

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 October 2016

Public Authority: Birmingham City Council
Address: Council House
Victoria Square
Birmingham
B1 1BB

Decision (including any steps ordered)

1. The complainant has requested images of a third party caught on CCTV. Due to the way the request was made, Birmingham City Council (the council) initially thought he was requesting his own personal data. But following clarification that he was after the images of a third party not his own the council advised it could not legally justify releasing the images to him.
2. The complainant complained to the Commissioner about this request being refused. During the Commissioner's investigations, the council clarified that this request was being refused under section 40(2) of the FOIA – third party personal data.
3. The Commissioner's decision is that the council is able to rely on section 40(2) of the FOIA to refuse this request.

Request and response

4. On 29 March 2015, the complainant made the following request to the council with regards to an incident that happened at a block of flats:

"I attach my formal request under section 35 Data Protection Act 1998 for 3rd Party Image Request for Evidence."

5. The council responded on the 24 April 2015 acknowledging the request as a request for personal information and advised that in order for it to

disclose the images to the complainant the council would firstly require appropriate identification.

6. On 2 May 2015 the complainant clarified that he is not making a Subject Access Request under the DPA for his own personal data. He stated that the images that he requires are those of the offender.
7. The council responded on the 28 May 2015 advising that the DPA provides that an individual is entitled to access their personal data, it also places an obligation on the council, as the Data Controller, to ensure that personal data not relating to the requestor is not disclosed.
8. It went on to advise that with regards to his request, section 35 of the DPA merely permits a the data controller to release personal data, where necessary, for the purposes of: *"(a)for the purpose of, or in connection with, any legal proceedings (including prospective legal proceedings), or (b)for the purpose of obtaining legal advice, or is otherwise necessary for the purposes of establishing, exercising or defending legal rights."*
9. The council therefore concluded that it was not able to legally justify disclosing the requested third party data under section 35 of the DPA.

Scope of the case

10. The complainant contacted the Commissioner on the 8 and 11 of June 2015 to complain about the council refusing his request. The complainant had also submitted a different FOIA and DPA complaint about the council at the same time as submitting this one. Those other complaints were handled and concluded by the Commissioner, but this particular complaint was not picked out within the correspondence to be assessed.
11. The complainant followed up on the progress of this 29 March 2015 request on 28 January 2016, where it became apparent that this request was separate to the other cases that had been investigated by the Commissioner.
12. During his initial investigations the council confirmed that the 29 March 2015 request should have been refused under section 40(2) of the FOIA – third party personal data, this was also advised to the complainant.
13. With this, the Commissioner considers the scope of the case is to determine whether section 40(2) of the FOIA is engaged to this request.

Reasons for decision

14. Section 40(2) of the 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 the second condition below is satisfied.”

15. Section 40(2) 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 DPA.

Is the withheld information personal data?

16. Personal data is defined by the DPA as any information which relates to a living individual who can be identified from the 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.

17. The information the complainant has requested is images of a third party. These images would therefore constitute the personal data of the third party as they ‘relate to’ a living individual.

Would disclosure contravene any of the Data Protection Principles?

18. 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 the information.

Reasonable expectations

19. The council has told the Commissioner that the third party would not expect the council to release the images, captured in the block of flats, in to the public domain.

20. The Commissioner agrees that it would be reasonable for a third party to expect images caught of them by cameras in a block of flats would not be placed in to the public domain, especially when this is in relation to a matter being looked at by the police.

21. It would be more reasonable, in the Commissioner's view, for these images to only be passed to the relevant bodies dealing with the incident that took place.

Consequences of disclosure

22. The council hold these images due to an incident that occurred and do not consider that they should be placed in to the public domain.
23. The Commissioner sees that releasing the third party images in to the public domain could cause some distress to the third party as he would not have had an expectation that his images would be used in this way.

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

24. The Commissioner is of the view that any information held by a public authority would carry legitimate interests in disclosure. However, the amount of legitimate interest does vary depending on the information that is being requested and circumstances of the individual case.
25. The complainant has told the Commissioner that he knows who the third party is, however, the Commissioner is of the view that if the council were to provide these images to him under the FOIA, then it would essentially be providing the images to the world. Also, just because the complainant is of the view that he knows the third party, this does not automatically make it a right for the third party's images to be released to him.
26. The complainant also considers that everything said and done by the council in relation to the incident will be contradicted by the CCTV images and that these images will not be suppressed in a court of law, so section 40(2) would not be engaged in those circumstances.
27. The Commissioner sees that these CCTV images might be released in a court of law if required as part of a case, but it would fall under courts disclosure rules. This also adds to the fact that there is a legitimate and appropriate way for these images to be revealed, outside the FOIA, should it come to there being a court case about the incident and them being required.
28. Therefore, on consideration of the above, the Commissioner's decision is that section 40(2) of the FOIA is engaged.
29. As the exemption has been found to be engaged, the Commissioner does not require the council to take any steps.

Right of appeal

30. 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

31. 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.
32. 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
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF