

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 November 2017

Public Authority: Manchester City Council
Address: Town Hall
Albert Square
Manchester
M60 2LA

Decision (including any steps ordered)

1. The complainant has requested historical information relating to [named children's home].
2. The Commissioner's decision is that Manchester City Council has correctly applied the exemption for personal data at section 40(2) to the request. Therefore the Commissioner does not require the council to take any steps.

Request and response

3. On 21 March 2017 the complainant wrote to Manchester City Council ('the Council) and requested information in the following terms:

"I was in the care of [named children's home] Reference M66/84/5/1 as a child from (I am not too sure of the dates but I am told they were from [DATES])

I am told there are a number of documents Title: GB127.M66/84 dated from 1904-1956 contents 3 boxes and 7 large volumes. Due to the fact that your letter sent to me on 14th March 2017 does not have the correct date of birth, I would like to view all relevant documents.

I have supplied you with photocopies of official documents bearing name and photograph if you require further validation of my identity I will provide on request."

4. The Council responded on 24 March 2017 and apologised for the incorrect date of birth which it explained was an error in translation from the record. The Council refused to provide the requested information citing the Data Protection Act, because of the third party personal data contained within it.
5. Following an internal review the Council wrote to the complainant on 13 April and maintained its original position.

Scope of the case

6. The letter of 14 March 2017 to which the complainant refers as having an incorrect date of birth, provides a transcribed extract of the register reference M66/84/5/1. This extract is the complainant's personal data and was provided under the Subject Access Request (SAR) provisions of the Data Protection Act 1998 ('the DPA'). The Council subsequently corrected the transcription error and advised the complainant of the correct date and the reason for the error. The Council explained that it could not provide a redacted version of document due to the nature of the bindings.
7. The complainant contacted the Commissioner on 28 March 2017 to complain about the way his request for information had been handled, specifically with regard to his request to view all relevant documents held by the Council in archive "*Title: GB127.M66/84 dated from 1904-1956*"
8. The SAR element of the complaint has been considered separately as a DPA concern, which concluded that the ICO is "*satisfied that appropriate steps were taken by the Council to both consider and respond to your SAR*".
9. In reply to the Commissioner's questions the Council confirmed that it is relying upon the exemption 40(2) by virtue of section 40(3)(b) of the FOIA for the remaining component of the request. The Council apologised for omitting to include the specific FOI condition in its internal review response.
10. Therefore the Commissioner considers the scope of this case to be the application of the exemption for third party personal data at section 40(2) of the FOIA to the requested information.

Reasons for decision

Section 40(2)

11. Section 40(2) of the FOIA states that information is exempt from disclosure if it constitutes the personal data of a third party and its disclosure under the FOIA would breach any of the data protection principles or section 10 of the DPA.
12. In order to rely on the exemption provided by section 40(2), the requested information must therefore constitute personal data as defined by the DPA. Section 1 of the DPA defines personal data as follows:

“personal data” means 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 intentions of the data controller or any other person in respect of the individual.”
13. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, she must establish whether disclosure of that data would breach any of the data protection principles under the DPA.

Is the withheld information personal data?

14. The Council has explained that the documents requested in GB127.M66/84 are registers from the children's home comprising of the *“personal information of children who were admitted to the home and other personal data relating to third parties.”*
15. The Commissioner's guidance on what is personal data¹ states that if information 'relates to' an 'identifiable individual' it is 'personal data' regulated by the DPA.

¹ <https://ico.org.uk/media/for-organisations/documents/1213/personal-information-section-40-and-regulation-13-foia-and-eir-guidance.pdf>

16. The Commissioner has reviewed a sample of the withheld information. It comprises of registers of the personal details (including names, dates of birth, religion, parentage) of third parties. The Commissioner agrees it is information from which the data subjects would be identifiable and therefore constitutes personal data.

First data protection principle

17. The first data protection principle requires, amongst other things, that the processing of personal data is fair. In considering fairness the Commissioner will take into account the reasonable expectations of the data subjects, what would be the consequences of disclosure, and the legitimate interests in the disclosure of the information in question.

Reasonable expectations of the individuals

18. When considering whether the disclosure of personal data is fair, it is important to take account of whether the disclosure would be within the reasonable expectations of the data subject. However, their expectations do not necessarily determine the issue of whether the disclosure would be fair. Public authorities need to decide objectively what would be a reasonable expectation in the circumstances.
19. The Council explained that the entries date back to the 1940's and therefore it is unlikely that individuals could be traced in order to seek consent. It also considered that *"given the nature of the information is it unlikely that any consent to disclosure would be forthcoming."*
20. The Commissioners view is that the information contains personal and sensitive information about individuals who may still be living. She therefore considers that the disclosure of this information would not be within their reasonable expectations.

Consequences of disclosure

21. The Council has explained that it has re-inspected the documents contained within GB127.M66/84 dated from 1904-1956 and no further information relating to the complainant, other than that already supplied, was found. It explained that the personal information relating to the complainant can be clearly differentiated from the third party data and this is the information that has been supplied. Having viewed a sample of the data the Commissioner agrees that this is the case.
-

22. Given the fact that the data for the complainant has been clearly differentiated, and therefore that the remaining information comprises completely of third party records, the Commissioner considers that its disclosure would result in an unwarranted invasion of privacy.

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

23. In the circumstances of this case the Commissioner recognises that the sought disclosure would intrude on the rights and expectations of privacy held by the third parties.
24. The Commissioner considers that the request relates to a private matter and finds no evidence of a legitimate interest in public disclosure.

The Commissioner's conclusion

25. Taking all of the above into account, the Commissioner concludes that it would be unfair to the data subjects to release the requested information. Disclosure would not have been within the individuals' reasonable expectations, and the loss of privacy could cause unwarranted harm or distress. On this basis the Commissioner upholds the Council's application of section 40(2) by virtue of section 40(3)(b).

Right of appeal

26. 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

27. 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.

28. 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