

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 May 2023

Public Authority: Liverpool City Council
Address: Cunard Building
Water Street
L3 1AH

Decision

1. The complainant requested information relating to a specific employee. Liverpool City Council (the "council") refused the request under the exemption for personal data – section 40(2) of the FOIA.
2. The Commissioner's decision is that the council did not respond to the request in time and breached section 10(1) but that it is entitled to rely on section 40(2) of FOIA to withhold the requested information as it is the personal data of a third party and disclosure would be unlawful.
3. The council is not required to take any steps.

Request and response

4. On 16 November 2022 the complainant made the following request for information:

"Under FOI can I be furnished with the number of challenges, appeals and/or complaints individuals have raised concerning [redacted] in the previous 12 months. Can I also have copies of any correspondence sent to him/her, training delivered to him or reminders about how to discharge his duties in due diligence (all suitably redacted)"
5. Liverpool City Council (the "council") responded on 17 January 2023 and confirmed that it was withholding the information under the exemption for personal data – section 40(2) of the FOIA.
6. On 17 January 2023 the complainant asked the council to carry out an internal review.
7. The council sent the outcome of its internal review on 27 April 2023. The review confirmed that it was maintaining its position.

Reasons for decision

Section 40 – personal data

8. Section 40(2) provides an exemption for information that is the personal data of an individual other than the requester and where the disclosure of that personal data would be in breach of any of the data protection principles.
9. Section 3(2) of the Data Protection Act 2018 defines personal data as: "any information relating to an identified or identifiable living individual."
10. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
11. An Identifiable living individual means a living individual who can be identified, directly or indirectly, by reference to: a) an identifier such as a name, an identification number, location data or an online identifier, or b) one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.

12. The council has argued that the request specifies an identification number which relates to an identifiable living individual. The request asks for copies of any correspondence sent to the individual, training delivered to them or reminders about how to discharge their duties in due diligence.
13. The council considers that disclosing the requested information would identify, directly or indirectly, the council employee and reveal biographical details about them.
14. The Commissioner is satisfied that the requested information is the personal data of an identifiable individual.
15. The next step is to consider whether disclosure of this personal data would be in breach of any of the data protection principles. The Commissioner has focussed here on principle (a), which states:

"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject."
16. In the case of an FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.
17. When considering whether the disclosure of personal information would be lawful, the Commissioner must consider whether there is a legitimate interest in disclosing the information, whether disclosure of the information is necessary, and whether these interests override the rights and freedoms of the individuals whose personal information it is.
18. The Commissioner notes that the complainant requested the information because they have personal concerns about the conduct of the individual specified in their request. The Commissioner considers that the complainant is pursuing a legitimate interest and that disclosure of the requested information is necessary to meet that legitimate interest.
19. In balancing the legitimate interests in disclosure against the fundamental rights and freedoms of the data subjects involved, the Commissioner must also consider the impact of disclosure and whether it would be fair to the individual involved.
20. Whilst the Commissioner considers that there is some legitimate interest in information about council staff performance or conduct being placed in the public domain, he considers that to do this would cause unwarranted damage and distress.

21. The Commissioner has not seen any evidence to suggest that the individual involved would have a reasonable expectation that their personal data would be disclosed in response to an information request.
22. In relation to the concerns which gave rise to the request, the Commissioner also considers that there are other remedies available to the complainant which do not require the disclosure of personal data into the public domain.¹
23. Having considered the council's explanations for this case, the Commissioner has determined that there is insufficient legitimate interest to outweigh the fundamental rights and freedoms of the individual in this specific case and considers that there is no legal basis for the council to disclose the withheld information and to do so would be in breach of principle (a).
24. The Commissioner considers that the conclusions he has reached in this case conform to the position he has taken in a number of decision notices which relate to comparable requests for information. He considers that the conclusions reached in these previous decision notices are transposable to the facts of this case².
25. The Commissioner's decision is that the council is entitled to rely on section 40(2) of the FOIA to refuse to provide the requested information.

Procedural matters

26. Section 10(1) of FOIA states that a public authority must respond to a request promptly and "not later than the twentieth working day following the date of receipt".
27. In this case the request was submitted on 16 November 2022 and the council issued a response on 17 January 2023.
28. The Commissioner finds that the council breached section 10(1) by failing to respond to the request within 20 working days.

¹ These may include engagement with the council's corporate complaints procedure or, ultimately, a complaint to the Local Government Ombudsman.

² See, for example: <https://ico.org.uk/media/action-weve-taken/decision-notices/2023/4025009/ic-179019-c2r9.pdf>; <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4023197/ic-184229-h8v8.pdf>; <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4021990/ic-175465-b2f8.pdf>

Other matters

29. Although they do not form part of this decision notice the Commissioner would like to note the following matters of concern.

Internal review

30. The code of practice issued under section 45 of the FOIA (the "code") contains recommendation as to best practice in the handling of requests.

31. Paragraph 5.4 of the code states:

"Requests for internal review should be acknowledged and the applicant informed of the target date for responding. This should normally be within 20 working days of receipt."³

32. In this case the complainant sent their request for internal review on 17 January 2023 and the council sent its review response on 27 April 2023.

33. The Commissioner considers that, in this case, the council's practice failed to conform to the code. He expects that, in future, it will follow the recommendations of the code.

3

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf

Right of appeal

34. 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

35. 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.
36. 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

Christopher Williams
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