

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 March 2015

Public Authority: Hampshire County Council
Address: The Castle
Winchester
Hampshire
SO23 8UJ

Decision (including any steps ordered)

1. The complainant has requested information in several parts in relation to a named councillor, dates of deaths of residents at a care home and information on legionnaires. Hampshire County Council (the council) provided information to parts 4 to 6b of the request, advised that it did not hold information for parts 7 and 8 and refused to provide the information for parts 1 to 3 of the request, relying on section 40(2) of the FOIA to refuse it.
2. The Commissioner's decision is that the council has provided the information it holds for parts 4 to 6b of the request, does not hold the information requested in parts 7 and 8, and has correctly relied on section 40(2) of the FOIA to withhold the information requested for parts 1 to 3 of the request.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 21 March 2014, the complainant wrote to the council and requested information in the following terms:

"1) The dates of deaths and numbers of all residents who were listed as one time residents of Bulmer House Residential care

home in total from July 29th 2013 to the present day, March 21st 2014.

2) The dates of deaths and numbers of all those transferred to other homes from Bulmer House between July 29th 2013 and Oct. 18th 2013.

3) The dates of deaths and numbers of all those transferred to other homes from Oct 18th 2013 to March 21st 2014.

4) The full content of Cllr [name redacted] Declaration of financial and other interests of July 29th 2013.

5) The full content of Cllr. [name redacted] Declaration of financial and other interests of Oct 18th 2013

6a) The full content of Cllr. [name redacted] Declaration of financial and other interests of Oct 22nd 2013.

6b) The full content of Cllr. [name redacted] Declaration of financial and other interests of March 21st 2014."

7) Was my mother/mother-in-law Mrs [name redacted] ever tested for the Legionnaires bacterium, and did she receive medication appropriate for this, whether actually having the disease or not?

8) How many residents were tested for the Legionnaires bacterium at Bulmer house? If none then please state."

5. The council responded on 17 April 2014. It refused to provide the dates requested for parts 1 to 3 of the request, relying on section 40(2) of the FOIA – third party personal data.
6. For parts 4 to 6b, it provided a link to its current register of interests for [councillor name redacted], covering the period from 30 October 2013 to the present day. The earlier period of the register of interests was provided as an appendix to the response.
7. For parts 7 and 8 the council advised that it does not undertake medical tests on its service users and only undertakes testing for legionella bacterium on its plants and equipment as part of the maintenance programme. The council then advised that the complainant would need to contact the relevant GP regards to any medical tests or medication users receive.
8. On the 24 April 2014, the complainant requested an internal review. Her review request focussed on points 4 to 6 of the request, explaining why

she required the information held by the council on those specific dates or needs confirmation that the declaration had not changed during these dates.

9. The council responded on the 25 April 2014 and stated that it had provided the complainant with the recorded information relation to the time period outlined and provided a copy of the register of interest for the period 30 July to October 2013 when a new register was published and it has provided this link to the new register.

Scope of the case

10. The complainant contacted the Commissioner on the 30 July 2014 and has advised that she is not satisfied with the council's response to the whole of her request, not just parts 4 and 6.
11. The Commissioner contacted the council regards to this, and it agreed to conduct an internal review as part of the Commissioner's investigations into the case for the other parts to the request.
12. The Commissioner therefore considers the scope of the case is to determine if the council was correct to withhold the information for parts 1 to 3 of the complainant's request under section 40(2) of the FOIA and then determine whether the council holds any further information with parts 4 to 8 of her request.

Reasons for decision

Section 40(2) of the FOIA

13. Section 40(2) of FOIA states that:

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

a) It constitutes personal data which do not fall within subsection (1), and

b) Either the first or second condition below is satisfied."

14. Section 40(2) of the FOIA provides that third party personal data is exempt if its disclosure would contravene any of the Data Protection Principles set out in Schedule 1 of the Data Protection Act 1998 (the DPA).

Is the withheld information for parts 1 to 3 of the request personal data?

15. Personal data is defined by the DPA as any information which relates to a living individual who can be identified from that data or from that data along with any other information in the possession or is likely to come into the possession of the data controller.
16. The information requested and being withheld under section 40(2) of the FOIA is for part 1 to 3 of the complainant's request. The information requested for these parts is for the dates of deaths and the number of residents that passed away during certain time periods.
17. The council has told the Commissioner that if this information were released then it could be cross referenced with other information already in the public domain, such as death notifications in the newspaper or death certificates in order to identify the relatives of the deceased. The council therefore consider the dates of death of the deceased would be the personal data of the relatives of the deceased.
18. The Commissioner acknowledges that the information cannot be the personal data of the deceased as the DPA only relates to living individuals. But having been provided, by the council, with the "*The dates of deaths and numbers*" for parts 1 to 3 of the request the Commissioner notes that the numbers involved are quite low. Due to these low numbers, combined with already having the knowledge of which care home the deceased were from, the Commissioner accepts that the relatives could fairly easily be identified by friends, family, possibly co-workers and neighbours if the information was released.

Would disclosure contravene any of the Data Protection Principles?

19. The Data Protection Principles are set out in Schedule 1 of the DPA. The first principle and the most relevant in this case states that personal data should only be disclosed in fair and lawful circumstances. The Commissioner's considerations below have focused on the issue of fairness. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the individual and the potential consequences of disclosure against the legitimate public interest in disclosing information.

Reasonable Expectations

20. The council has stated to the Commissioner that the relatives of the deceased would have no expectations that they would become publically identifiable in these circumstances.

21. The council also considers that this would be unfair because the relatives that could be identifiable would not have consented to being identified in this context.
22. The Commissioner also considers that the relatives of the deceased would have an expectation that they would not be identifiable from the release of the information, especially due to the nature of the circumstances involved.

Consequences of disclosure

23. The council has explained that knowing who the relatives of the deceased are, these relatives might then be contacted by a media campaign regarding the individuals who died in within the circumstances of the case.
24. The council considers that this would cause the relatives distress and their rights to privacy would be prejudiced and this would be unwarranted and could also reopen the circumstances in which their relatives had passed away.
25. The Commissioner does consider that if the relatives were identifiable from the release of this information it is probable that some distress would be caused to these individuals, simply by the loss of privacy itself.

Balancing the rights and freedoms of the data subjects with the legitimate interests in disclosure.

26. The complainant has stated to the Commissioner that the council has previously provided her with dates of death for a similar request in the past for different homes.
27. The council has explained to the Commissioner that although this is true, this related to four different homes. The dates of death were provided but the name of the home the individual resided at prior to their death was not provided. The council is of the view that providing a combination of the name of the home and the date of death does provide sufficient data to make it more likely that the relatives would be identifiable.
28. The Commissioner sees that there would be some public interest in knowing the dates and numbers of the people that had deceased in a care home. However he does not consider there to be enough legitimate public interest in this to outweigh the relatives rights and freedoms to have a reasonable expectation that they would be able to remain anonymous .

29. Therefore the Commissioner finds that the council was correct to rely on section 40(2) of the FOIA to withhold the information to parts 1 and 3 of the request.

Section 1 of the FOIA – Information held/ not held for parts 4 to 8 of the request

30. Section 1 of the FOIA states that a person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds the information within the scope of the request, and if so, to have that information communicated to them.
31. Where there is a dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
32. Therefore the Commissioner must decide whether, on the balance of probabilities, the public authority holds any information which falls within the scope of the request (or was held at the time of the request).
33. With regards to parts 4 to 6b of the request, information in relation to the register of interests for councillor [name redacted] and specific dates, the complainant was provided with the information by the council covering the period as a whole, but the complainant has advised the Commissioner that she wants to be able to compare the register of interests held at the requested specific dates to see if there were any changes. Or she requires confirmation that the register was not changed or updated during this period. With this, the council has firstly confirmed to the Commissioner that the registers provided were the relevant registers for the specific dates. The older register of interests which was provided (appended to its letter of 17 April 2014 to the complainant) relates to and was the correct register for 29 July 2013, 18 October 2013 and 22 October 2013. The council has explained to the Commissioner that this register was current until it was replaced on the 24 October 2013. The council has confirmed to the Commissioner that the register that was current at the time of the request and provided as a link in its 17 April 2014 response to the complainant was valid on the 21 March 2014.
34. The council has told the Commissioner it has realised since reviewing its response of 25 April 2014, when it advised the complainant that *"We have provided you with a copy of the Register of Interest for the period July to 30th October 2013 when a new Register was published"*, that it was meant to have stated that the register was updated on the 24 October not the 30 October.

35. With regards to parts 7 and 8, the complainant has told the Commissioner that she considers that the council would hold information with regards to either testing residents for legionnaires or medication being given for it. The complainant considers that these would be in the bed notes if they were prescribed medication and those notes would be held by the council.
36. The council has informed the Commissioner that as per its response to the complainant of the 17 April 2014, it does not undertake medical tests on its service users. The council has confirmed to the Commissioner that no residents were tested for legionnaire's bacterium whilst at Bulmer House. In doing so it has explained where information would be located if it was held.
37. The council has stated to the Commissioner that the Adult Services Department is where any reports would go to, as in the case of the care home manager reporting one individual who showed some relevant symptoms but was treated for a non-related infection so this was never recorded as a legionnaire's related issue.
38. The council has told the Commissioner that records held about residents of the council's care homes would include daily case notes, medication and record sheets (MAR). If a resident was being tested for legionella related diseases or receiving any treatment for it then details would be recorded in their notes/ records.
39. The council also explained monitoring of potential symptoms might also be recorded in the individual's case notes where such symptoms had been manifested. Details of their diagnosis and any treatment would be held on their medical records. Details of any medication administered would have been recorded on the MAR sheet held by the home.
40. From this the council has reiterated and confirmed to the Commissioner that no residents including the complainant's mother in law have been tested for legionnaire's bacterium.
41. The Commissioner, on consideration of the above finds that on the balance of probabilities the council does not hold any further information within the complainant's request. He is satisfied from the council's explanations that it has provided the information it holds for parts 4 to 6b of the request and that it does not hold the information for parts 7 and 8 of the request.

Right of appeal

42. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

43. 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.
44. 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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