

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 December 2017

Public Authority: Armagh, Banbridge & Craigavon Borough Council ("the Council")

Address: Craigavon Civic & Conference Centre
Lakeview Road
Craigavon BT64 1AL

Decision (including any steps ordered)

1. The complainant has requested information from the Council which consists of a report into allegations against a former Council employee. The Council has refused to disclose the requested information, citing section 40(2) of the FOIA as a basis for non-disclosure.
2. The Commissioner's decision is that the Council has correctly applied section 40(2) of the FOIA to the requested information. The Commissioner therefore requires no steps to be taken.

Request and response

3. On 12 October 2016, the complainant wrote to the Council and requested the following information:
 - A copy of the Kerr Report into Lough Neagh Rescue, which was commissioned by the legacy Craigavon Borough Council.

4. The Council responded on 7 November 2016. It stated that it held the information but would not disclose it to the complainant, citing section 40(2) of the FOIA as a basis for non-disclosure. The complainant sought an internal review of that decision on 18 November 2016.
5. Following an internal review the Council wrote to the complainant on 2 December 2016. It stated that the reviewer was upholding the original decision.

Scope of the case

6. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
7. The Commissioner has considered whether the Council was correct to apply section 40(2) of the FOIA to the requested information.

Reasons for decision

8. 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 second condition below is satisfied."*

Is the withheld information personal data?

9. Personal data is defined by the Data Protection Act 1998 (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.
10. The information being withheld under section 40(2) in this case is a report from which living individuals can be identified.

11. The Commissioner is satisfied that the information falls within the definition of personal data as set out in the DPA because it relates to identifiable living individuals.

Would disclosure contravene any of the Data Protection Principles?

12. 11. 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

13. When a public authority discloses information under the FOIA, it is essentially disclosing information to the world and not just the person making the request.
14. The Council has clarified to the Commissioner that the requested information, when put together with other information which is already in the public domain, can identify living individuals even if the names of such individuals were redacted.
15. The Council has informed the Commissioner that the individuals who could be identified from the requested information would have a reasonable expectation that their personal information would not be disclosed as the report relates to an internal staffing matter in which those individuals involved would reasonably expect their information to remain confidential.

Consequences of disclosure

16. The Council has informed the Commissioner that the situation which gave rise to the report was very complex and acrimonious which extended to some parties involved having expressed fears regarding their physical safety when a post in response to an FOI request appeared on the same publicly accessible website www.whatdotheyknow.com.
17. As the Council has stated that the individuals in the report would be identifiable if their information was put together with other information already in the public domain, the Commissioner considers it very likely that disclosure of a report likely to identify those individuals would cause them significant distress.

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

18. The complainant stated that he would accept the requested information with the names of the identifiable individuals redacted. The Council has informed the Commissioner that, even if those names were to be redacted, the individuals could still be identified from the requested information when put together with other information that was already in the public domain as a result of numerous requested under the FOIA.
19. The Council has also informed the Commissioner that, whilst it understands the need for transparency and openness in public authorities, disclosure of the requested information would not enlighten the complainant or the public at large as to any of the Council's activities or processes.
20. Having perused the requested information, the Commissioner accepts that, although the complainant may have a strong personal interest in the withheld information, there is no wider legitimate public interest in disclosing it which would outweigh the likely distress caused to the data subjects.
21. Therefore the Commissioner's decision is that section 40(2) of the FOIA is engaged in this case and has therefore been correctly applied by the Council to the requested information.

Right of appeal

21. 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

22. 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.
23. 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

Deirdre Collins
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
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SK9 5AF