the request was invalid under section 8(1)(c) of the FOIA as it

"did not describe identifiable information by subject or topic, but was for a medium upon which information is recorded."

36. The Commissioner disagrees with the Department, and is of the view that the request did constitute sufficient description to enable the Department to understand what was being requested. The Commissioner accepts that the complainant is unlikely to be aware of the nature of the information contained within the emails. However in the Commissioner's view it does not follow that the request was not for "identifiable information".

37. The Commissioner has considered a similar issue in a previous decision notice², in which he set out his view that the wording of section 8(1)(c) is clear and should bear its plain meaning. This provision simply requires the request to "*describe the information requested*". It does not specify that the request must describe the subject matter of the information. A description relating to origin, date and type of document can still, in the everyday meaning of those words, describe the information requested. For example, a request for the minutes of a meeting held on a particular date would clearly describe the information requested, even though it does not describe the content by reference to the matters discussed. Similarly the Commissioner considers that the request in this case sufficiently describes the information requested.

38. In the previous case the public authority also argued that the request described a medium for recording information, rather than the information itself. The Commissioner rejected this argument on the basis that the complainant had specified a particular sphere of interest (ie emails sent or received by a particular person) and the Commissioner sees no reason to depart from that view in this case. The complainant's request indicates that the complainant is interested in specific, identifiable information, even though he does not (and cannot be expected to) know the subject matter of that information. The Commissioner understands that public authorities may find such requests irritating, but the FOIA does not legislate against "fishing expeditions". The Commissioner would however accept that this may be

² Decision notice FS50465008, issued on 27 February 2013

relevant when considering whether a request is vexatious under section 14 of the FOIA.

39. In conclusion, the Commissioner finds that the complainant's request did sufficiently describe the information requested for the purposes of section 8(1)(c). The Department is therefore required to deal with the request in accordance with the provisions of the FOIA, although the Commissioner would stress that he cannot comment at this stage on whether or not any information held should be disclosed.

Other Matters

Internal review

40. Although it does not form part of the decision notice the Commissioner wishes to comment on the time taken to conduct the internal review.
41. The complainant requested an internal review on 17 August 2012. The Department communicated the outcome of the internal review to the complainant on 16 April 2013, although the complainant says he did not receive it. The complainant has confirmed that he did receive the letter re-issued by the Department on 4 June 2013.
42. The FOIA does not prescribe a timescale for conducting internal reviews. However the Commissioner considers that it should take no longer than 20 working days, or 40 working days in exceptional cases.
43. In this case the Department took eight months to complete its internal review, which the Commissioner considers excessive. However the Department has advised the Commissioner that it has taken steps to help ensure that such delays do not recur.

Right of appeal

44. 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

45. 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.
46. 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

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