

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 September 2018

Public Authority: City of Bradford Metropolitan District Council
Address: Centenary Square
Bradford
BD1 1HY

Decision (including any steps ordered)

1. The complainant has requested information from Bradford City Council ("the Council") relating to any investigation that may have been carried out by the Council in relation to an alleged incident at a specific school in 2012.
2. The Commissioner's decision is that the Council has correctly withheld the information which it holds under section 40(2) of the FOIA because it comprises the personal data of third parties.
3. The Commissioner does not require the Council to take any steps.

Request and response

4. On 10 November 2017, the complainant wrote to the Council to request information of the following description:

"[Information request - 1]

The claimants account, which was not challenged, is that [redacted information]".

Please send me: All of the information that you hold regarding my protected disclosure re. information request - 1.

[Information request - 2]

By 29th June 2012 the City of Bradford Metropolitan District Council was aware of two staff members from [named school] having seen [redacted information]. This matter of [redacted information] was reported to an ATL union representative and in turn the ATL Union reported the matter to the City of Bradford Metropolitan District Council in June 2012. ATL also raised concerns about whether an adequate investigation had been carried out. ATL also raised concerns about [redacted information].

Please send me: All of the information that you hold regarding this disclosure re. information request – 2.

I would like the above information to be provided to me as [paper or electronic copies, audio-tape version or an opportunity to view].”

5. On 4 December 2017, the Council responded and explained that it needed clarification of the request. It also explained that it would not be able to provide third party personal data.
6. On the same day, the complainant responded to the Council with some clarification. She provided some background to the request and requested some of her own personal data. She also explained:

“I am seeking...

The evidence of what the Child Protection Co-ordinator did from receiving my disclosure on Monday 28th May 2012 e.g. investigation, emails, telephone calls regarding the matter.

The evidence of what the Local Area Designated Officer did from receiving my disclosure on Monday 28th May 2012 e.g. investigation, emails, telephone calls regarding the matter.

The evidence of the things that the Chair of Governors at [named school] did from receiving my disclosure on Monday 28th May 2012 to inform you, the Council of [redacted information].

The evidence of what you, the Council did from the 29th June 2012 about [redacted information].

I am seeking...

The evidence of the things that the Council has done since Monday 28th May 2012 and especially since the 12/11/2015 to investigate the concerns that the Employment Tribunal Judgement (Case Number [number redacted] for which this Council is a respondent) raise about

how the School and the Council's management of my protected disclosure about [redacted information]".

7. Later that day, the Council issued a further response stating that it was still unclear as to the scope of the request and that it would be unable to provide third party personal data.
8. The complainant requested an internal review on 6 January 2018. On 16 February 2018, the Council stated that it held some records which were relevant to the request, but that it was withholding them under section 40(2) of the FOIA – third party personal data.

Background to the request

9. The complainant had previously been employed at a particular school in Bradford ("the school").
10. She had become concerned, during her employment, about an alleged incident involving a senior member of staff, which she had been told about informally in the staff room. She later reported her concerns. Subsequently, her employment at the school had ended.

Scope of the case

11. The complainant contacted the Commissioner on 12 March 2018 to complain about the way her request for information had been handled.
12. The Commissioner is aware that the complainant made a number of requests for information, both to the school and to the Council.
13. The Commissioner contacted the Council on 29 June 2018. She explained that she was aware that the Council had considered the request of 4 December 2017, in part, to be a subject access request from the complainant for her own personal data.
14. The Commissioner stated that, in her view, a reasonable reading of the request would be for any information held in relation to any investigation which had been carried out into the alleged incident at the school. While it appeared that the Council had located and withheld some "records", the Commissioner asked the Council to clarify what the withheld information comprised. She explained that the Council should ensure that it had located all of the information which it held falling within the scope of the request, and should confirm that it had not only considered the complainant's own personal data.

15. The analysis which follows covers whether the Council has, during the course of the investigation, located all of the relevant information which it holds and which is not the complainant's own personal data, and whether the Council is correct to have withheld some information under section 40(2) of the FOIA – third party personal data.

Reasons for decision

Section 1 – what information is held?

16. Section 1 of the FOIA states that states that:

"(1) Any person making a request for information to a public authority is entitled—

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him."

17. In cases where there is a dispute over the amount of information held, the Commissioner applies the civil test of the balance of probabilities in making her determination. This test is in line with the approach taken by the Information Rights Tribunal when it has considered whether information is held (and, if so, whether all of the information held has been provided) in cases which it has considered in the past.
18. The Commissioner asked the Council to explain what searches were carried out for relevant information.
19. The Council explained that it had carried out an extensive search, both of its electronic systems and of manual records, in relation to this matter. It had done this already in order to locate and consider the personal data which the complainant had requested in connection to associated litigation.
20. The Council explained that it held a file of legal documents relating to the alleged incident at the school. However, some of this comprises the personal data of the complainant, since it relates to an employment tribunal matter. The Council therefore considered providing that information separately, under the appropriate data protection legislation.
21. The Council had determined that the only information which it held which should be considered under the FOIA, comprised two letters. The

Council withheld these letters under section 40(2) of the FOIA, as will be considered further on in this notice.

22. The Commissioner notes that the letters pre-date the employment tribunal in November 2015 which is referred to in the latter part of the request. It would appear from the request that the complainant expected the Council to hold general information which would have been generated subsequent to this tribunal.
23. However, as explained previously, this notice only concerns information which is not the complainant's own personal data. In addition, the Council explained that, as far as it was aware, the school itself carried out an investigation into the alleged incident, and the Council considered that this was largely a matter for the school.
24. The Commissioner is satisfied that the Council carried out adequate and appropriately-targeted searches for information falling within the scope of the request, and that, on the balance of probabilities, it does not hold any further relevant information.
25. The Commissioner has gone on to consider whether the Council correctly withheld the information that is not the complainant's own personal data under section 40(2) of the FOIA – third party personal data.

Section 40(2) – Third party personal data

26. This section states that third party personal data is exempt from disclosure under the FOIA if disclosure would contravene any of the Data Protection Principles, set out in Schedule 1 of the Data Protection Act 1998 ("DPA"), which was the relevant data protection legislation at the date of the request.

Is the withheld information personal data?

27. Personal data is defined by the DPA as any information relating to a living and identifiable individual.
28. The two main elements of personal data are therefore that the information must 'relate' to a living person and that the person must be identifiable. Information will relate to a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them, has them as its main focus, or impacts on them in any way.
29. In this case, the withheld information comprises a letter from the Council to the school in August 2012, and a response sent on behalf of the school in September 2012.

30. The Commissioner has considered the two letters. It is evident that a number of individuals and their place of work are named in the contents of the letters, in addition to details of the respective senders and recipients, who are also named. She is therefore satisfied that a number of individuals are identifiable from the letters.
31. She is satisfied that, in the case of the individuals named in the letters' contents, the letters have them as their main focus. The Commissioner considers that the letters are clearly linked to these individuals, as well as to the named senders and recipients.
32. The Commissioner has therefore determined that the letters relate to living individuals who are identifiable within the definition of personal data at section 40(2) of the FOIA, and therefore comprise their personal data.

Can the withheld information be anonymised?

33. In certain cases, the Commissioner will consider ordering information to be disclosed in anonymised form. For example, it may be possible to redact individuals' names, or certain sections of information, so that the remaining information may be publicly disclosed once personal data has been removed.
34. However, while anonymisation can be a useful tool to promote transparency, there are cases where anonymising the data would leave very little, if anything, which could be understood in a meaningful sense.
35. The Commissioner considers that in this case, anonymising the letters by removing all information of a personal or sensitive nature would require almost the entire contents of both letters to be redacted, leaving nothing which could be understood in a meaningful sense.
36. She has therefore gone on to consider whether disclosure of the letters would breach any of the Data Protection Principles.

Would disclosure breach the Data Protection Principles?

37. 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.
38. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the individual(s), the potential consequences of the disclosure and whether there is a wider legitimate interest in the disclosure of the information in question.

Reasonable expectations

39. Whether an individual might reasonably expect to have their personal data released depends on a number of factors. These include whether the information relates to an employee in their professional role or to them as individuals, the individual's seniority or whether they are in a public-facing role.
40. In this case, the Commissioner notes that the contents of the letters relate to individuals in their professional roles. Two named individuals are in senior posts.
41. In the case of the senior post-holders, the Commissioner considers that those individuals would potentially have some reasonable expectation that information about them may be likely to enter the public domain.
42. However, in the case of the other employees named in the letters, the Commissioner does not consider that they would have any reasonable expectation that information of the type that has been withheld would be disclosed, since they do not occupy senior posts.

Consequences of disclosure/damage and distress

43. In the Commissioner's guidance on dealing with requests for information about public authority employees¹, it states that disclosure is unlikely to be fair if it would have unjustified adverse effects on the employees concerned. However, although employees (or former employees) may regard the disclosure of personal information about them as an intrusion into their privacy, this may not be a persuasive factor on its own, particularly if the information relates to their public role rather than their private life. If an authority wishes to claim that disclosure would be unfair because of the adverse consequences on the employees concerned, it must be able to put forward some justification for this claim.
44. In this case, the Council has not provided detailed arguments other than to explain in a general sense that it considers it has a duty to protect personal data. However, the Commissioner has considered the letters and has determined that, due to the connection to the alleged incident at the school, damage and distress is likely to be caused to those

¹ https://ico.org.uk/media/for-organisations/documents/1187/section_40_requests_for_personal_data_about_employees.pdf

employees named in the letters. This is likely to be the case both for the senior post-holders, who may be said to have greater responsibility regarding the alleged incident, and also for those not in senior posts but whose names are linked to the alleged incident and investigation of it, albeit in a peripheral way.

45. The Commissioner has considered the fact that the letters are now a number of years old, and whether this may lessen the impact on the named individuals; however, she is satisfied that there remains a likelihood that shock and distress could be caused if the information were disclosed publicly. She accepts that disclosure would potentially be an invasion of the individuals' privacy and could be distressing for them.

Balancing the rights and freedoms of the individuals with the legitimate interests in disclosure

46. In cases where complying with an information request would involve disclosing personal data, the Commissioner will always be mindful of the importance of protecting the privacy of individuals. Therefore, in order to find in favour of disclosure, it would need to be shown that there is a compelling interest in disclosure which would make it fair to do so.
47. The Commissioner has considered whether there is any wider legitimate interest in the disclosure of the information in question.
48. She notes that the original request related to a matter potentially of some interest to the wider public; that is, to the complainant's concern over the adequacy of any investigation into the alleged incident at the school.
49. The Commissioner considers that the withheld information is of some wider legitimate interest, since the letter from the school is likely to have informed any future course of action by the Council with regard to the alleged incident.
50. However, the Commissioner does not consider that this is sufficient to outweigh the individuals' right to privacy, albeit by a fairly narrow margin in the case of the senior post-holders.
51. The Commissioner has therefore determined that the withheld information is personal data, and that disclosure would breach the first data protection principle as it would be unfair to the individuals concerned. The Commissioner therefore finds that the exemption provided by section 40(2) is engaged and that the Council was not obliged to disclose the redacted information.

Right of appeal

52. 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

53. 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.
54. 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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