

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 27 July 2015

**Public Authority:** London Borough of Camden  
**Address:** Camden Town Hall  
Judd Street  
WC1H 9JE

### Decision (including any steps ordered)

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1. The complainant requested a copy of a specific piece of legal advice from the London Borough of Camden (the "Council"). The advice was internal legal advice given in an email in 2009. The Council provided the requested information to the complainant in June 2015 but with third party personal data redacted under section 40(2) of the FOIA.
2. The Commissioner's decision is that the Council has correctly applied section 40(2) to the withheld information. There are no further steps to be taken.

### Request and response

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3. On 24 October 2014, the complainant wrote to the Council and requested the following information:  
  
*"I wish to know the full text of the legal advice that was partially incorporated in the report to the Housing and Social Care Directorate Management Team (HASC DMT)".*
4. On 24 November 2014 the Council responded to the request. It explained that section 42 of the FOIA was engaged and that the public interest did not favour disclosure.

5. The complainant requested an internal review on 30 December 2014.
6. The Council reviewed its refusal to provide the requested information on 30 January 2015. It explained the request had been considered before in 2012 as part of case reference FS50429383 and it upheld the earlier application of section 42. However the Council acknowledged that as this was a new request, the public interest test should be reconsidered in view of the passage of time.
7. On 9 March 2015 the complainant therefore repeated his request and asked for a reconsideration of the public interest test.
8. The complainant contacted the Commissioner on 10 March 2015 to complain about the way his request for information had been handled.
9. The Council provided an internal review with a fresh public interest test on 9 April 2015 and provided further explanation in support of its position to the complainant and the Commissioner on 8 May 2015.
10. In an attempt to informally resolve this case, on 16 June 2015 the Council provided the complainant with the requested legal advice. It applied section 40(2) to redacted third party personal data.
11. On 17 June 2015, the complainant informed the Commissioner he did not accept the application of section 40(2).

### **Scope of the case**

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12. The Commissioner considers the scope of this case to be concerned with the Council's application of section 40(2) to the withheld information in this case.

### **Reasons for decision**

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#### **Section 40(2) – Personal information**

13. Section 40(2) of the FOIA specifies that the personal information of a third party must not be disclosed if to do so would contravene any of the data protection principles. The first principle of the Data Protection Act 1998 (the "DPA") states that personal data must be processed fairly and lawfully.

14. 'Personal data' is defined under section 1(1) of the DPA as data which relates to a living individual who can be identified from that data, or from that data and other information which is in the possession of the data controller or is likely to come into the possession of the data controller.
15. The withheld information in this case comprises the names of officers of the Council, i.e. the client officers and the lawyer involved in the request for legal advice and its provision. It also includes two telephone numbers of one of the officers.
16. The Commissioner is satisfied that the requested names relate to living individuals who may be identified from that data. The requested names therefore constitute personal data.
17. The complainant has argued that the telephone numbers are not personal data. The numbers redacted are the mobile number of the Deputy Head of Housing Needs and his direct line telephone number in 2009.
18. The Council has explained that the Deputy Head of Housing Needs is no longer a post within the organisation. The redacted direct line telephone number is therefore now the number of another individual. The Council has confirmed that the telephone numbers of individual staff are not generally advertised on its website or in the public domain.
19. The Commissioner is therefore satisfied that the redacted direct line telephone number is now the personal data of another individual. The Commissioner is also satisfied that the redacted mobile number is the personal data of the 2009 Deputy Head of Housing Needs.

### **Names of the individuals concerned**

#### **Would complying with section 1(1)(b) contravene the first data protection principle?**

20. The first principle of the DPA states that personal data must be processed fairly and lawfully.
21. In considering whether it would be unfair to provide the requested names and whether this would therefore contravene the requirements of the first data protection principle, the Commissioner has taken the following factors into account:
  - the data subjects' reasonable expectations of what would happen to their personal data;

- the consequences of disclosure; and
- the balance between the rights and freedoms of the data subjects and the legitimate interests of the public.

### **Reasonable expectations**

22. The Council has explained it considers that there was a strong expectation in October 2009 that the identities of the author and recipients of the legal communication would not be disclosed. The individuals were acting in a client/lawyer relationship and were confidential.
23. The Council has explained that the in-house lawyer no longer works for it and that at the time was a temporary member of staff. It has explained that all but one of the officers involved have now left. It considers that there remains a strong expectation that their identities will not be disclosed.
24. The Council has explained that the relevant staff members in this case are not senior members of staff. It has explained that The Transparency Code Guidance advises it follows the interpretation of the Accounts and Audit (England) Regulations 2011 for the definition of 'senior employees' and in Camden this is interpreted as chief officers only.
25. The Council has therefore explained that it defines its chief officers as Assistant Director level and above and that none of the individuals whose names have been redacted are at this level in the organisation.
26. The complainant has argued that the solicitor would have been a senior solicitor charged with giving legal advice regarding policy making. He has argued that in all probability, the council officers involved would have occupied senior public-facing positions in the Housing Department and would have been involved in making policy.
27. The information in this case has been requested in the context of the professional lives of the individuals concerned. Nevertheless, the Commissioner does not consider that the more junior council officers named in these emails would have an expectation that their names would be disclosed. He does consider that the more senior individuals may have more of an expectation that their names would be placed in the public domain. However none of them were at a level which the Council considers senior enough to be published.
28. In addition, the advice was requested and provided six years ago and the more senior personnel are all no longer in post.

29. The Commissioner therefore considers that all the individuals concerned would have a reasonable expectation that their identities would remain private and not be disclosed to the public under the FOIA.

### **Consequences of disclosure**

30. The Council has argued that there is a risk of damage and distress to the individuals concerned as disclosure of their identities would potentially lead to legal proceedings which it considers would be vexatious and would lack merit.
31. The Council has explained that in earlier correspondence concerning the disclosure of the actual legal advice, the complainant has indicated that this matter is still live and could be challenged in court. The legal advice relates to a London Borough of Camden Housing Policy and is therefore potentially subject to challenge by Judicial Review.
32. The complainant has also in the past raised the possibility of legal proceedings under section 110(1) and (2)(a) of the Housing Act 1985.
33. The Council has argued that the likelihood of such an application is high, and there is a strong risk that the individuals concerned would be drawn into what it considers would be vexatious litigation. It considers that this therefore lends weight against any possible public interest in disclosure.
34. The complainant has argued that there is no litigation currently pending, and if a particular tenant wished to challenge the decision of the Council to refuse a mutual exchange under the current policy in the County Court under section 110(1) and (2) of the Housing Act 1985, they would be free to do so.
35. The complainant does not consider that any such challenge would automatically be vexatious, as it is a statutory right. He has also argued that public officials all operate in the expectation that any policies they formulate or implement may be the subject of legal challenge, whether justified or not.
36. The Commissioner understands that the policies implemented by the Council may be subject to a legal challenge in court. However he understands that such action would be against the Council and not the individuals concerned. The legal advice was requested and provided six years ago and the individuals involved represented the Council. They were not working as private individuals but formulating Council policy.
37. The Commissioner therefore considers that the disclosure of the requested names may cause some distress to the individuals concerned. It would be contrary to expectations and therefore unfair.

### **Balancing the rights and freedoms of the data subject with the legitimate interests in disclosure**

38. The Council has argued that the interest in disclosure must be in the public interest and not in the private interest of the individual requester. It maintains the public interest in disclosure does not outweigh the interests of the individuals concerned.
39. The Council does not accept there is any necessity or public interest for members of the public to know the identity of an in-house lawyer (who was temporary and is no longer in the employ of the Council) and officers (all but one of whom have left the Council) when the matter of substance – i.e. the legal advice has now been disclosed.
40. The Commissioner acknowledges there is a tension between public access to information and the need to protect personal information. As far as possible, a public authority must be transparent and accountable for its actions.
41. However the Commissioner does not consider there is any legitimate public interest in knowing the names of the officers concerned in this case. The legal advice was requested and provided six years ago and the individuals were employees and therefore representatives of the Council. They were not acting in a private capacity and therefore their names are not relevant to the formulation of Council policy.
42. The Commissioner is therefore satisfied that providing the names of the relevant individuals would be unwarranted by reason of prejudice to the rights, freedoms and legitimate interests of the individuals in question.
43. In view of the above, the Commissioner is satisfied that the Council is correct to refuse these names under section 40(2) of the FOIA.

### **Telephone numbers**

44. The Commissioner is also satisfied that the Council is correct to redact the telephone numbers under section 40(2). The individuals concerned would have no expectation that these numbers would be placed in the public domain and there is no legitimate interest in disclosing numbers which were in use six years ago.

## **Other matters**

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45. The Commissioner notes that when the Council provided an internal review regarding its application of section 42 on 30 January 2015, it concluded that the request should be treated as a new request.
46. Although the complainant's arguments concerning waiver had been considered before in 2012 and did not need reviewing again, the Council did conclude that the public interest argument should be reconsidered, due to the passage of time.
47. The Council therefore concluded that its initial response was not correct. However, it did not then take the steps it identified as required.
48. The Commissioner considers that the internal review process provides the public authority with the opportunity to review its initial response and if necessary to revise its position.
49. In this case, in its internal review of 30 January 2015, the Council identified that its initial response was not correct, yet it did not go on to provide a public interest test within 20 working days. The Commissioner considers that at this point it should have conducted a fresh public interest test as soon as possible, and within this time frame.

## Right of appeal

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50. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

51. 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.
52. 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 .....**

**Rachael Cragg**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
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**SK9 5AF**