

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 January 2018

Public Authority: Chorley Borough Council

Address: Civic Offices
Union Street
Chorley
Lancashire
PR7 1AL

Decision (including any steps ordered)

1. The complainant has requested information about the training undertaken, and powers held, by council officers. Chorley Borough Council ("the Council") disclosed some information, and withheld some under the exemption provided by section 40(2). The complainant disputed the Council's application of section 40(2), and contested that further recorded information was held.
2. The Commissioner's decision is that the Council has correctly applied section 40(2), and that on the balance of probabilities, no further recorded information is held. However the Council breached section 10 by providing its response outside of the time for compliance.
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 2 March 2017, the complainant wrote to the Council and requested information in the following terms:

Please supply the training criteria for Neighbourhood Officers, including all compulsory training which officers must complete upon appointment. Please include training officers receive in relation to Environmental Health, Animal Welfare (including dealing with stray dogs) and Pest Control. A template of training would be appreciated.

Please also supply the details for the person responsible for pest control, including ordering of pesticides and rodenticides. Please ensure this information is current and provides the details of the person whom is qualified to order such items as of today's date (2/3/17). In addition please state the number of persons qualified to RSPH level 2 Pest Control within Chorley Council and their job title.

Please provide information in relation to Chorley Council Neighbourhood Officers in their authority to issue Fixed Penalty Notices, being a copy of their written authorisation including dates of authority being given for each officer. Officer names do not need to be provided and can be referred to as Officer one, two etc. Please include the last 6 years including dates of appointment and leaving or if they continue service.

5. The Council responded on 4 April 2017. It disclosed held information.
6. On 4 April 2017, the complainant asked the Council to undertake an internal review.
7. Following an internal review the Council wrote to the complainant on 28 April 2017. It disclosed further held information, and withheld some under the exemption provided by section 40(2).

Scope of the case

8. The complainant contacted the Commissioner on 4 April 2017 to complain about the way his request for information had been handled. Specifically, he disputed the Council's application of section 40(2), and contested that further relevant information was held.
9. The Commissioner considers the scope of the case to be the determination of whether section 40(2) has been correctly applied, and whether all relevant information has otherwise been disclosed.

Reasons for decision

Section 40(2) – Personal information

10. Section 40(2) states that:

Any information to which a request for information relates is also exempt information 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.”*

11. Section 40(3) provides that:

The first condition is–

(a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene–

- (i) any of the data protection principles...*

Is the withheld information personal data?

12. Personal data is defined by section 1 of the Data Protection Act 1998 ("the DPA") as:

...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 data controller or any person in respect of the individual...*

13. In order for the exemption to apply the information being requested must constitute personal data as defined by section 1 of the DPA. In this instance the Commissioner is aware that the information that has been withheld is:

- an attendance sheet for a 'RIPA' training course which contains the names and signatures of council officers; and
- the names of council officers who are recorded as having undertaken additional training courses (namely 'Using Rodenticide Safely', 'Certificate in Pest Control (pre-2000)', 'CPIA Evidence Gathering Course', and 'Powers Of Entry'.

The Commissioner considers that this information clearly represents personal data.

Would disclosure breach the data protection principles?

14. The data protection principles are set out in schedule 1 of the DPA. The Commissioner considers that the first data protection principle is most relevant in this case. The first principle states that personal data should only be disclosed in fair and lawful circumstances, the conditions of which are set out in schedule 2 of the DPA.
15. The Commissioner's considerations below have focused on the issues of fairness in relation to the first principle. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the data subject and any potential consequences of the disclosure against the legitimate public interest in disclosing the information.

Reasonable expectations of the data subject

16. 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.
17. In the circumstances of this case, the Council has not sought consent from the individuals, as it does not consider that the individuals would hold any reasonable expectation of their personal data being disclosed under the terms of the FOIA. The Council considers that disclosure would represent a breach of the individuals' privacy, and that neither the requestor, nor any other third party, hold a legitimate interest that justifies this.

The consequences of disclosure

18. The Council considers that disclosure of the information would represent a significant infringement into the individuals' privacy, as the requestor is a former officer of the Council and would be able to clearly identify the individuals by their name.

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

19. The Commissioner is aware that held information about the training undertaken by the council officers has been provided to the complainant. The complainant holds concerns about the validity of this training, and has indicated that he intends to submit the matter to the Health and Safety Executive.
20. Whilst the Commissioner has noted the complainant's concerns, it is understood that there are also processes by which he can have these independently considered by the appropriate authority.

The Commissioner's conclusion

21. There is always some legitimate public interest in the disclosure of any information held by public authorities. This is because disclosure of information helps to promote transparency and accountability amongst public authorities. This in turn may assist members of the public in understanding decisions taken by public authorities and perhaps even to participate more in decision-making processes.
22. Whilst the Commissioner accepts that there is legitimate interest in ensuring that council officers are sufficiently trained to undertake their roles, it is noted that the Council has already disclosed held information about the nature of this training. It is also evident to the Commissioner that any complaint against the decisions and actions of a council officer would need to be submitted to the Council through the formal routes available for this, and equally, that any concerns about the validity of the training received by council officers should be referred to the relevant authority.
23. Having considered these factors, the Commissioner has concluded that the disclosure of the individual's personal data would not be fair, and that the Council has correctly applied section 40(2).

Section 1(1) – General right of access to information

24. Section 1(1) of the FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information relevant to the request, and if so, to have that information communicated to them. This is subject to any exclusions or exemptions that may apply.
25. Where there is a dispute between the information located by a public authority, and the information a complainant believes should be held, the Commissioner follows the lead of a number of First-tier Tribunal (Information Rights) decisions in applying the civil standard of the balance of probabilities.
26. In the circumstances of this case the Commissioner will determine whether, on the balance of probabilities, the Council holds further recorded information that falls within the parameters of the request.

The Council's position

27. The Council has informed the Commissioner that it has consulted with those departments known to be relevant to the subject matter of the request. These departments include Human Resources, ICT, and Early Intervention & Support. In conjunction with this, a search of hardcopy

and electronic records has also been undertaken across the Council, with particular emphasis on those used by Human Resources. The identified information, with the exception of that withheld under section 40(2), was disclosed to the complainant.

28. The Council has explained that whilst it referred to further information potentially being held in its internal review outcome (i.e. about any 'PACE' training received by Neighbourhood Officers), it has now consulted with the Head of the Early Intervention and Support department, who has confirmed that no relevant information is held in relation to those officers. This is because any such training would be made available by Lancashire City Council (which coordinates all training for Environmental Health Lancashire); and would not be recorded by the Council for its own purposes.
29. The Council has confirmed that no relevant information is known to have been previously held and destroyed, and that there is a statutory requirement upon the Council to retain relevant information for seven financial years.
30. In response to the Commissioner's investigation, no new information has been identified by the Council, and the Council considers that all held recorded information that falls within the parameters of the original request has been provided.

The Commissioner's conclusion

31. The Commissioner has considered the searches undertaken by the Council.
32. The Commissioner recognises that logical steps have been taken by the Council in searching for relevant information. These steps have included consultation with departments most relevant to the request (which the Commissioner notes relates to the training and authority held in relation to specific posts), and searches across held hardcopy and networked electronic files; including those specifically held by the Human Resources department. Whilst the Council has previously alluded to the possibility of further recorded information being held (i.e. about 'PACE' training), it has now confirmed with the head of the relevant department that no such information is recorded in relation to Neighbourhood Officers.
33. There is no evidence available to the Commissioner that indicates that the Council's searches have been deficient, or that further recorded information is held by it that falls within the parameters of the request. On this basis the Commissioner must conclude that it is likely that all relevant recorded information has been disclosed.

Section 10 – Time for compliance

34. Section 10(1) of the FOIA states that:

Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.

35. In this case the Commissioner has identified that the Council responded outside of the time for compliance provided by section 10.

Right of appeal

36. 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

37. 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.
38. 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
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