

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 July 2024

Public Authority: Brighter Futures for Children Limited
Address: Civic Offices
Bridge Street
Reading
RG1 2LU

Decision (including any steps ordered)

1. The complainant requested a record of part of a child protection conference attended by their former partner from Brighter Futures for Children Limited ("Brighter Futures"). Brighter Futures has refused to provide the information requested, citing section 40(2) of FOIA (personal information) as its basis for doing so.
2. The Commissioner's decision is that Brighter Futures is entitled to withhold the majority of the requested information under section 40(2) of FOIA. The Commissioner has determined that the remainder of the information is the complainant's own personal data and is therefore exempt from disclosure under section 40(1) of FOIA.
3. The Commissioner does not require further steps.

Request and response

4. On 31 August 2023, the complainant wrote to Brighter Futures and requested information in the following terms, regarding a record of a child protection conference:

"Please could you send me the rest of the report requested."

5. On the same date Brighter Futures responded and stated, "As the conference was split, the rest of the report was from [name of complainant's former partner redacted]'s part of the meeting therefore has been redacted". It did not cite a specific exemption under FOIA as grounds for withholding the requested information.

6. The complainant requested an internal review on 7 September 2023.

Scope of the case

7. Having not received an internal review outcome, the complainant made a complaint to the Commissioner on 29 October 2023. The Commissioner wrote to Brighter Futures on 24 November 2023 to advise it that its response of 31 August 2023 was not compliant with FOIA as it had not cited an exemption. He asked Brighter Futures to carry out an internal review and provide the outcome to the complainant within 20 working days.
8. The complainant contacted the Commissioner again to complain on 29 February 2024 as they had still not received an internal review outcome.
9. The Commissioner wrote to Brighter Futures again on 22 March 2024 to advise it that he had accepted this complaint for investigation without an internal review to avoid any further delays for the complainant.
10. The information governance team at Reading Borough Council ("the Council"), which owns Brighter Futures, subsequently contacted the Commissioner on 16 May 2024. On behalf of Brighter Futures, it provided some further information about how the request had been handled, however it still did not confirm the specific exemption under which Brighter Futures was withholding the requested information.
11. During the course of the investigation the Council, acting on behalf of Brighter Futures, confirmed that Brighter Futures was withholding the requested information under section 40(2) of FOIA (personal information).
12. This decision notice will consider whether Brighter Futures is entitled to withhold the requested information under section 40(2) of FOIA. It will also address Brighter Future's handling of the request.

Reasons for decision

13. Brighter Futures has cited section 40(2) of FOIA in relation to all of the withheld information on the grounds that it is the personal data of the complainant's former partner and that the former partner has not consented to disclosure of the information.
14. The withheld information is a copy of the minutes from part of a child protection conference concerning the complainant's children. This part of

the conference was attended by the complainant's former partner (the children's other parent) but not by the complainant.

15. Having viewed the withheld information the Commissioner's view is that whilst the majority of the information contained is the personal data of the former partner, it also includes the personal data of the children, of the complainant and also a small amount of personal data of the people attending the conference in a professional capacity.
16. The exemption at section 40(2) cannot be applied to a requestor's own personal data. The relevant exemption for personal data of which the requestor is the data subject is section 40(1) of FOIA.
17. The Commissioner has therefore considered whether the information that is the personal data of the complainant should be withheld under section 40(1) before going on to consider whether Brighter Futures is entitled to withhold the remaining information under section 40(2) of FOIA.

Section 40(1) - personal data of which the applicant is the data subject

18. Section 40(1) of the FOIA provides that any information to which a request for information relates is exempt information if it constitutes personal data of which the requestor is the data subject.
19. The Commissioner's guidance¹ is clear that a requestor's own personal data should not be disclosed under FOIA or the EIR, instead public authorities should handle this aspect of the request as a subject access request (SAR) under the UK GDPR or the DPA, as applicable.
20. As the Commissioner's guidance is clear that a requestor's own personal data should not be disclosed under FOIA or the EIR, he has proactively applied this exemption to the parts of the minutes which contain the complainant's personal data.
21. The Commissioner's decision is that some of the content of the minutes relates to and identifies the complainant so is their personal data, therefore 40(1) is engaged with respect to this information. He has addressed Brighter Future's obligations with respect to this information under UK GDPR and the DPA in the other matters section of this notice.

¹ <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/section-40-and-regulation-13-personal-information/part-one-is-the-request-for-personal-data/#own>

22. He has gone on to consider Brighter Future's application of section 40(2) to the parts of the minutes which do not identify and relate to the complainant.

Section 40(2) – Personal information of an individual other than the requestor

23. This reasoning covers whether Brighter Futures is entitled to rely on section 40(2) (personal information) of FOIA to refuse to provide the information in the minutes which is not the personal data of the complainant.
24. Section 40(2) provides an exemption for information that is the personal data of an individual other than the requestor and where the disclosure of that personal data would be in breach of any of the data protection principles.
25. Section 3(2) of the Data Protection Act 2018 defines personal data as:
"any information relating to an identified or identifiable living individual."
26. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
27. As stated above, the Commissioner's view is that the minutes contain the personal data of the complainant's former partner, of the complainant's children and also a small amount of personal data of the people attending the conference in a professional capacity.
28. The Commissioner is satisfied that the withheld information is personal data as the information relates to and identifies these individuals.
29. 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."
30. 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.
31. 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.

32. The Commissioner considers that the complainant is pursuing a legitimate interest in seeking to understand what was discussed in the part of the child protection conference concerning their children in which they were not present.
33. However, the Commissioner does not consider that the disclosure of the small amount of personal data about the people attending the conference in a professional capacity is necessary to meet this legitimate interest. As indicated by the minutes, these people all attended the whole conference, with only the complainant and their former partner having attended only part of the conference. The complainant is therefore already aware that they attended, and this information does not relate specifically to what was discussed in the complainant's absence. The Commissioner's decision is therefore that this information is exempt from disclosure under section 40(2) of FOIA as disclosure is not necessary to meet the legitimate interest pursued by the complainant.
34. The Commissioner does, however, consider the disclosure of the details of what was discussed in the complainant's absence comprising of the personal data of their former partner and their children to be necessary to meet this legitimate interest pursued by the complainant. He has therefore gone on to consider whether that legitimate interest overrides the rights and freedoms of the individuals whose personal information it is.
35. While the Commissioner recognises that the complainant is pursuing a legitimate interest, he considers that in this case this is far outweighed by the rights and freedoms of the complainant's former partner and their children.
36. The Commissioner does not consider that they would have any reasonable expectation that the information within the minutes would be disclosed to the world at large under FOIA. The information relates to their personal lives and highly sensitive family matters. The Commissioner considers that disclosure of this information to the world at large would be likely to cause considerable distress to both the complainant's former partner and to their children.
37. In addition, with respect to the information that is the personal data of the complainant's children, article 6(1)(f) of the UK GDPR states that the interests or fundamental rights and freedoms of the data subject require particular protection where the data subject is a child.
38. The Commissioner has determined that the legitimate interest in disclosure does not outweigh the fundamental rights and freedoms of the data subjects. His decision is therefore that Brighter Futures is

entitled to rely on section 40(2) (personal information) of FOIA to refuse to provide the information in the minutes which is not the personal data of the complainant.

Procedural matters

39. If a public authority intends to refuse to disclose information, section 17(1) of FOIA obliges the authority to provide the applicant with a refusal notice promptly and within 20 working days following the date of receipt of the request, that states the exemption being relied on and explains why the exemption applies.
40. In this case, Brighter Futures didn't state what exemption it was relying on when corresponding with the complainant. This was only provided to the Commissioner when he specifically asked for this to be confirmed during the course of his investigation. Brighter Futures therefore did not comply with the requirements of section 17(1).

Other matters

41. In this case, Brighter Futures did not offer an internal review and did not carry a review out after being requested to by the complainant.
42. The Commissioner accepted the case for investigation without an internal review in this case, however the Commissioner refers Brighter Futures to the FOIA section 45 Code of Practice² which states:

"It is best practice for each public authority to have a procedure in place for dealing with disputes about its handling of requests for information. These disputes will usually be dealt with as a request for an 'internal review' of the original decision."
43. Brighter Futures should therefore, as a matter of best practice, consider putting in place an internal review procedure and should advise information requestors of this when responding to requests.
44. The Commissioner understands from the information provided to him by the Council, on behalf of Brighter Futures, that the procedure for

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

handling information requests made to Brighter Futures is for staff to forward them to the Council's information governance team but that this process was not followed with regards to this request. Brighter Futures should ensure that all staff are aware of the correct processes for handling information requests, requests for internal review and correspondence received from the Commissioner.

45. Whilst the Commissioner cannot require a public authority to take action under the DPA via a FOIA decision notice, in view of his decision that some of the requested information is the personal data of the complainant, Brighter Futures should consider providing a response to the complainant under the DPA in respect of this information. The Commissioner understands that the complainant was advised to submit a SAR but has not done so to date. It is important to note, however, that the appropriate response under the DPA may well be the application of an exemption rather than disclosure.

Right of appeal

46. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

47. 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.
48. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Victoria James
Senior Case Officer
Information Commissioner's Office
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