

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 November 2017

Public Authority: Enfield Council

Address: Civic Centre
Silver Street
Enfield
EN1 3XA

Decision (including any steps ordered)

1. The complainant has requested a report into an investigation carried out by the council following her complaint against a named organisation. The council provided some information from the report on the basis that it was the complainant's own personal data which she was entitled to under the subject access provisions of the Data Protection Act 1998 (DPA). However it withheld the remaining information under section 40(2) – third party personal data, and section 43(2) – commercial prejudice.
2. The Commissioner's decision is that the majority of the withheld information constitutes the personal data of the complainant, albeit on occasions linked to the personal data of third parties. This information is exempt from disclosure under section 40(1) of the FOIA, but should have been considered for disclosure under the DPA. There is a small amount of information which is purely the personal data of third parties, some of which is exempt from disclosure under the FOIA by virtue of section 40(2), some of which is not. In addition the Commissioner finds that the council cannot rely on section 43(2) to withhold the majority of information which is not personal data. However a very limited amount of the non-personal data can be withheld under section 43(2).
3. The Commissioner has produced two confidential annexes. One will be provided solely to the council and identifies which information she has considered under the various exemptions and which of that information the council is required to disclose under the FOIA. The second annexe will be provided to the complainant and simply illustrates the extent of

the information which the Commissioner finds is her personal data and therefore should have been considered under the DP.

4. The Commissioner requires the council to take the following steps to ensure compliance with the legislation.
 - To disclose the third party personal data identified in the confidential annexe provided to it.
 - To disclose the non-personal data which the Commissioner has found does not engage section 43(2) as identified in the same confidential annexe.
5. 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 Act and may be dealt with as a contempt of court.

Request and response

6. On 5 February 2017, the complainant wrote to the council and requested information in the following terms:

“I sent my [name of organisation] Breach of Service Level Agreement Formal complaint etc., to the Council, not [the named of organisation] – and am requesting [the named council officer]’s investigation report into those complaints be sent to me immediately ...”
7. She went on to make it clear that her request was made under both the FOIA and the DPA.
8. The council responded on 28 February 2017. It explained that the information may be exempt under section 43(2) – commercial interests, and was consulting with the organisation about which she had complained. The council stated that it would need additional time to consider the public interest in maintaining that exemption and said that it hoped to provide a final response by the 3 April 2017.
9. On 3 April 2017 the council did provide its final response. It disclosed the complainant’s personal data to which it considered she was entitled under the DPA. However, it referred to withholding some information on the basis that it was the personal data of other individuals, but did not specifically cite the exemption provided by section 40(2). It withheld the remaining information under the exemption provided by section 43(2) – prejudice to commercial interests.

10. Following an internal review the council wrote to the complainant on 8 May 2017. The council released some additional information to which it considered she was entitled under the DPA. It stated that the remaining information was exempt under section 43(2) on the basis that its disclosure would prejudice the commercial interests of the organisation that she had complained about. It did not refer to any information being withheld on the basis that it was third party personal data.
11. During the Commissioner's investigation the council clarified that it was withholding third party personal data under section 40(2) and commercially sensitive information under section 43(2).

Scope of the case

12. The complainant contacted the Commissioner on 19 July 2017 to complain about the way her request for information had been handled. In particular, she was concerned over the council's refusal to provide her with the information which it had withheld under section 43(2) and the time the council had taken to respond to her request.
13. This notice will only consider the complainant's right of access to the information under the FOIA. The requested information contains the complainant's own personal data, the personal data of third parties and non-personal data. The FOIA does not provide a right of access to personal data about the person making a request. The right of access to such information can only be considered under the subject access provisions of the DPA. As far as the FOIA is concerned any personal data about the person making the request is exempt under section 40(1).
14. Therefore the first thing the Commissioner needs to do is look at what information is exempt from disclosure under section 40(1) by virtue of being the complainant's own personal data. The Commissioner will then look at whether any of the remaining information can be withheld under either section 40(2) or section 43(2).
15. When looking at the exemptions provided by section 40(2) and section 43(2) the Commissioner is obliged to ignore the fact that the complainant is the person who made the complaint which led to the report being produced and treat the request as being made from any other member of the public. This means that the Commissioner will disregard any impact that would result if the information withheld under these exemptions was read in conjunction with the information that she may be entitled to under the DPA. This is because such information would not be available to other members of the public.

16. The complainant has also complained about the time it took the council to respond to her request. This issue will be addressed under 'Other matters'.

Reasons for decision

Section 40(1) – the complainant's own personal data

17. Section 40(1) states that any information captured by the request is exempt information if it constitutes the personal data of the person making the request.
18. Personal data is defined as information which relates to a living individual who can be identified from that information, or that information and any other information which is, or is likely to come into, the possession of the data controller. For the purpose of this notice the term 'data controller' can be taken to mean the person holding the information.
19. The Commissioner has been provided with a full copy of the requested report. The council has highlighted the information it is continuing to withhold. The council has already provided the non-highlighted information to the complainant on the basis that it was her own personal data which she was entitled to under the subject access provisions of the DPA.
20. The only exemptions cited by the council for withholding the highlighted information are those provided by sections 40(2) – third party personal data and section 43(2) – commercial prejudice. It follows that the council does not consider any of the information it is continuing to withhold to be personal data of the complainant. However having looked at this highlighted information the Commissioner finds that the majority of it is the complainant's personal data.
21. The report considers a number of issues relating to a piece of work carried out by a named organisation and its conduct towards the complainant. Following an introduction it is split into six points and concludes with a series of recommendations. In broad terms the report details what material was considered when looking in to the complaint, the arguments the complainant presented as to why the work carried out by the organisation was flawed, the interactions between that organisation and the complainant, the complainant's views on those interactions and decisions taken by the organisation in respect of the complainant.
22. In the context of the report into her complaint against the named organisation the Commissioner is satisfied that the complainant can be

identified from much of the information and that this same information relates to her. This is therefore the complainant's own personal data. It is therefore exempt from the disclosure under section 40(1). The correct legislation under which to consider the complainant's right of access to this information is the DPA. The Commissioner has provided the complainant with an annexe to this notice which will illustrate the extent of the information which she considers to be the complainant's personal data. It will not however reveal what that information is. The Commissioner has also provided the council with an annexe identified fully the information considered to be the personal data of the complainant.

23. For the purposes of this open version of the notice the Commissioner will set out in broad terms the extent of the information found to be exempt under section 40(1) on the basis that it is the complainant's own personal data:

- The information withheld under the introduction;
- Approximately a third of the information withheld from point 1;
- All the information withheld from point 2 apart from that withheld from the first paragraph;
- All the information withheld under point 3;
- All the information withheld under point 4 apart that the final sentence;
- All the information withheld from point 5 apart from the final sentence;
- All the information withheld from point 6;
- The final two of the recommendation which conclude the report.

24. The Commissioner will now go on to look at the application of sections 40(2) and 43(2) to the information that is not the complainant's own personal data, starting with the application of section 40(2).

Section 40(2) – third party personal data

25. So far as is relevant, section 40(2) provides that information is exempt if it constitutes the personal data of someone other than the person making the request and its disclosure would breach any of the data protection principles contained in the DPA.

26. Although the council cited the exemption provided by section 40(2) to the Commissioner, it has not provided any arguments as to why the exemption applies. Nor has the council attempted to identify the

information that it considers to be third party personal data. However as dual regulator of both the FOIA and the DPA it would not be appropriate for the Commissioner to order the disclosure of information that would breach the data protection principles simply because a public authority had failed to provide adequate arguments. Therefore the Commissioner has identified the information she finds to be the personal data of someone other than the complainant and considered whether it can be disclosed.

27. The Commissioner notes that there is some information within the report which clearly identifies staff of the named organisation. It details their interactions with the complainant and is as much personal data about the complainant as it is about those members of staff. Where personal data is inextricably linked in this way the Commissioner considers it would be exempt under section 40(1) on the basis that it is the complainant's own personal data and it is identified as such in the confidential annexe provided to the council. The complainant's right of access to such information is through the DPA.
28. Under section 40(2) the Commissioner has considered only that personal data which is not inextricably linked with the personal data of the complainant. The requested report is contained in a letter from the council to the named organisation and the personal data which the Commissioner has considered under section 40(2) is the author's name and contact details and their signature, together with the name of the person to whom the letter is addressed and the name of one former council employee who is referred to under point 1 of the report.
29. The only data protection principle that could be potentially be breached if this information was disclosed would be the first principle. The first principle states that the processing of personal data shall be fair lawful and that personal data shall not be processed unless of the conditions contained in Schedule 2 of the DPA can be met. The term 'processing' includes the disclosure of personal data.
30. The Commissioner's approach when considering the first principle is to start by looking at whether the disclosure would be fair. 'Fairness' is a difficult concept to define. It involves consideration of:
 - The possible consequences of disclosure to the individual.
 - The reasonable expectations of the individual regarding how their personal data will be used.
 - The legitimate interests in the public having access to the information and the balance between these and the rights and freedoms of the particular individual.

Often these factors are interrelated.

31. All the information considered under section 40(2) relates purely to individuals acting in their professional capacity and as such does not intrude into their personal lives. The letter containing the report was sent to a very senior officer within the named organisation. Due to the seniority of this individual it is reasonable to assume they would have an expectation that information about their role within the organisation would be disclosed. This would include being identified as the recipient of a report in to the performance of the organisation they are responsible for, regardless of whether that report is critical of the organisation or not. This is simply a case of shouldering the responsibilities of their position. The Commissioner understands that the organisation does receive public money for providing specified services, including some on behalf of the council. Therefore there is a legitimate interest in the disclosure of the information. In light of the above the Commissioner finds that disclosing the name of the recipient of the report and their position would be fair.
32. Before deciding whether the name and position of the recipient can be disclosed it is also necessary to consider whether the disclosure would be lawful and whether any of the conditions contained in Schedule 2 of the DPA can be met. In respect of lawfulness, the Commissioner has considered whether disclosing the recipient's name and position would breach a duty of confidence. She has concluded that there is nothing to indicate that the senior figure's name or role within the organisation is in any way confidential, nor can it realistically be argued that the fact that they were the recipient of the report is confidential. Therefore there is no reason to find disclosing the information would breach a duty of confidence owed to that individual. In the absence of any other arguments around lawfulness the Commissioner finds that the disclosure of this information would be lawful.
33. The next issue to consider is Schedule 2 of the DPA. Schedule 2 sets out a number of conditions, at least one of which has to be satisfied in order for personal data to be processed. The sixth condition provides that personal data may be disclosed where the processing is necessary for the legitimate purposes pursued by the data controller, or by a party to whom the data is to be disclosed, except where the processing is would prejudice the rights and freedoms, or legitimate interests of the data subject (ie the individual the information is about). When considering a disclosure under the DFOIA the person the information is to be disclosed to is taken to be the public at large rather than just the actual person who made the request. In effect the sixth condition provides a similar test to that already considered when looking at fairness under the third bullet point of paragraph 30. It balances the reasons for disclosing the information against any harm to the individual. The Commissioner is satisfied that there is a legitimate reason for disclosing the recipient's name and position, i.e. more fully understanding the report and the level at which it was considered by the organisation. The Commissioner

has already found that there would be no detriment to the individual in being identified as the recipient of the report. Therefore the Commissioner finds that the sixth condition is satisfied.

34. The Commissioner finds that disclosing the name and position of the recipient of the letter would not breach the first data protection principles. The council is obliged to disclose this information.
35. The information being considered under section 40(2) also includes the personal data of the author of the letter. This consists of their name, signature and direct contact details. The remaining third party personal data is the name of a former council employee who managed the facility which was the subject of the piece of work carried out by the named organisation. As explained earlier, the council has not provided any arguments in support of its application of section 40(2) and the seniority of these officers is not known. The Commissioner has therefore erred on the side of caution and treated them both as if they were relatively junior officers within the council.
36. On the assumption that neither are, or were, senior officers within the council the Commissioner considers they would have less of an expectation that information relating to their role within the council would be made public. Furthermore the Commissioner does not consider it is necessary to identify these individuals in order for a member of the public to understand the report. Therefore although there would be no obvious detrimental consequences in disclosing their names the Commissioner finds that disclosure would be unfair. In respect of the signature of the letter/report the Commissioner considers that disclosing this information could expose that individual to potential fraud and therefore doing so would be unfair. The Commissioner also considers providing the direct phone number and work email address of that individual could result in their working day being disrupted. In light of the above the Commissioner finds that the Council is entitled to withhold the personal data of the letter/report's author together with that of the former council employee.

Section 43(2) – prejudice to commercial interests

37. Section 43(2) states that information is exempt if its disclosure would, or would be likely to prejudice the commercial interests of any person. This would include the commercial interests of the named organisation and it is this organisation whose interests the council is seeking to protect.
38. The exemption can be engaged on the basis that the disclosure either 'would' or 'would be likely to' prejudice the commercial interests. In this case the council has argued that disclosing the requested information 'would be likely to' prejudice the commercial interests of the named

organisation. Although this provides a lower threshold for engaging the exemption, the council is still required to demonstrate that the chance of the prejudice being suffered is more than a hypothetical possibility; there must have been a real and significant risk.

39. In its submission to the Commissioner the council failed to indicate which specific information it was withholding under section 43(2). However by identifying that which she considers to be either the personal data of the complainant (and so exempt under section 40(1)) and that which is purely the personal data of third parties (and which has therefore been considered under section 40(2)) the Commissioner has by a process of elimination identified the information which she finds should be considered under section 43(2). This information is identified in the confidential annexe which has been provided to the council.
40. The Commissioner understands that the named organisation operates in the voluntary sector and as such is reliant on donations and grants to fund its activities. It appears that a significant amount of this funding is provided by the council itself and that much of that funding is provided on a restricted basis, that is, it is provided on the basis that it is to be used only for specific purposes. Therefore to a large extent the Commissioner considers the council is in effect commissioning the named organisation to provide particular services to meet its own objectives. Clearly a public authority, or any other donor, would only provide funding to an organisation that it had confidence in. The council has consulted with the named organisation and come to the view that disclosing the withheld information would be likely to damage the reputation of the named organisation and therefore make it more difficult for the organisation to secure funding. The Commissioner is satisfied that the ability of the named organisation to secure funding for its activities is a commercial interest.
41. However it is now necessary to look carefully at the information to which the Commissioner finds has been withheld under section 43(2) and determine what, if any, impact its disclosure would have on the named organisation's fund raising activities. In doing so the Commissioner notes that the named organisation has argued that there is an increasingly competitive environment for attracting funds. The organisation has not provided any evidence to back up this assertion, nor has the council developed this argument any further. Nevertheless the Commissioner accepts that in the current economic climate it is likely that funding is harder to obtain. The Commissioner has therefore given some weight to this argument when considering how sensitive a voluntary body's fundraising activities would be to adverse comments.
42. The majority of the information which the Commissioner has identified as being withheld under section 43(2) deals with issues which are not obviously controversial. The report is split into six points which are then

followed by a number of recommendations. The Commissioner will now go through the report and consider each redaction under section 43(2) in order.

43. Although the Commissioner cannot go into any great detail about the contents of this information, but she is prepared to say that point 1 deals mainly with the range of the named organisation's activities which the council is supporting, the agreements which are in place in respect of that work and how they relate to a particular piece of work carried out by the named organisation. Much of the information withheld from point 1 under section 43(2) is fairly bland and could be disclosed without harming the named organisation's reputation. It does not engage the exemption and the council is required to disclose it.
44. However a limited amount of information redacted from point 1 is more critical and therefore does have some potential to harm the organisations' reputation. The Commissioner finds that this information, which will be identified in the confidential annexe provided to the council, does engage the exemption provided by section 43(2).
45. Point 2 sets out the named organisation's complaints procedure which the Commissioner assumes would become apparent to any user of the organisation's services who made a complaint. The Commissioner can see no plausible grounds for believing that the information withheld under section 43(2) from point 2 would damage the reputation of the named organisation. It is not exempt under section 43(2) and the council is required to disclose it.
46. The Commissioner has already found that all the information withheld from point 3 is the personal data of the complainant and so exempt under section 40(1). None of the information has been considered under section 43(2).
47. The Commissioner has also found that most of the information redacted from point 4 is the personal data of the complainant and therefore exempt under section 40(1). However she does not consider the final sentence of point 4 to be the personal data of either the complainant or any third party. Therefore the Commissioner has considered its redaction under section 43(2). The information in question could be interpreted as being very mildly critical of the named organisation, but Commissioner is not persuaded that its disclosure would be likely to raise any realistic prospect of the organisation's reputation being damaged. This one sentence does not engage the exemption and the council is required to disclose it.
48. Again the Commissioner is satisfied that most of the information redacted from point 5 is the personal data of the complainant and so is exempt by virtue of section 40(1). However the final sentence which

provides a form of general conclusion on the matter discussed in this part of the report, is not the complainant's personal data. The Commissioner has therefore considered it under section 43(2). The Commissioner accepts that the sentence implies criticism of the named organisation. The Commissioner appreciates the importance of the issue addressed by the comment, but at the same time recognises that the problem is not unique to the named organisation and considers that disclosing the criticism would not have such a marked impact on the reputation of the organisation as to prevent it securing future funding. This information is not exempt under section 43(2) and the council is required to disclose it.

49. The Commissioner has already found that all the information withheld from point 6 is the personal data of the complainant and so exempt under section 40(1). None of the information has been considered under section 43(2).
50. The final pieces of information that the Commissioner has considered under section 43(2) are contained in the 'Recommendations' that are provided at the end of the report. There are five of these recommendations, the last two of these relate specifically to the complainant and as such the Commissioner has considered these under section 40(1). The first three however relate more generally to the named organisation and these have been considered under section 43(2).
51. Clearly recommendations are only contained in the report to address problems that have been identified, or at least where there has been found to be room for improvement. Therefore their disclosure would imply some criticism of the named organisation. However certainly two of the three issues addressed would be common to many organisations and the other issue could not be described as being fundamental to the delivery of services by the named organisation. Therefore the Commissioner is not satisfied that this information would cause the reputational damage that the named organisation fears; certainly the Commissioner does not think the release of this information would have a significant impact on its ability to attract funding. The Commissioner finds this information is not exempt under section 43(2) and the council is required to release it.
52. The Commissioner has found that the majority of the information that the council has applied section 43(2) does not engage the exemption. However a limited amount of information redacted from point 1 of the report would be likely to prejudice the commercial interests of the named company and so is exempt.

Public interest test

53. Section 43(2) is subject to the public interest test. This means that although information may be prejudicial to the organisation's commercial interests and therefore engages the exemption, the information can only actually be withheld if the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
54. The council recognises that there is a public interest in openness and transparency but found that, apart from these general points, no other public interest arguments in favour of disclosure existed. It went on to find that the public interest in withholding the information outweighed the arguments in favour of disclosure. The Commissioner is surprised by the lack of detailed public interest arguments presented by the council, particularly considering it required additional time to fully consider this issue.
55. The Commissioner will first look at the public interest arguments in favour of maintaining the exemption, that is, in withholding the information. In effect this involves consideration of the extent of the harm that disclosing the information would cause and the value in preventing that harm occurring. Before going into any further detail, the Commissioner notes that council has engaged the exemption on the basis that the prejudice is only 'likely to' occur. This reflects less confidence that the harm would occur which in turn reduces the weight given to the public interest arguments in favour of maintaining the exemption.
56. The organisation has argued that any damage to its reputation would impact on its ability to raise money and the Commissioner has accepted this argument. Under the public interest test the Commissioner will consider the extent or severity of the harm that would be caused.
57. The organisation receives a significant proportion of its funds from the council which means one of its main contributors is obviously already aware of any issues that exist within the organisation. The council has not suggested to the Commissioner that it has any intention of withdrawing funding due to the report's findings. The Commissioner considers this reduces the extent of the harm that disclosing this information would have.
58. Furthermore, the information only deals with one particular piece of work and it is not clear that this work stream represents a significant element of services offered by the organisation. This again reduces the extent of the reputational damage disclosing this information would have.
59. Therefore although the disclosure of this information does have the potential to harm the commercial interests of the organisation the

Commissioner is not satisfied that disclosing this information in response to a request under the FOIA would have a major impact on the organisation's ability to attract funds.

60. The Commissioner notes that the organisation believes the report is inaccurate and there is some indication in the material the council submitted to the Commissioner that the council were considering the organisation's concerns. Although there is clearly less value in disclosing an inaccurate report, the council has not presented any arguments to the Commissioner along the lines that it considers the report to be flawed, or that it does not continue to stand by its findings.
61. The Commissioner also notes that as part of the consultation process the named organisation stressed the fact that it had cooperated with the council's investigation into the complainant's complaints on a voluntary basis. The Commissioner has given no weight to this argument as it is not relevant to arguments in respect of any commercial prejudice that may arise through disclosure.
62. The Commissioner will now consider the public interest in disclosing the information. As already stated, the named organisation receives a significant amount of public money from the council. Although it is not clear how the piece of work undertaken by the named organisation relates to the services which the council was funding, there is still a value in the public having access to information relating to the performance of that organisation which in turn sheds light on the funding decisions of the council itself. The Commissioner would stress that this does not imply any criticism of the organisation or the council, but simply that there is a public interest in knowing more about the organisations funded by public money.
63. Having viewed the withheld information the Commissioner also considers that it sheds light on the relationship between the council and the named organisation in terms of the council's understanding of the range of services which the organisation was providing for the funding it received and the council's influence over the delivery of those services. Taken as a whole therefore the information withheld under section 43(2) relates to the performance of the council as well as that of the named organisation. The Commissioner has found that the majority of the information which the council has withheld under section 43(2) does not engage the exemption. The information which does engage the exemption and which is now being considered under the public interest test is in effect the conclusions of drawn under point 1 of the report. As such they are in part a consequence of how the council managed its relationship with the named organisation and therefore there is a public interest in better understanding those consequences. Having said that the Commissioner would accept that the information which she already found does not engage the exemption provided by section 43(2), and so

should be disclosed, would in itself go a long way to satisfying the public interest in understanding the relationship between the council and the named organisation.

64. It has already been stated that the named organisation believes there is an increasing competition for the limited funds available to finance voluntary organisations. The Commissioner accepts that this is likely to be the case it should be recognised that even if this is the case, it can be argued that in such circumstances there is a greater public interest in making information available on the performance of voluntary organisations which would help prospective donors decide which ones to fund.
65. The public interest arguments in favour of disclosure are heightened by the fact that it provides services to a vulnerable sector of the community. However an equally weighty argument can be made that care should be taken before disclosing information which might unnecessarily jeopardise the provision of such services.
66. Having considered the public interest arguments in favour of withholding the information which engaged section 43(2) and weighed this against the public interest factors in favour of disclosure, the Commissioner finds that the public interest favours withholding the information. In reaching this conclusion she has had particular regard for the fact that although there is a value in understanding the performance of an organisation that receives funding from public authorities and the council's management of its relationship with that organisation that public interest can to a large extent be satisfied by the information which the Commissioner has already found should be disclosed on the basis that it does not engage the exemption provided by section 43(2). In light of this the public interest in preventing the likely harm to the organisation's ability to secure funds in an increasingly competitive environment carries greater weight.
67. The council is entitled to withhold this information under the exemption provided by section 43(2).

Other matters

68. Although not forming part of the formal decision notice the Commissioner uses 'Other Matters' to draw a public authority's attention to issues that have been identified through the investigation. Firstly the Commissioner would wish to make following observations in respect of the council's extension to the time for complying with the request in order to consider the public interest.

69. A public authority may extend the time for complying with a request under section 10(3) of FOIA, but only in order to fully consider the public interest test. There is no statutory limit on how long that extension may be; the FOIA simply refers to an extension being until such time as is reasonable in the circumstances. However the Commissioner has issued guidance which sets out her opinion that only in the most exceptional circumstances should a public authority require an extension of more than an additional twenty working days. This would provide a public authority with a total of forty working days from the date the request is received to deal with it.
70. In this case the request was made by email on Sunday 5 February 2017, so Monday 6 February would be the first full working day following its receipt. When calculating the number of working days following the receipt of a request, the FOIA allows account to be taken of any bank holiday that occurs in any part of the United Kingdom; this would include St Patrick's Day which is a bank holiday in Northern Ireland. Taking account of St Patrick's Day means that the fortieth working day would be Monday 3 April 2017. The council's response final response was therefore provided within the time limit advised by the Commissioner.
71. However where a public authority has found it necessary to extend the time for dealing with a request in order to properly address the public interest the Commissioner would expect the public authority to be able to demonstrate it had fully considered the public interest test by providing a well-argued submission as to where the balance of the public interest lay. In this case the council has not done so. It has simply directed the Commissioner to the refusal notice it issued to the complainant on 3 April 2017. This only contains a very superficial consideration of the public interest.
72. The Commissioner considers it appropriate to remind to the council that the extension to the time for responding to a request is only available when more time is required to consider the public interest once it has been decided that an exemption is engaged. Any consultation with a third party which is required in order to decide whether the exemption is engaged in the first place must be completed within the initial twenty working days.
73. The second point arises from the council's possible confusion over the interpretation of section 1(4) of the FOIA and whether it provided any scope to amend the report in light of the named organisation's concerns over its accuracy. The Commissioner has detected this apparent confusion from the letter sent by the named organisation to the council as part of the consultation process. The named organisation rightly questioned whether making any amendments was appropriate.

74. Under section 1(4) of the FOIA the information captured by a request is that held at the time the request is received, however account may be taken of any amendment or deletion made between then and when information is provided to the applicant, so long as that amendment or deletion is one that would have been made regardless of the fact that a request had been made.
75. The Commissioner considers that the provision is intended to cater for routine amendments and deletions where for example readings or statistics are updated on a regular basis, or even where a document falls due for destruction in line with an established records management policy. The provision exists to ensure public authorities are not required to put its regular work on hold until it has dealt with a request.
76. It would not cater for a situation where a public authority has already provided another party with what at that time it considered a final version of a report as was the case here. This remains the position even if the public authority later considers it has cause to produce a revised report in light of feed-back from the report's recipient. There is nothing that the Commissioner has seen which suggests that the report was intended to be provided to the named organisation as a draft document as part of an iterative process.

Right of appeal

77. 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

78. 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.

79. 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

Rob Mehan
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