

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 November 2020

Public Authority: Nottingham City Council

Address: Loxley House
Station Street
Nottingham
NG2 2NG

Decision (including any steps ordered)

1. The complainants have requested from Nottingham City Council ("the Council") information in relation to an investigation report.
2. The Commissioner's decision is that the Council was entitled to withhold the information under section 40(1) of the FOIA. However, in providing a response outside of statutory time periods, it breached section 10(1).
3. The Commissioner does not require the Council to take any steps.

Request and response

4. On 25 March 2020, the complainants wrote to the Council and requested information in the following terms:

"In November 2018 6 employees working in Adult Social Care and, based at The Mary Potter Centre, submitted a Collective Grievance against a number of Senior Managers Team Managers SSW SCCO's. The allegations indicated that they had breached a number of NCC policies and procedures.

There has been considerable delays in not only carrying out the investigation, there has also been a reluctance to provide us with the completed Investigators Report. We are aware that it was completed sometime ago and that [Named Person] HR has the Report. [Named Person] was appointed as the Deciding Officer. Withholding the completed report has generated ongoing stress and anxiety and, with the current Pandemic, has made it almost impossible for us to function, emotionally, on a day to day basis. We have come to the decision to request the completed Investigators Report under the Freedom of Information Act (2000) Act. We have sort advice about any exemptions you may consider to be relevant in possibly refusing our request and, we have been advised that given the allegations against a number of senior managers and supervisors, using the exemption to refuse our request under "Not in the Public Interest" cannot be used as a legal reason to withhold the report."

5. On 20 April 2020, the complainants contacted the Council, as they had not received a response to their request.
6. The Council responded on 29 June 2020. It explained that it had not received the original request dated 25 March 2020. It further advised that the delay in providing a response was due to the Covid-19 pandemic, which meant that only essential staff were able to access the office.
7. Within the response of 29 June 2020, the Council advised that it was applying section 40(1) of the FOIA to the request, as it contains the personal data of the complainants. It also explained that it had passed the request to its Data Protection team, so that the request could be processed as a Subject Access Request (SAR), under the Data Protection Act 2018.
8. Following an internal review the Council wrote to the complainants on 1 September 2020. It stated that it was upholding its original position, in that section 40(1) is applicable to the requested information. It also explained that the complainants would be receiving a response from its Data Protection team, providing them with individual reference numbers, so that they can track the progress of the request.

Scope of the case

9. The complainants contacted the Commissioner on 1 June 2020 to complain about the way their request for information had been handled. They advised that they had originally contacted the Commissioner on 29 April 2020 by letter. Following a telephone call from one of the complainants to the Commissioner, the Commissioner advised the complainant that due to the Covid-19 pandemic, all staff are working

from home and that hard copy mail was not being collected. The complainant then provided a copy of their complaint by email on the same date.

10. The Commissioner is aware that the complainants have several concerns regarding the Council and the way in which it has handled different complaints. However, as regulator of the FOIA, the Commissioner can only make a formal determination regarding whether the Council responded appropriately in its handling of the request. Put simply, the Commissioner has no authority to rule on the other matters of concern to the complainants.
11. The Commissioner considers that the scope of the case is to establish whether the Council correctly engaged the exemption at section 40(1) to withhold the requested information. If the exemption is (or would be) engaged in relation to the request, the Council would not have been under any obligation to provide information under the FOIA.

Reasons for decision

Section 40(1) – personal data of the applicant

12. Section 40(1) of the FOIA states that:

Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject."

13. Section 2(2) of the Data Protection Act 2018 defines personal data as: *"any information relating to an identified or identifiable living individual"*.
14. In this particular case, the information that the Council holds is related to the complainants. The information is in relation to a complaint made about senior members of staff, by the complainants, which then led to an investigation and a report being produced. As the complainants would be included within the report, it would therefore be their personal data and as such, it is exempt under section 40(1) of the FOIA.
15. Section 40(1) is an absolute exemption and there is no requirement for the Commissioner to consider the balance of public interest. As the exemption is engaged in respect of any information which came or would have come within the scope of the request, the Council was not obliged to supply any information in response.

Section 10 – Time for compliance

16. Section 10 of the FOIA states that:

“Any person making a request for information to a public authority is entitled –

(a) to be information 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. Section 8(1) of the FOIA states:

“In this Act any reference to a “request for information” is a reference to such a request which-

(a) is in writing

(b) states the name of the applicant and an address for correspondence, and

(c) describes the information requested.”

18. The Commissioner considers that the request in question fulfilled these criteria and therefore constituted a valid request for recorded information under the FOIA.

19. Section 10 of the FOIA states that responses to requests made under the Act must be provided *“promptly and in any event not later than the twentieth working day following the date of receipt.”*

20. The Commissioner acknowledges that, in this case, the Council’s delay in responding was due to the Covid-19 pandemic. As such, although there has been a breach of section 10 of the FOIA, she takes a sympathetic view of the Council’s position.

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@justice.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

Phillip Angell
Group Manager
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